Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:DET:TL-N-6974-00
MTHammoud

date: JUL 10 2001

to: Julie Short, Team Coordinator, Group 1692

from: Associate Area Counsel (LMSB)
Detroit, Michigan

subject: **Consent to Extend Statute of Limitations**
[redacted]

This memorandum responds to your request for assistance dated June 21, 2001, and confirms our e-mail of June 22, 2001, regarding the above subject. This memorandum may not be cited as precedent.

ISSUE

Who is the proper party to execute a consent to extend the statute of limitations, Form 872, on behalf of [redacted]?

CONCLUSION

The consent to extend the statute of limitations should be executed by an authorized officer of [redacted].

FACTS

The facts are as set forth in your correspondence of December 1, 2000, the Stock Purchase Agreement, Agreement and Plan of Merger, and Memorandum of June 21, 2001.

[redacted], a Delaware corporation, (hereinafter referred to as [redacted]), is currently under examination for the [redacted] [redacted] and [redacted] tax years. During the years under audit, [redacted] was [redacted]% owner of [redacted], (hereinafter the FSC), and was the common parent of the [redacted] consolidated group.

In [redacted], [redacted] merged with [redacted] (hereinafter [redacted]). Pursuant to the Agreement and Plan of Merger dated as of [redacted], [redacted], a Delaware corporation and a wholly owned subsidiary of [redacted], also a Delaware corporation, purchased for cash all the issued and outstanding shares of [redacted] common stock. [redacted]

[redacted], then merged with [redacted] and its corporate existence ceased, with [redacted] being the surviving entity of the merger. The merger became effective on [redacted], with [redacted] becoming a wholly owned subsidiary of [redacted] and retaining the same Employer Identification Number (EIN). Nothing in the Plan of merger mentions either the ownership and/or operation of the FSC.

Pursuant to the information recently forwarded to our office, it appears the merger will not impact the FSC and the FSC will remain in existence. The FSC intends to file a Form 1120-FSC for its export sales for the time period before the merger, i.e., [redacted] through [redacted]. The FSC also intends to file a Form 1120-FSC for the period from [redacted] through [redacted] reporting no activity. In response to a request by exam, [redacted] stated "[a]ny tax benefit related to export sales will be reported under the new extraterritorial income exclusion regime for the period ending [redacted]."[1]

As a result of the merger, exam requested our assistance regarding the proper party to execute a consent on behalf of the FSC.

DISCUSSION AND ANALYSIS

Internal Revenue Code § 6501(a) generally provides that any tax imposed by this title is to be assessed within 3 years after the return is filed. I.R.C. § 6501(c)(4) further provides that, before the expiration of the time provided by subsection (a), the taxpayer and government may consent in writing to extend the time allowed for assessment.

As a general rule, the common parent of a consolidated group 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). Accordingly, the common parent, in its own name, is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members of the consolidated group.

By definition, foreign sales corporations are organized pursuant to the laws of a qualified foreign country or U.S. possession. I.R.C. § 922(a)(1)(A). The corporate existence of a foreign sales corporation, including periods of limitations, is generally respected for U.S. tax purposes. See, United Carbide Corp. v. Commissioner, 110 T.C. 375 (1998).

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[1] This is presumably in reference to the new procedures established for reporting FSC income, as set forth in Rev. Proc. 2001-37.

Since a foreign sales corporation is organized under the laws of a foreign country or U.S. possession, it cannot be part of its U.S. parent's consolidated group. I.R.C. § 922(a)(1)(A); I.R.C. §§ 1504(a)(1) and (b)(3). Thus, it is generally not appropriate to obtain a consent to extend a foreign sales corporation's period of limitations for assessment from the U.S. parent or the parent's successor-in-interest, such as [redacted] in this case.

Internal Revenue Code § 6061 provides that any return, statement or other document made under the internal revenue laws must be signed in accordance with the applicable forms or regulations.

The regulations to I.R.C. § 6501(c)(4) do not specify who may sign consents. However, 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.

With respect to corporate returns, I.R.C. § 6062 provides that a corporation's income tax return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to act on behalf of the corporation. The fact that an individual's name is signed on the return is prima facie evidence the individual is authorized to sign the return. I.R.C. § 6064. Accordingly, any such officer may sign a consent, regardless of whether that person was the same individual who signed the return. Rev. Rul. 84-165.

Based on all the above, and considering the fact the FSC remains in existence, the consent (Form 872) should be executed by an authorized officer of the FSC. **Please note and adhere to the notice requirements of I.R.C. § 6501(c)(4)(B) at the time of seeking the consent.**

This advice is subject to post-review by our National Office, and should only be relied upon by the recipient after this office's assurance of National Office concurrence.

We hope the foregoing fully addresses your concerns regarding this issue. However, should you have any questions or require any further assistance, please feel free to contact the undersigned at (313) 237-6432.

DISCLOSURE STATEMENT

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.

Associate Area Counsel
(Large and Mid-Size Business)

By: _____
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cc: Larry Strong, Team Manager