

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:FSH:MAN:4:TL-N-1911-01
SDTillem

date:

to: Director of Field Operations, Natural Resources
Attn: Arnold Schwartz, Revenue Agent, LMSB, Group 1463

from: Area Counsel (FS&H:Man)

subject:

[REDACTED]
EIN: [REDACTED]
Taxable Years [REDACTED], [REDACTED] & [REDACTED]
Consent to Extend the Statute of Limitations on Assessments

STATUTES OF LIMITATION EXPIRE: [REDACTED]

U.I.L. #: 6501.08-00; 6501.08-17

INTRODUCTION

This memorandum responds to your request for assistance via telephone on March 21, 2001. This memorandum should not be cited as precedent. Specifically, you have asked our office to provide you with the appropriate language to use on a Form 872 (Consent to Extend the Time to Assess Tax) ("Form 872") with respect to [REDACTED] (" [REDACTED] ") for the taxable years ending [REDACTED], [REDACTED], and [REDACTED].

This advice relies on facts provided by you to our office. If you find that any facts are incorrect, please advise us immediately so that we may modify and correct this advice. This advice is subject to 10-day post review by the National Office. CCDM 35.3.19.4. Accordingly, we request that you do not act on this advice until we have advised you of the National Office's comments, if any, concerning this advice. We will inform you of the result of the National Office review as soon as we hear from that office, which should be in approximately 10 days. In the meantime, the conclusions reached in this memorandum should be considered to be only preliminary.

The statute of limitations on assessments for the [REDACTED], [REDACTED] and [REDACTED] taxable years is currently set to expire on [REDACTED].

ISSUE

What specific language should be used on the consent to extend the statute of limitations on assessment for the taxpayer, [REDACTED] for the tax years ended [REDACTED], [REDACTED] and [REDACTED].

CONCLUSION

[REDACTED] is the proper party to sign a Form 872 for the [REDACTED], [REDACTED] and [REDACTED] taxable years.

FACTS

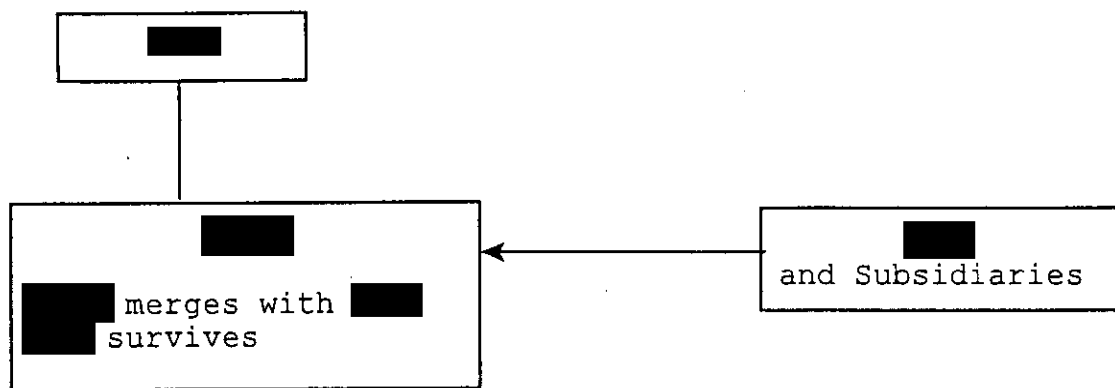
Revenue Agent Arnold Schwartz has requested that the taxpayer, [REDACTED] (EIN: [REDACTED]) execute a Form 872 to extend the time within which to assess its Form 1120 corporate income tax liability for taxable years ending [REDACTED], [REDACTED] and [REDACTED]. The statutory period for assessment of the Form 1120 corporate income tax liability for [REDACTED], [REDACTED] and [REDACTED] taxable years terminates [REDACTED].

[REDACTED] entered into a Merger Agreement dated [REDACTED] with [REDACTED] ("[REDACTED]") and [REDACTED] ("[REDACTED]"). [REDACTED] is a direct, wholly owned subsidiary of [REDACTED]. [REDACTED] and York are both Delaware corporations. [REDACTED] is the common parent of a group of subsidiary corporations. [REDACTED] is an English public limited company.

Under the terms of the Merger Agreement, [REDACTED] was merged with and into [REDACTED]. Merger Agreement § 1.1.1. The separate corporate existence of York ceased and [REDACTED] continued as the surviving corporation under the laws of the state of Delaware. Merger Agreement § 1.1.1.

Pursuant to the Merger Agreement [REDACTED] common shareholders receive [REDACTED] shares of [REDACTED] per share of [REDACTED] common stock. Merger Agreement § 1.2.1. Upon conversion to [REDACTED] shares, [REDACTED] shares were canceled and retired. On [REDACTED] the merger was executed.

Illustration of Merger



1. [] and [] merge. [] survives.
2. Each [] share is converted into [] common share.
3. Upon conversion each [] share is canceled and retired.

DISCUSSION

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment of any tax except estate tax. The Form 872 ("Consent to Extend the Time to Assess Tax") is used by the Service to extend the statute of limitations on assessment.

Where a common parent [REDACTED] remains in existence, it remains the agent for the group with regard to years in which it was the common parent of the group. Treasury Regulation §§ 1.1502-77(a); 1.1502-77T(a)(1). Treasury Regulation § 1.1502-77(a) provides, in part, as follows:

The common parent...shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year...

Temporary Regulation § 1.1502-77T, which was promulgated in 1988 by the Service to supplement Treasury Regulation § 1.1502-77, modifies the "exclusive agent" rule of Treasury Regulation § 1.1502-77(a).¹ Where a common parent corporation ceases to be the common parent of a group, whether or not the group remains in existence, Temporary Regulation § 1.1502-77T(a)(4) provides "alternative agents" for the affiliated group, but only for purposes of mailing notices of deficiency and for executing waivers of the statute of limitations. Pursuant to Temporary Regulation § 1.1502-77T(a)(4), any one or more of the following corporations may act as "alternative agents" for the group:

(i) The common parent of the group for all or any part of the year to which the notice or waiver applies,

¹Temporary Regulation § 1.1502-77T is effective for taxable years for which the due date (without extensions) for filing the consolidated return is after September 7, 1988. Temporary Regulation § 1.1502-77T(b). Simultaneous with the promulgation of the temporary regulation, the Service amended Treasury Regulation § 1.1502-77 by adding paragraph (e), cross referencing to Temporary Regulation § 1.1502-77T.

(ii) A successor to the former common parent in a transaction to which §381(a) applies,

(iii) The agent designated by the group under section 1.1502-77(d), or

(iv) If the group remains in existence under section 1.1502-75(d) (2) or (3), the common parent of the group at the time the notice is mailed or the waiver given.

Temporary Regulation § 1.1502-77T(a) (4) (i) provides as an "alternative agent" the common parent of the group for all or any part of the year to which the notice or waiver applies. ██████ was the common parent of the consolidated group for tax years ██████, ██████ and ██████ to which the waiver applies. ██████ still exists post-merger. Therefore, ██████ is the proper party to execute a Form 872 (Consent to Extend the Time to Assess Tax) with respect to the consolidated group for the group's ██████, ██████ and ██████ tax years. Treasury Regulation § 1.1502-77(a). This is true even though ██████ no longer acts as the common parent of ██████ and subsidiaries. Id.; Temporary Regulation § 1.1502-77T(a) (4) (i).

Who May Sign the Form 872

Under I.R.C. § 6501(c) (4), a taxpayer and the Internal Revenue Service may consent in writing to extensions of the time for making assessments. The regulations under section 6501(c) (4) do not specify who may sign consents executed under that section. Accordingly, the Service will generally apply the rules applicable to execution of the original returns to consents to the extension of time to make an assessment.

Section 6062 of the Code provides, generally, that 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.

Based on our legal analysis, we recommend:

- captioning the Form 872 as follows:

_____ (E.I.N.: _____)
 _____)
 successor in interest to _____
 _____ (E.I.N.: _____)*

- inserting language at the bottom page of the Form 872 as follows:

*This is with respect to the
 consolidated return liability of
 _____ (E.I.N.: _____)
 consolidated group for the tax
 years ended _____,
 _____ and _____
 _____.

- securing the signature of an authorized officer of _____ on the signature block on Form 872 and noting on the signature block on page 2 of Form 872 as follows:

[name of current officer]

[title of officer]

 _____, successor in interest
 to _____.

- inputting the E.I.N. of _____ in the box on the Form 872 labeled "SSN or EIN".
- confirming that _____ is still in existence when the Form 872 is secured from this entity.
- inputting the E.I.N. for _____.

Additionally, at or before the time Form 872 is presented to the taxpayer for execution, please notify the taxpayer in writing that the taxpayer may (1) refuse to extend the period of limitations or (2) limit the extension to particular issues or to a particular period of time. I.R.C. § 6501(c)(4)(B). The statutory notice requirement under I.R.C. § 6501(c)(4)(B) generally applies to requests to extend the period of limitations

made after December 31, 1999.

We also recommend that you verify the EINs of the respective corporations to be shown on all of these Forms. If any change(s) in EINs occurred as a result of the transactions discussed herein, such change(s) should be reflected on the forms.

Please also note that IRM 121.2.22.3 requires use of Letter 907(DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929(DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the authorized manager should promptly sign and date it in accordance with Treasury Regulation § 301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

If [REDACTED] was a partner in any partnerships during the taxable years at issue, and if the statute on partnership item adjustments is still open, we recommend that a Form 872-I be used, rather than a plain Form 872. The Form 872-I contains language applicable to TEFRA.

Should you have any questions regarding this matter, please contact Steven Tillem at (212) 264-5473, extension 255.

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.

ROLAND BARRAL
Area Counsel
(Financial Services and
Healthcare: Manhattan)

By: _____
THEODORE R. LEIGHTON
Associate Area Counsel (LMSB)