

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:NR:DAL:2OKL:TL-N-1284-01  
CGMcLoughlin

date: APR 5 2001

to: Team 1775, Large and Mid-size Business Division,  
Heavy Manufacturing, Construction and Transportation  
Attn: Bill Cyphers

from: Associate Area Counsel (LMSB:DAL:2), Oklahoma City P.O.D. 2000-OKC

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subject: Request for Advisory Opinion

Taxpayer: [REDACTED]

EIN: [REDACTED]

Taxable year: [REDACTED] & [REDACTED]

This memorandum responds to your request for assistance dated February 22, 2001. This memorandum should not be cited as precedent. In your request, you seek our views on some statute extensions, Form 872, prepared for the [REDACTED] and [REDACTED] taxable years. As discussed below, either the common parent for the consolidated group during the years at issue or the current common parent for the group may execute the consents.

Facts

During the taxable years ended [REDACTED] and [REDACTED], [REDACTED] (EIN: [REDACTED]), a Missouri corporation, ("Old [REDACTED]") was the common parent for an affiliated group of corporations filing a consolidated income tax return. In late [REDACTED] and early [REDACTED], the consolidated group established a new holding company structure. The group implemented the new structure using two basic steps.

The group first established two new members, [REDACTED], a Delaware corporation ("New [REDACTED]"), and [REDACTED] ("Merger 1"). New [REDACTED] initially was a wholly-owned subsidiary of Old [REDACTED]. Merger 1 was a wholly-owned subsidiary of New [REDACTED].

On [REDACTED], Old [REDACTED] and Merger 1 merged with Old [REDACTED] being the surviving corporation. The merger agreement provided that Old [REDACTED] shares were converted into New [REDACTED] shares plus rights to purchase New [REDACTED] preferred shares. The New [REDACTED] shares held by Old [REDACTED] were canceled and Merger 1 shares were converted into Old [REDACTED] shares. The net effect of the merger was that Old [REDACTED] became a subsidiary of New [REDACTED].

Next, Old [REDACTED] entered into a merger agreement with [REDACTED] (" [REDACTED]"), a wholly-owned subsidiary of New [REDACTED], and [REDACTED] ("Merger 2"), a wholly-owned subsidiary of [REDACTED]. The merger agreement provided for Old [REDACTED] to merge with Merger 2. Old [REDACTED] was the surviving corporation. Old [REDACTED] stock was converted into [REDACTED] stock. Merger 2 stock was converted into Old [REDACTED] stock. The net effect of the merger was that Old [REDACTED] became a subsidiary of [REDACTED], a wholly-owned subsidiary of New [REDACTED]. The merger was completed on [REDACTED].

New [REDACTED] then changed its name to [REDACTED]. But, Old [REDACTED] continued to retain and use the same name. We understand that both New [REDACTED] and Old [REDACTED] are still in existence. The Old [REDACTED] consolidated group remained in existence after the new holding company structure was put in place. New [REDACTED] filed the consolidated return for the [REDACTED] taxable year as common parent for the group using the New [REDACTED] EIN.

### Analysis

Either New [REDACTED] or Old [REDACTED] has the authority to execute Forms 872 covering the [REDACTED] and [REDACTED] taxable years. Treas. Reg. § 1.1502-77T(a) sets forth alternative agents for a consolidated return group where the group's common parent ceases to be the common parent. The regulation applies whether or not the group remains in existence. Treas. Reg. § 1.1502-77T(a)(1). The regulations cover the issuance of a deficiency notice and the execution of waivers extending the statute of limitations on behalf of the group. Treas. Reg. § 1.1502-77T(a)(2) and (3).

The alternative agents for a consolidated group include:

1. The common parent of the group for all or part of the year to which the consent applies;
2. A successor to the former common parent in a transaction to which I.R.C. § 381(a) applies;
3. The agent designated by the group under Treas. Reg. § 1.1502-77(d); or

4. If the group remains in existence under Treas. Reg. § 1.1502-77(d)(2) or (3), the common parent of the group at the time the waiver is given.

Treas. Reg. § 1.1502-77T(a)(4).

Here, Old [REDACTED] has the authority to act on behalf of the group. As common parent during the [REDACTED] and [REDACTED] taxable years, Treas. Reg. § 1.1502-77T(a)(4)(i) authorizes Old [REDACTED] to sign the Forms 872 for those taxable years.


Likewise, New [REDACTED] can sign the Forms 872 for the [REDACTED] and [REDACTED] taxable years. The creation of the new holding company structure did not terminate the Old [REDACTED] consolidated group. There was no substantial change in the composition of the Old [REDACTED] group after the restructuring when judged by reference to the group's underlying assets. Consequently, the consolidated group remained in existence after creation of the new holding company structure, since the restructuring was the equivalent of a transaction described in Treas. Reg. § 1.1502-75(d)(2)(ii). See Rev. Rul. 82-152, 1982-1 C.B. 205. For that reason, New [REDACTED] has the authority to sign the Forms 872 for [REDACTED] and [REDACTED] here. Treas. Reg. § 1.1502-77T(a)(4)(iv).

The Forms 872 you provided us correctly reflect that Old [REDACTED] is the taxpayer here. The Forms also properly use the EIN for Old [REDACTED]. To avoid confusion, we recommend that the corporate name used in the signature block include information needed to determine if Old [REDACTED] or New [REDACTED] executed the consents. After the name, [REDACTED], we suggest that you indicate whether the signatory is a Missouri corporation (in the case of Old [REDACTED]) or a Delaware corporation (in the case of New [REDACTED]). You should also include the EIN for whichever corporation signs the consents. Lastly, we recommend that you confirm the executing official is actually an officer of Old [REDACTED] or New [REDACTED], as the case may be, to assure the official has the authority to sign the consents.

Please contact Glenn McLoughlin at (405) 297-4803 if you have any questions. We are closing our 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.

MARK E. O'LEARY  
Associate Area Counsel

By:   
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C. GLENN McLOUGHLIN  
Senior Attorney

cc: AAC (LMSB:DAL:2)