

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:HMT:CIN:1:POSTF-156396-01
LRAverbeck

date:

to: Karen Turner, Team Manager
LMSB Group 1695, Carmel, Indiana
Attn: Carter Ebann

from: Associate Area Counsel
(Heavy Manufacturing and Transportation)

subject: **Consent to Extend Statute of Limitations**
[REDACTED]

This memorandum is in response to your request for assistance dated September 28, 2001. This memorandum should not be cited as precedent.

ISSUE

What entity may execute a Form 872 Consent to Extend the Statute of Limitations for a corporation which has merged with another corporation, but still operates, as a subsidiary, under the name and EIN listed on the tax return for the year at issue? What language should be used on the Form 872 for the name of the taxpayer?

CONCLUSION

The surviving corporation may execute the Form 872 for the taxpayer. We suggest the following language be used when listing the taxpayer information on the Form 872: [REDACTED] ([REDACTED]). In addition, any duly authorized officer of [REDACTED] may sign the Form 872.

FACTS

The taxpayer, [REDACTED], was acquired by [REDACTED] on [REDACTED]. [REDACTED] continues to operate under the [REDACTED] name, EIN, and corporate charter, but as a subsidiary of [REDACTED]. However, none of the [REDACTED] corporate officers who were in place when the returns under examination were filed, are still with the company. The companies will file consolidated returns for the year ending [REDACTED]. [REDACTED] will have a short year ending on [REDACTED].

Prior to the acquisition, [REDACTED] filed consolidated returns with its subsidiaries. All of these subsidiaries were either sold or dissolved before the merger with [REDACTED].

ANALYSIS

Generally, the name of the taxpayer shown on the return can be used on the consent. Refer to I.R.M. 121.2.22.6.2. In this case, the exam team has informed us that the taxpayer was merged into [REDACTED] but still operates, as a subsidiary, under the name and EIN shown on the return. The common parent of a consolidated group is generally considered the group's agent for all matters relating to the consolidated tax liability. Treas. Reg. § 1.1502-77(a). See also, FSA 200132001 (June 9, 2001). Since all of the subsidiaries of [REDACTED] were sold or dissolved before the merger, and the taxpayer continues to operate with the name and EIN as shown on the return under examination, the following language should be used for the taxpayer's name on the consent form:

[REDACTED] ([REDACTED]).

Please ensure that the name of the corporation on the consent is the same as the name reflected on the corporate charter, including all articles and punctuation. Also please ensure that the merger agreement includes no limitations or exclusions on the successor's liability.

Internal Revenue Code § 6501(a) provides that, as a general rule, tax must be assessed within three years of the filing date of the return. Under section 6501(c)(4), a taxpayer and the Service may consent in writing to an extension of the time for making an assessment. Section 6061 provides that any return, statement, or document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. The regulations under section 6501(c)(4) do not specify who may sign consents executed under that section. Accordingly, the Service generally applies the rules regarding the execution of the original returns to Forms 872.

Section 6062 of the Internal Revenue Code provides that, generally, a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. Accordingly, any such officer may sign a consent, whether or not that person was the same individual who signed the

return. See Rev. Rul. 83-41, 1983-1 C.B. 349. Therefore, since none of the officers of [REDACTED] are currently employed with either corporation, any officer duly authorized to act for [REDACTED] may sign the consent. The title of the signing officer should also be shown in the consent.

Please note that Section 6501(c)(4)(B) requires the IRS to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative, to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitation period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872, or provide some other written form of the Section 6501 requirement (such as with a Letter 907).

Regardless of which method you use to notify the taxpayer, you should document your actions in this regard in the case file. Although Section 6501(c)(4)(B) does not provide a sanction or penalty on the Service for failure to comply with the notification requirement, a court might conclude that an extension of the statute of limitations is invalid if the Service did not properly notify the taxpayer. Thus, it is important to document your actions in this regard in the case file.

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 other questions regarding the language or the name to be used on Forms 872, feel free to contact us.

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(Large and Mid-Size Business)

By: _____
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