

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:MWD:MIL:TL
GWBezold

date: August 29, 2000

VIA FAX

to: Hattie Coles, Examination Group Manager
Brent Boerner, Revenue Agent

E:1106
E:1106

from: District Counsel, Midwest District, Milwaukee

subject: Identifying the Appropriate Entity to Sign Forms 872 and the
Appropriate Format for Forms 872

Taxpayer: [REDACTED]

Years: [REDACTED]

This memorandum responds to your request for our advice regarding the appropriate entity to sign Forms 872 and the appropriate format for those forms.

ISSUES

1. Who is the proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the [REDACTED] ([REDACTED]) consolidated group for its [REDACTED] taxable year?

2. What is the appropriate language to use on Forms 872 for the [REDACTED] consolidated group for its [REDACTED] taxable year?

CONCLUSION

1. The proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the [REDACTED] consolidated group for its [REDACTED] taxable year is [REDACTED].

2. The proper language to use on Forms 872 for the [REDACTED] consolidated group's [REDACTED] taxable year is "[REDACTED] (E.I.N. XX-XXXXXXX) as successor in interest to [REDACTED] (E.I.N. XX-XXXXXXX) as successor in interest to [REDACTED] (E.I.N. XX-XXXXXXX) as successor in interest to [REDACTED] (E.I.N. XX-XXXXXXX) and as alternative agent for the [REDACTED] consolidated return group pursuant to Temp. Treas. Reg. § 1.1502-77T.*" Put an asterisk immediately thereafter (as shown). At the bottom of the page, the following language should be added (including the asterisk):

10087

*This is with respect to the consolidated tax liability of the [REDACTED] (E.I.N. XX-XXXXXXX) consolidated return group for the taxable year [REDACTED].

The forms must be signed by a current officer of [REDACTED].

FACTS

[REDACTED] filed a consolidated income tax return for [REDACTED] with it as the consolidated parent. On [REDACTED], [REDACTED] was merged into [REDACTED] ([REDACTED]). [REDACTED] survived the merger and [REDACTED] went out of existence. The parties characterized the merger as one under I.R.C. §§ 368(a)(1)(A) and (2)(D) and represented that [REDACTED] assumed all of the liabilities of [REDACTED].

Understanding the next two mergers that occurred on [REDACTED], requires knowing the following corporate structure as of that date: 1) [REDACTED] ([REDACTED]) is the consolidated parent; 2) [REDACTED] ([REDACTED]) is a [REDACTED]% subsidiary of [REDACTED]; and 3) [REDACTED] ([REDACTED]) is a [REDACTED]% subsidiary of [REDACTED]. On [REDACTED], [REDACTED] merges into Merger with [REDACTED] surviving and [REDACTED] going out of existence. As a result, [REDACTED] is now a [REDACTED]% subsidiary of [REDACTED]. [REDACTED] is renamed [REDACTED] ([REDACTED]) and [REDACTED] is renamed [REDACTED] ([REDACTED]). Also on [REDACTED], [REDACTED] is merged into [REDACTED] with [REDACTED] surviving and [REDACTED] going out of existence. The parties characterized the merger as one under I.R.C. §§ 368(a)(1)(A) and (2)(D) and represented that [REDACTED] assumed all of the liabilities of [REDACTED].

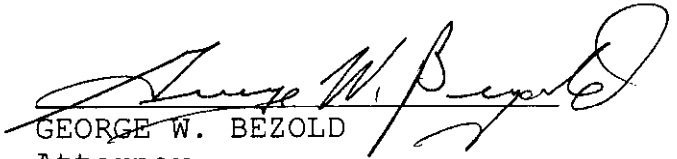
On [REDACTED], [REDACTED] is liquidated into [REDACTED]. [REDACTED] represents that the liquidation, accomplished pursuant to Wisconsin law, was an I.R.C. § 332 liquidation. Wisconsin law provides that in a merger the surviving corporation becomes primarily liable for the debts of the merged corporation. Wis. Stat. § 180.1106(c) (formerly 180.67(5)); Bruns v. Rennebohm Drug Stores, Inc., 442 N.W.2d 591, 597 (Wis. App. 1989); Schweiner v. Hartford Accident & Indemnity Co., 354 N.W.2d 767 (Wis. App. 1984). [REDACTED] also represents that certain subsidiaries of [REDACTED] still exist but are all under its consolidated umbrella.

ANALYSIS

[REDACTED] is a successor-in-interest to [REDACTED] as a result of the various mergers whereby the surviving corporation assumes all of the liabilities of the merged corporation and the liquidation of [REDACTED] into [REDACTED]. We also believe that series of mergers and the liquidation results in [REDACTED] becoming an alternative agent under Treas. Reg. § 1.1502-77T(a)(4)(ii) for the [REDACTED]'s [REDACTED] taxable year. Accordingly, [REDACTED] is the proper entity to sign

Forms 872. The forms should be prepared in the format given above. The form should be signed by a current officer of

█. If you have any questions or need further information, please contact me at (414) 297-4240.


GEORGE W. BEZOLD
Attorney