

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFP: [REDACTED]

TL-N-6891-00
[REDACTED]

date: December 20, 2000

to: [REDACTED]

from: Associate Area Counsel (LMSB)
[REDACTED]

subject: [REDACTED]
Distributor Commissions Form 906

Our advice has been requested as to the proper party to execute, and the proper form for, a Form 906 for [REDACTED] under the following circumstances. For the reasons discussed, we believe that the Form 906 should be executed as indicated below.

FACTS

[REDACTED] (EIN: [REDACTED]) (" [REDACTED] ") was a [REDACTED] corporation which filed consolidated returns as the common parent of a consolidated group (the " [REDACTED] ") for the TYEs [REDACTED], [REDACTED], and [REDACTED].

[REDACTED] (EIN: [REDACTED]) was a wholly-owned subsidiary of [REDACTED] and was a member of the [REDACTED] for the TYEs [REDACTED], [REDACTED], and [REDACTED]. On or about [REDACTED] changed its name to " [REDACTED] " (" [REDACTED] "). At all relevant times [REDACTED] has been a distributor of mutual funds. In that capacity it incurs distributor commissions on the sale of mutual fund shares. During the course of the present examination, certain adjustments were proposed for the TYEs [REDACTED], [REDACTED], [REDACTED], and [REDACTED] with respect to [REDACTED]'s method of accounting for distributor commissions.

[REDACTED] (EIN: [REDACTED]) (" [REDACTED] ") was also a wholly-owned subsidiary of [REDACTED] and a member of the [REDACTED] for the TYEs [REDACTED], [REDACTED], and [REDACTED].

On about [REDACTED], [REDACTED] was merged into [REDACTED], with [REDACTED] being the surviving corporation. Both [REDACTED] and [REDACTED] were [REDACTED] corporations. The merger was effectuated pursuant to [REDACTED] of the [REDACTED].

Prior to its merger into [REDACTED], [REDACTED] was a wholly-owned subsidiary of [REDACTED] (EIN: [REDACTED]) (" [REDACTED] "). [REDACTED] was a mutual insurance company incorporated in [REDACTED]. [REDACTED] filed a separate return for the TYE [REDACTED]. For the TYE [REDACTED], [REDACTED] filed a consolidated return as the common parent of a consolidated group which included certain subsidiaries but did not include [REDACTED] or members of the [REDACTED]. For the TYE [REDACTED], [REDACTED] filed a consolidated return as the common parent of a group which included [REDACTED] and the members of the former [REDACTED], including [REDACTED]. At some point after [REDACTED], [REDACTED] amended its articles of incorporation to change its name to "[REDACTED]".

In [REDACTED], [REDACTED] converted from a mutual life insurance company to a stock life insurance company. Concurrently, it engaged in a reorganization under I.R.C. §368(a)(1)(E) wherein it became a third-tier subsidiary of [REDACTED] (" [REDACTED] "), a newly organized holding company. For the TYEs [REDACTED] and [REDACTED], [REDACTED] filed consolidated returns as the common parent of a consolidated group which included the former members of the [REDACTED], including [REDACTED].

Rev. Proc. 2000-38 sets forth three permissible methods for accounting for distributor commissions as well as procedures for obtaining the Commissioner's consent to change to one of the three methods. The revenue procedure provides that if a taxpayer's method of accounting for distributor commissions has been raised in an examination and the taxpayer now desires to change to one of the three methods set forth in the revenue procedure, it must execute a closing agreement substantially in the form provided by the revenue procedure. The pro forma closing agreement provides, *inter alia*, that the taxpayer will change its method of accounting for distributor commissions for the year including [REDACTED]; that the Commissioner consents to the change; and that the Commissioner accepts the taxpayer's reported method of accounting for distributor commissions for all taxable years prior to the year of change.

Pursuant to Rev. Proc. 2000-38, [REDACTED] is applying to change its method of accounting for distributor commissions to the 5-year method, one of the three permissible methods under the revenue procedure.

DISCUSSION

Treas. Reg. § 1.1502-77(a) provides generally that the common parent of a consolidated group is the sole agent for each subsidiary in the group for any consolidated return year. Expressly included in the authority of the common parent is the power to execute closing agreements. Treas. Reg. § 1.1502-77(a) further provides that its provisions shall apply "whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time."

The proposed closing agreement contains both provisions with prospective effect (e.g., the taxpayer will change its method of accounting for distributor commissions) and provisions which effect prior taxable years (e.g., the Commissioner will accept [REDACTED]'s method of accounting for distributor commissions in prior years). As [REDACTED] is the parent of the group of which [REDACTED] is currently a member, it has authority to execute the Form 906 on behalf of [REDACTED] both prospectively and for the years for which [REDACTED] was a member of its consolidated group (TYEs [REDACTED] and [REDACTED]). [REDACTED], however, does not have authority to execute the Form 906 as to years prior to the time when it became the parent of the group of which [REDACTED] was a member. For such years, the Form 906 should be executed by or on behalf of the corporation which was the parent for such years. Thus, for the TYEs [REDACTED], [REDACTED] and [REDACTED], the Form 906 should be executed by [REDACTED] as successor-in-interest to [REDACTED],¹ the parent of the former [REDACTED]. Likewise, for the TYE [REDACTED], the Form 906 should be executed by [REDACTED] as the parent of the former [REDACTED].²

¹ Under [REDACTED], [REDACTED] succeeded to all the rights, privileges, liabilities, etc., of [REDACTED].

² The corporate existence of [REDACTED] has continued unabated, albeit under a new name and as a subsidiary of [REDACTED]. Accordingly, [REDACTED] continues as agent for the [REDACTED]'s TYE [REDACTED] and can execute the Form 906 for the group for that year.

In preparing the Form 906, we suggest that:

1. The attached preamble and whereas clauses should be substituted for those set forth in the proposed Forms 906. When doing so, please fill in the date when [REDACTED] changed its name to "[REDACTED]" in the eleventh whereas clause.

2. The signature block should contain separate signature lines for [REDACTED], [REDACTED], and [REDACTED] as follows:

[REDACTED], Successor-in-Interest
to [REDACTED]

By: _____ Date: _____
Title: _____

[REDACTED] (formerly [REDACTED])
[REDACTED]

By: _____ Date: _____
Title: _____

[REDACTED]

By: _____ Date: _____
Title: _____

In each case, the Form 906 should be executed on behalf of the corporation by a current officer.

If you have any questions respecting this matter, please call [REDACTED].

[REDACTED]
Associate Area Counsel (LMSB)

By: [REDACTED]

Attachment: As stated.

cc: Associate Chief Counsel
(Procedure and Administration); and
Barbara Franklin (CC:LM)