

We agree with your conclusion that a waiver of limitations with respect to the Taxpayer Group for the taxable years in question given by [REDACTED] for the taxable years in question will be deemed given by the agent of the group, provided [REDACTED] is still in existence. See § 1.1502-77T(a)(4)(i). That is, as an alternative agent, [REDACTED] would be the proper party to sign a Form 872 to consent to extend the time to assess tax for the years in question.

We believe the caption of the Form 872 should read as follows: (Top of Form 872) [REDACTED], (E.I.N.: XX-XXXXXXX), as agent for the group*.

We recommend that in the E.I.N. box on the front page of the Form 872 you put the E.I.N. of [REDACTED]

We recommend that on the bottom of the front page of the Form 872 the asterisk should refer to the following: *This is in respect to the [REDACTED] consolidated group for the taxable years ending [REDACTED]

In addition, the signature block on page 2 of the Form 872 should be signed as follows: [REDACTED]. The block should be signed by a current officer of [REDACTED].

We should make sure that [REDACTED] is still in existence at the time the consent is signed.

The Advice needs to be clarified concerning who is the proper party to execute a Form 872 for the Taxpayer Group for its [REDACTED] taxable year. The last sentence in the introductory paragraph of the Advice on page one and the second paragraph on page three need to be modified to indicate that [REDACTED] is the proper party to execute a Form 872 for the Taxpayer Group's taxable year ending [REDACTED]. Section 1.1502-76(b)(1)(ii) generally provides that, if a corporation becomes a member of a new consolidated group (for example, by acquisition), it becomes a member at the end of the day on which its status as a member changes, and its taxable year ends for all Federal income tax purposes at the end of that day. Thus, [REDACTED]'s, and the Taxpayer Group's, [REDACTED] taxable year ends on [REDACTED]. As concerns the proper party to execute a Form 872 for that taxable year ending [REDACTED], the same rules apply as would apply for the Group's taxable years ending [REDACTED]. Namely, [REDACTED] is the proper party to execute the Form 872 under the general agency of § 1.1502-77 and as an alternative agent under § 1.1502-77T(a)(4)(i) since [REDACTED] itself, remains in existence. [Note: [REDACTED], and the other members of the Taxpayer Group, became members of the [REDACTED] beginning on [REDACTED] and, under §1.1502-76(a)(1), would have adopted the [REDACTED]'s calendar taxable year; thus, [REDACTED] would not have had a fiscal year ending [REDACTED].]

Other parts of the Advice that we recommend revising include-

(i) On the first page, in the second paragraph under the heading "Facts", there is a typo: Replace '██████' with '██████'.

(ii) On page 2, remove the last paragraph. This paragraph deals with the situation in which the company that was the common parent has ceased to exist, which is not relevant to our case (where ██████ remains in existence).

(iii) At the beginning of the first paragraph on page 3, add a sentence to the following effect:

If the corporation that was the common parent of the group ceases to be the common parent, § 1.1502-77T(a)(4) may identify one or more possible alternative agents. Section 1.1502-77T(a)(4)(i) essentially provides that the common parent of the group for the year to which the waiver applies has authority to execute the waiver (i.e., Form 872) as an alternative agent of the group.

In that same paragraph, we recommend removing the last sentence (referring to the *Union Oil* case), given that our case does not involve a reverse acquisition that would permit the new parent to be an agent for preacquisition years.

Finally, add a paragraph to the Advice informing the taxpayer of its rights under new section 6501(c)(4)(B), which provides that the Service shall notify the taxpayer of its right: 1) to refuse to extend the period of limitations; or 2) to limit such extension to particular issues; or 3) to limit the extension to a particular period of time. This notice must be provided by field personnel each time an extension is requested. The legislative history of this provision states that Congress believed that taxpayers should be fully informed of their rights with respect to the statute of limitations on assessment.

Further Action Needed: Yes [] No [X]

Describe:

Call Returned By:	Keith Stanley <i>KS</i>	Symbols: CC:CORP:4
Date Call Returned:	September 28, 2000	Time Spent: 2 hours
Reviewed By:	Steve Fattman <i>SF</i>	
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Date:	September 28, 2000	

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NER:CTR:HAR:TL-N-5280-00
CJSantaniello

date: **SEP 15 2000**
to: Ronald Hathaway, Team Manager, FS&H, Group 1122, Hartford, CT
from: District Counsel, Connecticut-Rhode Island
subject: **Large Case Advisory Opinion - [REDACTED]**

THIS DOCUMENT INCLUDES CONFIDENTIAL INFORMATION SUBJECT TO THE ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGES AND SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE SERVICE, INCLUDING THE SUBJECT TAXPAYER. THIS DOCUMENT ALSO CONTAINS TAX RETURN INFORMATION SUBJECT TO THE PROVISIONS OF I.R.C. § 6103 AND ITS USE WITHIN THE SERVICE SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW IT.

We are responding to your memorandum dated August 18, 2000, in which you request legal advice regarding who is the proper party to execute a Form 872 for [REDACTED]'s fiscal years ending [REDACTED] through [REDACTED]. For the reasons set forth below, we believe that [REDACTED], which filed its own consolidated returns for those years and remains in existence despite its [REDACTED] merger with [REDACTED], is the proper party to execute the Form 872 for the years under examination. Because [REDACTED] was part of [REDACTED]'s [REDACTED] consolidated return, the proper party to extend the limitations period for its fiscal year ended [REDACTED] is [REDACTED], its common parent.

Facts

This case involves an audit of [REDACTED]'s fiscal years ended [REDACTED] through [REDACTED]. [REDACTED] is a leading manufacturer of [REDACTED] components. Its products, the majority of which it manufactures itself, consist of [REDACTED] and [REDACTED].

Prior to [REDACTED], [REDACTED], a Connecticut corporation, was the common parent of an affiliated group. For its fiscal years ended [REDACTED] through [REDACTED], [REDACTED] filed consolidated returns.

On [REDACTED], [REDACTED], the [REDACTED], completed a merger with [REDACTED] by exchanging approximately [REDACTED] shares of its common stock for all the common stock of [REDACTED]. Each share of [REDACTED] was exchanged for [REDACTED] of [REDACTED] share of [REDACTED]. Under the Agreement and Plan

of Merger, [REDACTED], a wholly owned [REDACTED], merged with and into [REDACTED], with [REDACTED] surviving. Following the merger, [REDACTED] became a wholly-owned [REDACTED].

[REDACTED] filed consolidated returns for its calendar years [REDACTED] and [REDACTED]. On Form 851, Affiliations Schedule, attached to its return, [REDACTED] lists [REDACTED] affiliates. [REDACTED] is not among those listed. [REDACTED] is, however, listed in [REDACTED]'s [REDACTED] Form 851.

The statute of limitations on assessment for [REDACTED]'s fiscal years ended [REDACTED] through [REDACTED] expires on [REDACTED]. The examination team has requested our assistance in determining who is the proper party to execute the Forms 872 for those years.

Discussion

Under I.R.C. § 6501(c)(4), the Service and the taxpayer may consent in writing to extend the time for making an assessment if the consent is executed before the normal period of assessment or a previously-extended period expires. The regulations under section 6501(c)(4) do not specify who may sign consents executed under that section with respect to consolidated returns. Instead, the rules pertaining to statute extensions for consolidated returns are contained in Treas. Reg. § 1.1502-77(a) and Treas. Reg. § 1.1502-77T.

The common parent of a consolidated group is the sole agent for each subsidiary in the group for all matters regarding the tax liability for the group's consolidated return year. Treas. Reg. § 1.1502-77(a). This agency continues for as long as the common parent remains in existence under state law, even if consolidated returns are not filed in subsequent years or corporations join or leave the group. Treas. Reg. § 1.1502-77(a); Craigie, Inc. v. Commissioner, 84 T.C. 466, 474 (1985). Thus, the common parent is generally the proper party to sign consents to extend the period of limitations on assessment for all members of the group. Treas. Reg. § 1.1502-77(a).

This general rule does not apply when the common parent is no longer in existence. Southern Pac. Co. v. Commissioner, 84 T.C. 395 (1985). Under this rule, if the common parent no longer exists, a waiver of the statute of limitations may be signed by an "alternative agent," as defined in Treas. Reg. § 1.1502-77T(a)(3). Under Treas. Reg. § 1.1502-77T(a)(4)(ii), a waiver may be signed by "[a] successor to the former common parent of the group in a transaction to which section 381(a) applies."

Notwithstanding the [REDACTED] merger, [REDACTED] remains in existence as a subsidiary of [REDACTED]. Consequently, [REDACTED] is the proper party to sign the Form 872 for all years that it was the common parent of its consolidated group. See Union Oil Company of California v. Commissioner, 101 T.C. 130 (1993) (holding that where old common parent continues to exist after a reverse acquisition, the old common parent and the new common parent are agents for the consolidated group for preacquisition years).

As noted above, [REDACTED] became a member of [REDACTED]'s consolidated group beginning with [REDACTED]'s consolidated return year [REDACTED]. Consequently, [REDACTED] is the sole agent for each subsidiary in its group (including [REDACTED]) for all matters regarding the group's consolidated return year under Treas. Reg. § 1.1502-77(a). Thus, [REDACTED] is the proper party to execute the Form 872 for [REDACTED]'s fiscal year ended [REDACTED].

We are simultaneously submitting this memorandum to the National Office for post-review and any guidance they may deem appropriate. Consequently, you should not take any action based on the advice contained herein during the 10-day review period. We will inform you of any modifications suggested by the National Office, and, if necessary, we will send you a supplemental memorandum incorporating any such recommendation.

Since there is no further action required by this office, we are closing our file in this matter. Please call Carmino J. Santaniello at (860) 290-4075 if you have any questions or require further assistance.

BRADFORD A. JOHNSON
Acting District Counsel

By: (Signed) Carmino J. Santaniello
CARMINO J. SANTANIELLO
Attorney