

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:CLE:PIT:POSTF-145889-01

DPLeone

date: September 7, 2001

to: Gary E. O'Shell, Team Manager

from: Associate Area Counsel (CC:LM:MCT:CLE:PIT)

subject: [REDACTED] - [REDACTED], [REDACTED] and [REDACTED] (Final) Form
872 language following organizational changes

This is in response to your August 29, 2001 request for advice with respect to an extension of the statute of limitations for the tax years ended [REDACTED], [REDACTED] and [REDACTED] (Final Return). This memorandum should not be cited as precedent. This memorandum is subject to 10-day post review by our National Office and, therefore, is subject to modification.

ISSUE

After the organizational changes effective on [REDACTED], what is the proper name to be used on the Forms 872, Consent to Extend the Time to Assess Tax?

ANSWER

1. The proper name to be used on the Forms 872, is as follows:

[REDACTED] (EIN: [REDACTED]),
formerly known as [REDACTED] (EIN: [REDACTED]),
[REDACTED].*

* This is with respect to the consolidated federal income tax liability of the [REDACTED] [REDACTED] consolidated group for the taxable years ended [REDACTED], [REDACTED], and [REDACTED].

The common parent of the group for the tax years at issue is still in existence and is still the entity that has the authority to execute the consents to extend the statute of limitations on behalf

of the consolidated group. Further, an officer of [REDACTED], formerly known as [REDACTED], should sign the Forms 872. I.R.C. § 6062; Rev. Rul. 83-41, 1983-1 C.B. 349.

FACTS

For the years ended [REDACTED]¹, [REDACTED]² and [REDACTED]³, [REDACTED] filed consolidated income tax returns.

On [REDACTED], all of the stock of [REDACTED], and all of the stock of each of the subsidiaries listed on the affiliation schedules, was acquired by [REDACTED], now known as [REDACTED]⁴ and its subsidiaries became a part of the consolidated federal group of which [REDACTED]⁵ is the highest domestic tier

¹ For [REDACTED], the subsidiaries identified on the Form 851, Affiliations Schedules, are as follows: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

² For [REDACTED], the subsidiaries identified on the Form 851, Affiliations Schedules, are as follows: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

³ For the final return year ended [REDACTED], the subsidiaries identified on the Form 851, Affiliations Schedules, are as follows: [REDACTED]; [REDACTED]; [REDACTED], formerly known as [REDACTED]; [REDACTED], formerly known as [REDACTED]; [REDACTED]; and [REDACTED].

⁴ [REDACTED] is a UK company, which changed its name to [REDACTED] in [REDACTED].

⁵ [REDACTED] is a domestic reverse hybrid. Under the check-the-box regulations, the entity is a partnership

corporation. Since [REDACTED] and its subsidiaries was acquired on [REDACTED], a final consolidated income tax return was filed for the group for the short tax year ended [REDACTED].

On [REDACTED], another member of the [REDACTED] consolidated group, [REDACTED], a Delaware corporation, was merged into [REDACTED], a Delaware corporation, with [REDACTED] surviving the merger. [REDACTED] then changed its name to [REDACTED].⁶ It is this organizational change which has prompted the request for advice.

The steps undertaken to effectuate the merger are as follows:

1. On [REDACTED], the Board of Directors of [REDACTED] ("[REDACTED]") (the holder of [REDACTED]% of the stock of [REDACTED]) adopt a plan of liquidation ("Plan") for [REDACTED]. On same date, [REDACTED] ("[REDACTED]"), as the holder of all issued and outstanding shares of the capital stock of [REDACTED], consents to the Plan.
2. As of [REDACTED], [REDACTED], pursuant to the Plan, declares the first liquidating distribution to be made under the Plan: all of the outstanding stock of [REDACTED], which is to be distributed to [REDACTED], as sole shareholder of [REDACTED].
3. As of [REDACTED], the [REDACTED] shares are distributed to [REDACTED].
4. As of [REDACTED], [REDACTED] shares are contributed by [REDACTED] to the surplus capital of [REDACTED] (a wholly-owned

for U.K. purposes and a corporation for U.S. purposes. [REDACTED] consists of two fifty-percent partners: [REDACTED] and [REDACTED], both of which are wholly owned subsidiaries of [REDACTED]. It is sufficient for purposes of this advice to note solely that [REDACTED], and its subsidiaries, became a part of the federal consolidated group under [REDACTED].

⁶ Note the addition of the comma to the corporate name.

subsidiary of [REDACTED]), then further contributed to [REDACTED] (a wholly-owned subsidiary of [REDACTED]), and then, finally, contributed to [REDACTED] (a wholly-owned subsidiary of [REDACTED]).

- 5. With an effective date of [REDACTED], [REDACTED] merges with and into [REDACTED] (subsidiary into parent with [REDACTED] surviving)⁷, and [REDACTED] changes its name to [REDACTED].

DISCUSSION

Under the consolidated return regulations, the common parent of a consolidated group is the sole agent for each subsidiary in the group. Treas. Reg. § 1.1502-77(a). Thus, generally, the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). Generally, the common parent for a particular consolidated return year remains the common parent agent for purposes of extending the period of limitations with respect to that year even though that corporation is no longer the common parent of that group when some action, such as consenting to an extension of the statute of limitations, needs to be taken for that year. Under the regulations, the common parent's authority to act as an agent for the group is determined on a year-by-year basis, so for any particular year the entity that is the common parent for that year is the sole agent for procedural matters related to that year. So long as the common parent remains in existence, even if it is no longer the common parent, it remains the agent for the group with respect to the years in which it was the common parent for the group. Southern Pacific Co. v. Commissioner, 84 T.C. 395, 401 (1985).

The general rule does not apply when the common parent is not in existence at the time such action is necessary. Treas. Reg. § 1.1502-77(d). The common parent is considered to have gone out of existence when it formally dissolves under state law or merges into another

⁷ Pursuant to Del. Code Ann. tit. 8, § 253 (2001), the merger of the subsidiary into the parent was effectuated by the filing of a Certificate of Ownership and Merger, in which Certificate [REDACTED] merged into itself [REDACTED] and assumed all of [REDACTED]'s liabilities and obligations. In the same filing, [REDACTED] changed its name to "[REDACTED]"

corporation.

[REDACTED], although it has changed its name, was the surviving corporation to a merger under state law and has not been dissolved under state law. Accordingly, the general rule still applies and [REDACTED], formerly known as [REDACTED], as common parent for the tax years ended [REDACTED], [REDACTED] and [REDACTED], should execute the Forms 872 to extend the statute of limitations. All that needs to be done is to make sure that the caption reflects the name change (see Answer above).

In addition to the general rule, it should be noted that Temp. Reg. § 1.1502-77T is applicable in this case since [REDACTED], formerly known as [REDACTED], has ceased to be the common parent of its group, and the statutes of limitations that are to be extended are for taxable years for which the due dates (without extensions) for filing the consolidated returns are after September 7, 1988.

Under Temp. Reg. § 1.1502-77T(a)(4), there are "alternative agents" which are authorized to sign statute extensions for the group. Temp. Reg. § 1.1502-77T(a)(3). One of the permissible "alternative agents" which may sign the waiver is the common parent of the group for all or any part of the year for which the waiver applies. Temp. Reg. § 1.1502-77T(a)(4)(i). Since [REDACTED], formerly known as [REDACTED], is a proper alternative agent, it should sign the consents with respect to the years for which it was the common parent.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. If you have any questions, please call Donna P. Leone at 2-644-34...

RICHARD S. BLOOM
Associate Area Counsel
(Large and Mid-Size Business)

By: _____
DONNA P. LEONE
Senior Attorney (LMSB)