

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SER:DEM:BAL:TL-N-741-99
SMJefferson/jmk

date: **MAR 05 1999**

to: District Director, Delaware-Maryland District
Attn: Chief, Examination Division
Acting Group Manager 1301, Linda Vranas
Chief, Quality Assurance Staff, John J. Reiter

from: Assistant District Counsel, Delaware-Maryland

subject:

[REDACTED]

[REDACTED]

Year: [REDACTED]

Related Taxpayers: [REDACTED]
[REDACTED]

EXPEDITE: EARLIEST STATUTE OF LIMITATIONS EXPIRES
ON [REDACTED] -- PROPOSED NOTICES FOR [REDACTED]
[REDACTED]
AND [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically

indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

Per my telephone conversation of [REDACTED] with the case manager for [REDACTED] we should not issue a notice of deficiency to [REDACTED] as successor corporation, since the years [REDACTED] and [REDACTED] are currently under a [REDACTED] large case audit. As indicated in the attached memorandum from the National Office, [REDACTED] may be liable as a successor corporation. As a fall back position, we should solicit a consent from [REDACTED]. The case manager for [REDACTED] has agreed to coordinate the execution of the consent. I also informed him that we would send a copy of the proposed notice of deficiency. The Form 872 should state the following: [REDACTED] (E.I.N. XX-XXXXXXX), as successor to [REDACTED]. After, the "[REDACTED]", you should place an asterisk and at the bottom state the following:

with respect to [REDACTED]'s
(E.I.N. [REDACTED] several liability for [REDACTED]
[REDACTED]
tax liability for the fiscal year ending [REDACTED]

See page 3 of the attached copy of the memorandum from the National Office, which was modified after our telephone conversation of March 4, 1999, with the National Office to eliminate the reference to [REDACTED] as an "agent" and to change the language as indicated herein. The general extension already signed by [REDACTED] is not sufficient and you should solicit this additional extension containing the language set forth herein. If [REDACTED] refuses to execute the consent, the statutory notice should contain the same language.

To protect the government's interests in the event that a determination is made that [REDACTED] is not a successor corporation, you should issue a notice of deficiency to [REDACTED] and a letter to [REDACTED] which breaks the agency.

The letter should be sent to [REDACTED]'s last known address, which is also the last known address of [REDACTED] with a copy of the letter going to [REDACTED]. The letter should state the following:

This is written to notify you that we intend to deal separately with your former subsidiary, [REDACTED] concerning the consolidated group income tax liability of [REDACTED] for the fiscal year ending [REDACTED]. As you know, during that year [REDACTED] was a wholly owned subsidiary and a member of the consolidated group. Therefore, it is severally liable for any income tax due for the fiscal year ending [REDACTED].

As with [REDACTED], you have the option of soliciting a Form 872 or issuing the statutory notice by [REDACTED]. Both the Form 872 and the statutory notice should contain the same language, which is set forth below:

[REDACTED] (E.I.N. [REDACTED]), * with an asterisk after the name and the following language should be behind the asterisk "with respect to the several liability for [REDACTED] (E.I.N. [REDACTED]) Consolidated Group Tax for the fiscal year ending [REDACTED]."

See page 4 of the advice from the National Office, which was also slightly changed during a telephone discussion with the National Office on March 4, 1999. If you want to obtain a consent from [REDACTED] for its several liability, as indicated above, the Form 872 should contain the same language. Since you have a general power of attorney to the accountants on behalf of [REDACTED], for the year in dispute, it would appear that this power would allow the accountants to execute the consent on behalf of [REDACTED].

There is no apparent prohibition against issuing a duplicate statutory notice to [REDACTED] as additional protection for the government in the unlikely event that the Court would hold that [REDACTED] is not severally liable for the tax of [REDACTED]. The notice to [REDACTED] should state the following:

[REDACTED] (a dissolved corporation), [REDACTED], member of the consolidated group, with the last known addresses of [REDACTED] and [REDACTED] should not be listed on the statutory notice. Do not send a notice to [REDACTED] or use the old address on the notice to [REDACTED].

Finally, we did not review the RAR as you have indicated and we express no opinion concerning the removal of the penalty.

Hopefully, the above has answered all the questions set forth in mandatory review memorandum dated March 3, 1999, as well as your prior request for advice. Your administrative file is returned herewith. If you have any questions concerning the above, please feel free to call Sandra M. Jefferson at (410) 962-3136.

ELIZABETH S. HENN
Assistant District Counsel

By: (410) 962-3136 SA 10/27/99
SANDRA M. JEFFERSON
Senior Attorney

Attachments:
Copy of Opinion from National Office
Administrative File