

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:CTR:HAR:TL-N-5009-99

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date: August 12, 1999

to: Chief, Examination Division, Connecticut-Rhode Island District
Attn: Group Manager Ronald Hathway, Examination Group 1104

from: District Counsel, Connecticut-Rhode Island District, E. Hartford

subject: [REDACTED]

DISCLOSURE STATEMENT

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ISSUE:

Whether an officer of [REDACTED] can execute a consent to extend the time to assess tax (Form 872) on behalf of [REDACTED] for the taxable years ended [REDACTED] and [REDACTED]. UIL:6501.08-09.

CONCLUSION:

It is our opinion that [REDACTED] can execute a consent to extend the time to assess tax (Form 872) on behalf of [REDACTED] for the taxable years ended [REDACTED] and [REDACTED].

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FACTS:

The facts as we understand them are that [REDACTED] was the common parent, (i.e., the highest tier domestic corporation), of a consolidated group for the taxable years ended [REDACTED] and [REDACTED]. [REDACTED] was a member of the consolidated group during these years. In [REDACTED] [REDACTED] sold [REDACTED] to [REDACTED]. [REDACTED] has remained in existence since at least [REDACTED] and has agreed with [REDACTED]'s consent to represent [REDACTED] with respect to the [REDACTED] and [REDACTED] examination by the Service. [REDACTED] and [REDACTED] have further agreed that any additional taxes resulting from the Service's audit of [REDACTED] for these tax years will be paid by [REDACTED].

[REDACTED] has given [REDACTED] a power of attorney authorizing [REDACTED] to act on behalf of [REDACTED]. A copy of this power of attorney is enclosed and marked as exhibit A. The power of attorney is quite broad stating among other things that: (1) [REDACTED] appoints [REDACTED] as its agent and attorney in fact for [REDACTED] for periods ending before [REDACTED]; (2) to respond to all tax authorities questions and demands; (3) to participate in any tax audits affecting [REDACTED] and to effect a final disposition thereof; (4) to process all refunds from state, federal or local government authorities; and, (5) to conduct all other activities reasonably required in order to effect the intent of the forgoing authorities.

The Service has asked for an extension of the statute of limitation for assessment for the taxable years [REDACTED] and [REDACTED] for [REDACTED] until [REDACTED]. [REDACTED] has agreed to sign the consent to extend time to assess tax (Form 872) on behalf of [REDACTED].

DISCUSSION:

I.R.C. § 6061 provides that any return, statement or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. The regulations under section 6501(c)(4) do not specify who may sign consents. Accordingly, the Service applies the rules applicable to

the execution of the original returns to the execution of consents to extend the time to make an assessment. Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

As a general rule, the common parent, with certain exceptions not applicable here,^{1/} is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers and any waiver so given shall be considered as having also been given or executed by each subsidiary in the consolidated group. Treas. Reg. § 1.1502-77(a). The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a). It follows that, even absent the specific power of attorney, [REDACTED] is the proper party to execute a consent on behalf of [REDACTED]. In this case the specific power of attorney, that appoints [REDACTED] as the agent and attorney in fact for [REDACTED] is additional authority to support the conclusion that [REDACTED], acting through its officers, can sign the consent (Form 872) on behalf of [REDACTED] for the taxable years [REDACTED] and [REDACTED].

We suggest that the consent (Form 872) be signed by an authorized officer of [REDACTED] on both the corporate officer line as common parent with respect to the consolidated liabilities, (i.e., [REDACTED] as Vice President of [REDACTED] with respect to the consolidated tax liabilities), and the representative line, (i.e., [REDACTED] as Vice President of [REDACTED] pursuant to the attached power of attorney), to make it clear there are two separate grounds authorizing the execution of the consent.

If you have any questions, or need any further information, please contact the attorney assigned to this case, Joseph F. Long, at (860) 290-4090. This opinion is based upon the facts set forth herein. Should you determine that the facts are different you should not rely upon this opinion without conferring with this

^{1/} For example, the general rule of Treas. Reg. § 1.1502-77(a) that the common parent is the sole agent for the group does not apply when the common parent goes out of existence.

office, as our opinion might change. Further, this opinion is subject to post-review in the National Office. That review might result in modifications to the conclusions herein. Should the National Office suggest any material change in the advice, we will inform you as soon as we hear from that office.

BRADFORD A. JOHNSON
Assistant District Counsel

By: _____
JOSEPH F. LONG
Attorney