Office of Chief Counsel Internal Revenue Service

memorandum

CC:LM:MCT:CLE:PIT:TL-N-3977-01

DPLeone

date: July 31, 2001

subject:

to: Carlton L. Hill, Team Manager, # 1707 (LM:MCT)

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

- and and a

Form 872 and Form 2848 language following organizational changes

This is in response to your June 13, 2001 request for advice with respect to an extension of the statute of limitations for the tax years ended and You have also requested advice regarding the validity of the Form 2848, Power of Attorney, following the organizational changes. 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.

The advice given herein is contingent upon the accuracy of the factual representation that continues in existence and has not been dissolved.

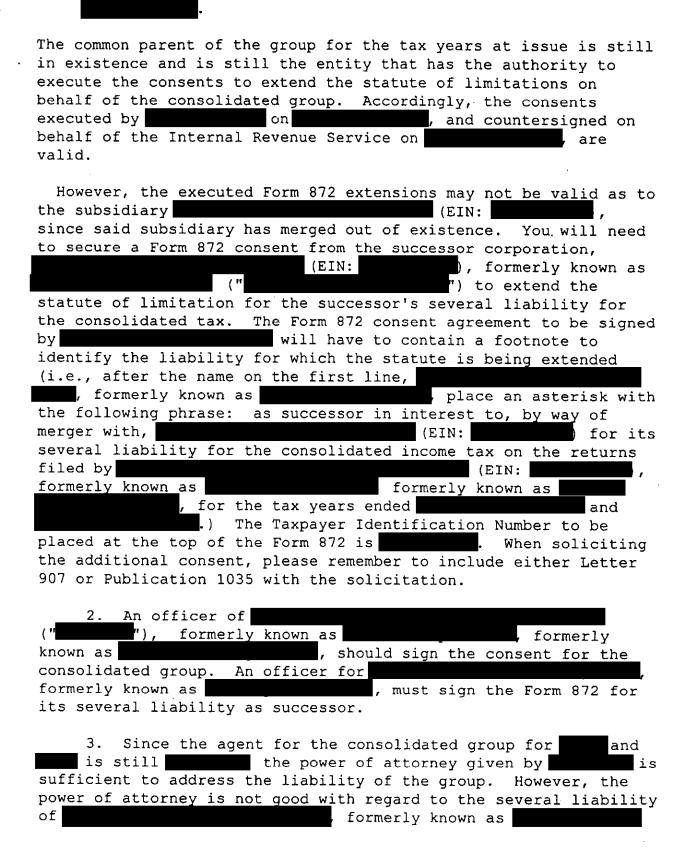
ISSUES

- 1. After the organizational changes effective on what is the proper name to be used on the Forms 872, Consent to Extend the Time to Assess Tax?
 - 2. Who should sign the Forms 872?
- 3. Is a replacement of the From 2848 Power of Attorney necessary?

ANSWERS

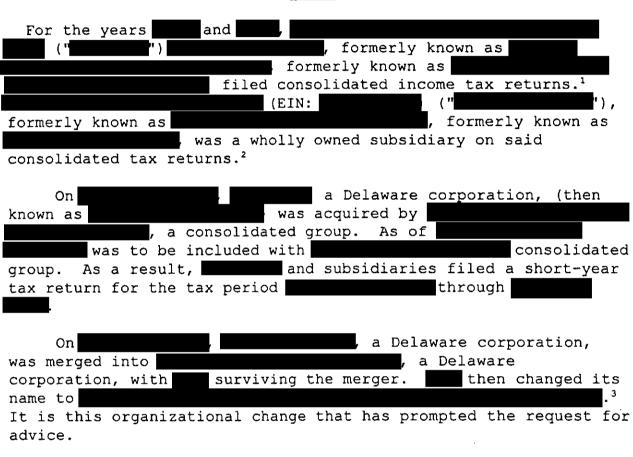
1. The proper name to be used on the Forms 872, is as follows:

formerly known as formerly known as



Accordingly, if necessary to deal with the subsidiary's several liability, an additional power of attorney should be secured.

FACTS

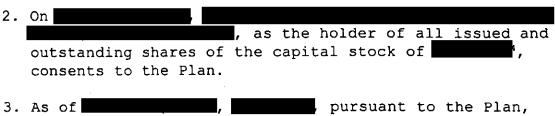


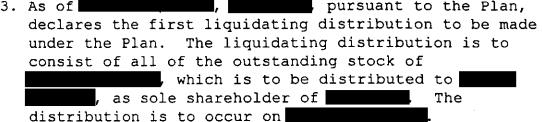
The steps undertaken to effectuate the merger are as follows:

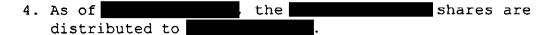
The name on the consolidated tax returns for and was

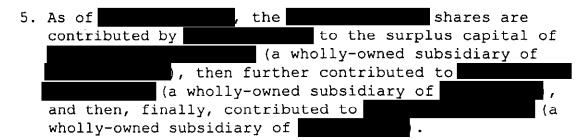
The name of the corporation when the consolidated returns were filed for and was

³ Note the addition of the comma to the corporate name.









6.	With an effe	ctive	date of			,	
	merges into	(subsidiar	y into	parent	with	
	surviving) ⁵ ,	and	change	es its	name to		

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 merged into itself and assumed all of liabilities and obligations.

On , as vice-president and treasurer
of executed a consent to extend the statute of
limitations for the tax year to ,6 and executed
a consent to extend the statute of limitations for the tax
year to is not an officer of
. The consents identify the taxpayer as
and and
further indicate (in a separate paragraph referenced by an
asterisk) that is the current
name of the parent corporation formerly known as:
(and subsidiaries); formerly known as
. On the consents
for both the and tax years were executed by the Team
Manager on behalf of the Internal Revenue Service.
Although has adopted a plan of liquidation, and has
made a first distribution pursuant to said plan (of the
shares), it has been represented by counsel for
that has not been dissolved, nor will it be
dissolved. The Plan of Liquidation that was adopted provides for
complete cancellation or redemption of all of its stock through a
series of distributions, pursuant to Internal Revenue Code § 332,
with the distributions to be completed within three years of the
close of the taxable year in which the first of the series of
distributions was made under the Plan. The terms of the Plan are
consistent with the representation that is still in
existence. Further, it appears as if the winding down or
liquidation may take at least three years from the close of
(the taxable year of the first distribution).8

DISCUSSION

Under the consolidated return regulations, the common parent of a consolidated group is the <u>sole agent</u> for each subsidiary in the

⁶ Prior consents to and and were obtained.

⁷ Prior consent to was obtained.

⁸ Additionally, under Delaware law, a corporation can continue to take actions to wind down its affairs for at least three years following dissolution. 8 Del. C. § 278 (2000). Executing a consent to extend the statute of limitations is within the parameters of a "winding down" activity.

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 corporation. As stated above, it is our understanding that has not been dissolved under state law nor merged into another corporation. Accordingly, the general rule should still apply and tax years, should execute the Forms 872 to extend the statute of limitations.

In addition to the general rule, Temp. Reg. § 1.1502-77T is applicable in this case since has ceased to be the common parent of its group (state of the holder of record of all of the issued and outstanding shares of capital stock of state of the statutes of limitation that are to be extended are for taxable years for which the due dates (without extensions) for filing the consolidated returns are after

Under Temp. Reg. § 1.1502-77T(a)(4)(i), there are "alternative agents" which are authorized to sign statute extensions for the group. 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. Since is a proper alternative agent, it should sign the consents with respect to the years for which it was the common parent.

Finally, your question following the organizational changes seems to show concern for the fact that the subsidiary is no longer in existence, having been merged into and that there is no overlap in the officers between
and It may be that you are questioning the ability of officers of to act "on behalf of"
•
An officer of can sign the consents for the group. I.R.C. § 6062; Rev. Rul. 83-41, 1983-1 C.B. 349. However, the officer (may not be able to extend the statute of limitations with regard to the subsidiary went out of existence when it merged into may, and there is a question as to whether the former parent of the consolidated group, otherwise a proper agent for the group, has the authority to act on behalf of a subsidiary once that subsidiary merges into another corporation that is not, and was not, a member of the consolidated group. Due to the merger, molonger exists while will be the party ultimately severally responsible for the consolidated income tax liabilities, if any, as successor by merger to make the successor corporation, to get a consent signed by an officer of the successor corporation,
Likewise, the power of attorney is not valid as to the successor by merger to
of the successor in order to secure a consent, or with respect to any other matter connected to its several liability, a power of attorney form, signed by an officer of the successor Communications, must be secured.

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. Also, if you have any questions, please call Donna P. Leone at 412-644-3442.

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

Ву:					
	DONNA	P.	LEONE		
	Senio	(LMSB)			