

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NER:MAN:TL-N-2454-99
PLDarcy

date:

to: Chief, Examination Division,
Manhattan District
Attn: Mr. Daniel Altman

from: District Counsel, Manhattan District, New York

subject:

████████████████████
Tax year ██████ through ██████
Consents to Extend the Statute of Limitations
On Assessment

Uniform Issue List # 6501.08-00; 6501.08-17

THIS DOCUMENT MAY INCLUDE CONFIDENTIAL INFORMATION SUBJECT TO THE ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGES, AND MAY ALSO HAVE BEEN PREPARED IN ANTICIPATION OF LITIGATION. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE INTERNAL REVENUE SERVICE, INCLUDING THE TAXPAYERS INVOLVED, AND ITS USE WITHIN THE INTERNAL REVENUE SERVICE SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW THE DOCUMENT IN RELATION TO THE SUBJECT MATTER OF THE CASE DISCUSSED HEREIN. THIS DOCUMENT IS ALSO TAX INFORMATION OF THE INSTANT TAXPAYERS WHICH IS SUBJECT TO I.R.C. § 6103.

This memorandum responds to your request for advice on how the Internal Revenue Service can enter into a valid agreement to extend the statute of limitations on assessment with ██████████
████████████████████
for the taxable years ██████ through ██████. You also asked our advice on who has the authority to execute Internal Revenue Service Forms 872-F on behalf of ██████████
████████████████████, a Canadian corporation doing business in the United States. The statute of limitations on assessment expires on ██████████. In memoranda dated June 17, 1999, June 25, 1999 and August 2, 1999 we gave advice on the same issues relative to the ██████ through ██████ taxable years.

CONCLUSION:

██████ is the proper entity to extend the statute of limitations for the remaining corporate members of its former consolidated group during the taxable years ██████ through ██████. We further conclude that ██████ may execute Internal Revenue Service Forms 872 on behalf of ██████ and Internal Revenue Service Forms 872-F on behalf of ██████. The advice contained in this memorandum essentially mirrors the advice in our memoranda dated June 17, 1999, June 25, 1999 and August 2, 1999.

ISSUES:

1. What is the proper entity to enter into a consent to extend the statute of limitations on assessment, Internal Revenue Service Forms 872, for the ██████ through ██████ taxable years of ██████?
2. Which individual may execute the Internal Revenue Service Forms 872 on behalf of ██████?
3. Which individual may execute the Internal Revenue Service Forms 872-F on behalf of ██████ for its ██████ through ██████ taxable years?

FACTS:

The Examination Division is currently auditing ██████ through ██████ taxable years of ██████, a corporation organized under the laws of Delaware and ██████, a corporation organized under the laws of Canada. During these taxable years, ██████ was the first tier subsidiary of ██████. For all relevant years, ██████ acted as the consolidated parent of ██████'s United States consolidated group.

████████████████████ is currently the Managing Director and Vice President of ██████ and deals with the Internal Revenue Service on all ██████'s and ██████'s tax matters. In a memorandum dated ██████, ██████ advised the Internal Revenue Service that ██████ was no longer the common parent of the United States consolidated group on ██████. Instead, on ██████, ██████ created a new United States holding company called ██████. As of ██████, ██████ became a first tier subsidiary of ██████, the common parent of a new United States consolidated group. ██████ still exists and retains the same employee identification number as it had prior to corporate reorganization of ██████.

██████ also executed an Internal Revenue Service Form 2848

granting [REDACTED] plenary authority to execute all tax related documents on behalf of [REDACTED] for the [REDACTED] through [REDACTED] taxable years. [REDACTED] executed [REDACTED]'s [REDACTED] and [REDACTED] Federal corporate income tax returns ("Forms 1120") as Vice President of Taxation.¹

During the [REDACTED] through [REDACTED] taxable years, [REDACTED] did business in the United States and filed Forms 1120-F. On [REDACTED], in a Board of Directors' resolution, [REDACTED] gave [REDACTED] plenary power to perform all the following on behalf of [REDACTED]:

1. To negotiate, make, execute, acknowledge, deliver, file and record any and all tax related documents on behalf of [REDACTED] in the United States including, but not limited to tax returns, tax audits and settlements and any other tax related documents or instruments.
2. To make such representations and warranties in the name of and on behalf of [REDACTED] as he may deem necessary, desirable or appropriate with the foregoing.

[REDACTED] also executed [REDACTED]'s Forms 1120-F for the relevant periods.

DISCUSSION:

1. The proper entity to execute Internal Revenue Service Internal Revenue Service Forms 872 on behalf of [REDACTED].

In the case of a consolidated group, we can find guidance as to the appropriate entity to enter into a consent to extend the

¹We note that I.R.C. § 6062 specifically states:

The return of a corporation with respect to income shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary pursuant to the provisions of section 6012(b)(3), such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

statute of limitations in the consolidated return regulations. Treas. Regs. § 1.1502-1 et seq. Pursuant to the consolidated return regulations, the common parent acts as the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its own name can give waivers and any waiver so given shall be considered as having been given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a). An agreement entered by the common parent to extend the time within which to assess an income tax deficiency for the consolidated return year binds each member of the consolidated group during any part of such taxable year. Treas. Reg. § 1.1502-77(c).

The common parent remains the agent for the members of the group for any year during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group. See Treas. Reg. § 1.1502-77(a); Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985). Accordingly, as a general rule, the common parent remains the proper party to extend the statute of limitations for any taxable year for which it was the common parent, as long as it remains in existence. Since [REDACTED] was the common parent of the consolidated group during the years at issue, it retains the authority to execute a Internal Revenue Service Form 872 on behalf of its old consolidated group.

In addition to Treasury Regulation § 1.1502-77(a), Treasury Regulation § 1.1502-77T also applies to support our conclusion that [REDACTED] is the proper party to extend the statute of limitations for [REDACTED]. Prior to the effective date of Treasury Regulation § 1.1502-77T, some uncertainty existed under Treasury Regulation § 1.1502-77(a) concerning whether a common parent that became a subsidiary of a new common parent as a result of a reverse acquisition under Treasury Regulation § 1.1502-75(d)(3) would be a proper party to sign a Internal Revenue Service Form 872. See Raymond International Builders, Inc. v. United States, Civil No. H-89-2174 (S.D. Texas, Houston Division, Dec. 12, 1994). In the instant case, [REDACTED] became a subsidiary of [REDACTED] as a result of a transaction that may have been a reverse acquisition under Treasury Regulation § 1.1502-75(d)(3).

² We never determined how [REDACTED] became a subsidiary of [REDACTED]. However, under any possible scenario, we conclude, that as the former parent of the consolidated group, [REDACTED] remains the proper entity to execute the Internal Revenue Service Form 872.

Treasury Regulation § 1.1502-77T applies where the common parent of the group ceases to be the common parent, as in this case, whether or not the group remains in existence under Treasury Regulation § 1.1502-75(d). Treasury Regulation § 1.1502-77T provides that a waiver given by any one or more "alternative agents" described under Treasury Regulation § 1.1502-77T(a)(4) is deemed given by the agent of the group. Treasury Regulation § 1.1502-77T(a)(4)(i) lists the common parent of the group for all or any part of the year to which the notice or waiver applies as an "alternative agent." Treasury Regulation § 1.1502-77T applies for waivers of the statute of limitations for tax years for which the due date (without extensions) of the consolidated return is after September 7, 1988. Accordingly, Treasury Regulation § 1.1502-77T provides that [REDACTED]'s waiver of the statute of limitations for the old [REDACTED] group for its [REDACTED] through [REDACTED] tax years is deemed given by the agent of the old consolidated group for those tax years.

Accordingly, [REDACTED] is the proper entity to extend the statute of limitations for itself and the remaining corporate members of the former consolidated group during the taxable years [REDACTED] through [REDACTED]. We conclude that [REDACTED] has the authority to execute the Internal Revenue Service Form 872 on behalf of itself and its former consolidated group.

2. [REDACTED]'s authority to extend the statute of limitation on assessment on behalf of [REDACTED].

We conclude that as Managing Director and Vice President, [REDACTED] is a current officer of [REDACTED]. Accordingly, as a factual matter, we believe [REDACTED] has the authority to execute Internal Revenue Service Forms 872 of [REDACTED]'s old consolidated group. However, a Lexis search of Delaware's corporate laws does not reveal whether or not a "Managing Director" or "Vice President" specifically has the authority to bind the Delaware corporation for which he or she works³. However, there is ample Delaware case law to support our position that [REDACTED] had authority to extend the statute of limitations on assessment for [REDACTED].

When a Delaware corporation holds out to the public that a specific person has authority to act on an issue, that person has the apparent authority to act with respect to that issue. Colish

³ Delaware's corporate statutes are unclear with respect to the authority of a "Managing Director." However, we believe that a "Managing Director" has the same authority as any other director.

v. Brandywine Raceway Ass'n, 119 A.2d 887 (1955). When a corporation allows a person to manage certain affairs, that person has implied power to bind the corporation with respect to those affairs. Hessler v. Farrell, 226 A.2d 708 (1967). For years [REDACTED] through [REDACTED], [REDACTED] has clearly permitted [REDACTED] to deal with the Internal Revenue Service on all substantive and procedural tax issues. [REDACTED] is [REDACTED]'s top tax person. We therefore conclude that [REDACTED] has both implicit and explicit authority to execute the Internal Revenue Service Forms 872 on [REDACTED]'s behalf. Additionally, because [REDACTED] explicitly has the authority to a Internal Revenue Service Forms 872 for any year he may have executed [REDACTED]'s Form 1120. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B.

3. [REDACTED]'s authority to extend the statute of limitation on assessment on behalf of [REDACTED].

[REDACTED] explicitly gave [REDACTED] the authority to execute Internal Revenue Service Internal Revenue Service Forms 872-F. Additionally, [REDACTED] executed the Forms 1120-F for the years at issue. Therefore, we see no reason to doubt the [REDACTED] had the authority to extend the statute of limitations on assessment for [REDACTED].

CC:NER:MAN:TL-N-2454-99

Should you have any questions regarding this matter, please contact Paul Darcy of our office at (212) 264-5473 ext. 256.

LINDA R. DETTERY
District Counsel

By: _____
ROLAND BARRAL
Assistant District Counsel

Noted:

Linda R. Dettery
District Counsel

cc: Paulette Segal
Assistant Regional Counsel (LC) (by e-mail)

Mary Helen Weber
Assistant Regional Counsel (LC) (by e-mail)

Michael P. Corrado
Assistant Regional Counsel (TL) (by e-mail)

Theodore R. Leighton
Assistant District Counsel

Peter J. LaBelle
Assistant District Counsel