

**Office of Chief Counsel
Internal Revenue Service**

memorandum

CC:LM:RFP:CHI:2:TL-N-94-01

JPJankowski

date: March 30, 2001

to: Carol J. Poindexter, Team Manager
Group 1574, International (RFP)

from: JOHN P. JANKOWSKI
Special Litigation Assistant

subject: Request for Legal Advice and Assistance

[REDACTED]

The purpose of this memorandum is to respond to your request for legal advice and assistance relating to the proper wording to be used in the preparation of one or more Consent(s) To Extend The Time to Assess Tax (Form 872), for the above-noted LMSB Large Case taxpayer. We understand that the earliest relevant statute of limitations, for the tax year ending on [REDACTED], will expire after [REDACTED].

These same matters arise from the former Illinois District Director's ongoing Large Case examination of [REDACTED] and consolidated affiliated companies, for the tax periods ending in [REDACTED] and a short period return ending [REDACTED]. The assistance provided by the undersigned is in accordance with the former Large Case Coordination Procedures, for all significant advice provided in non-docketed (LMSB) large cases. The undersigned is currently assigned to provide you with assistance on this case under the Attorney-Advisor Program.

Your question has not previously been coordinated with the National Office. On several previous occasions, this type of consent question was informally coordinated and discussed by the undersigned with Harmon B. Dow, Associate Area Counsel, Prefiling & Technical Guidance (CC:CHI:RFP:LMSB 3). It was previously agreed that corporate reorganizations, corporate name changes and agency questions do not rise to the level of "significant" industry issues. Accordingly, no preliminary coordination with the National Office or other industry counsel (Financial Services and Health Care) was deemed necessary, prior to providing you with the advice contained herein.

Issue

What corporate entity is the proper party to extend the statute of limitations for the [REDACTED] consolidated group's taxable years [REDACTED] and the short period [REDACTED]?

Conclusion

We believe that the following language and format is appropriate under the circumstances:

[REDACTED] (EIN: [REDACTED]),
[REDACTED] (EIN: [REDACTED]),
[REDACTED]. *"

At the bottom of page 1 of Form 872, next to a reciprocal to the above-noted asterisk, state:

" * With respect to the consolidated tax liability of [REDACTED],
[REDACTED] for the tax periods ending [REDACTED]
[REDACTED], [REDACTED] and [REDACTED]."

[REDACTED] formerly [REDACTED], is a viable and legal corporate entity. [REDACTED] remains the corporate party (agent) with the actual and apparent authority to execute a Form 872 for the original [REDACTED] consolidated group, for each of the tax years ending [REDACTED], [REDACTED] and the short period [REDACTED]. Accordingly, the language noted above should be used in your solicitation of one or more new consents for the identified tax periods. For the sake of brevity, we will hereinafter summarize the relevant facts surrounding the corporate restructuring transaction that [REDACTED] and [REDACTED] completed in [REDACTED].

Facts

For each of the tax years [REDACTED], [REDACTED], [REDACTED] and [REDACTED], [REDACTED] filed timely consolidated Forms 1120 (U.S. Corporation Income Tax Return). Each of the subject tax returns were captioned as "[REDACTED]". [REDACTED], a Delaware corporation, was a wholly owned subsidiary of a foreign parent, [REDACTED]. On or about [REDACTED], [REDACTED], a second tier wholly owned subsidiary of [REDACTED], purchased all of the outstanding stock of [REDACTED] from [REDACTED] in a taxable transaction. [REDACTED] is a first tier subsidiary of [REDACTED].

[REDACTED], the overall parent bank holding company. On [REDACTED], the corporate name of [REDACTED] was changed to [REDACTED] and [REDACTED] continues to use the same EIN of [REDACTED], that [REDACTED] used.

On [REDACTED], [REDACTED] contributed all of the [REDACTED], formerly [REDACTED], stock it held to a controlled partnership entity of [REDACTED]. The partnership, [REDACTED], is composed of related entities controlled by [REDACTED]. Accordingly, [REDACTED] reports, for financial accounting purposes, the relevant financial results from its controlled subsidiaries, including [REDACTED], through the [REDACTED] partnership. For bank regulatory reporting purposes, [REDACTED] is included in the "Call Report" of [REDACTED]. Further, for federal income tax purposes, [REDACTED] remains the parent of a group of corporations filing a consolidated tax return, Form 1120.

The taxpayer, through responsible individuals and officers, has reported the above-noted facts to you in a letter dated March 27, 2001. The undersigned has also been able to confirm the [REDACTED] acquisition and name change independently, through the FDIC Bank Holding Company data base and the Federal Reserve National Information Center web site.

Discussion

Treas. Reg. §1.1502-77(a) provides that the common parent is the agent for the members of the group. This agency continues as long as the common parent remains in existence under state law. Treas. Reg. §1.1502-77(a); Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985); Southern Pacific Co. v. Commissioner, 84 T.C. 395 (1985).

Under Temp. Treas. Reg. §1.1502-77T(a)(4)(i), the common parent for all or any part of the taxable year to which the notice or waiver applies is the alternative agent for the members of the group.

Therefore, under both Treas. Reg. §1.1502-77(a) and Temp. Treas. Reg. §1.1502-77T(a)(4)(i), [REDACTED] remains the agent for the members of its consolidated group for each of the relevant taxable years [REDACTED]. In the instant case, the old [REDACTED] group continues with [REDACTED] as the common parent because it remains the highest tier, domestic corporation in the old affiliated group.

Accordingly, [REDACTED] is the proper corporate entity to extend

the limitations period on behalf of the members of [redacted] s consolidated group for the [redacted] and [redacted] taxable years. Finally, the corporate name on the signature section (on the back of the waiver - Form 872) should be captioned "[redacted] (EIN: [redacted]) as agent for the members of the [redacted]."

* * * * *

In accordance with the former Large Case (LMSB) coordination procedures with the National Office, this written legal advisory is being treated as a non-significant advice request (NSR). We are submitting this advisory opinion for post review and anticipate a 10-day response from the National Office. As you know, the response can supplement, modify and/or reject the advice contained herein. Accordingly, please take no action on the advice contained herein, until such National Office response is received by the undersigned. You will be promptly notified of any exceptions or modifications recommended to the advice contained herein. In the interim, should you have any questions regarding this memorandum or our recommendations, please contact the undersigned at (312) 886-9225, Extension 319.

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Special Litigation Assistant

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- James C. Lanning, Area Counsel (CC:CHI:RFP:LMSB 3)
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