Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:PHI:TL-N-3041-01
JRGilbert

date: JUN 15 2001

to: Walter J. Kirwan, Case Manager, Group 1677
(King of Prussia P.O.D.)

from: Associate Area Counsel (LM:MCT) - Philadelphia

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subject: [redacted] - **Extension of Statute of Limitations - Forms 872**

DISCLOSURE STATEMENT

This memorandum may contain privileged information. Any unauthorized disclosure of this memorandum may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

DISCUSSION

This memorandum responds to your request for assistance of May 9, 2001. This memorandum should not be cited as precedent. You have requested our advice regarding the correct captions for Forms 872, Consent To Extend The Time To Assess Tax, for tax returns concerning the [redacted] consolidated group.

ISSUE

How should the taxpayer be identified on the Forms 872 or 872-A to be executed to extend the statute of limitations for assessment?

CONCLUSION

For the [redacted] and [redacted] consolidated returns, any Forms 872 or 872-A should be prepared in the name of "[redacted], **successor by merger to** [redacted]".

Additionally, at the bottom of the first page of the Form

872 (or Form 872-A), add the following language:

> **"* This is in respect to the consolidated tax liability of the [redacted] consolidated group for the taxable year(s) ended _____."**
> [Fill in blank as appropriate for [redacted] and/or [redacted]]

In addition, we recommend having an officer of [redacted] sign the Form 872 (or Form 872-A) and noting on the signature block on page 2 of the Form 872 (or Form 872-A) as follows:

> **[name of current officer]**
> **[title of officer]**
> [redacted]

Please also note that for all years, 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 responsible manager should promptly sign and date it in accordance with Treas. Reg. § 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.

FACTS

Revenue Agent Raymond Woodruff is examining the consolidated Forms 1120 filed by [redacted] ("[redacted]") for calendar years [redacted] and [redacted]. As the [redacted] consolidated Form 1120 was filed on [redacted], the three year statute of limitation on assessment per I.R.C. § 6501(a) expires on [redacted].

You have been informed by the taxpayer that on [redacted], [redacted] was acquired by [redacted], a wholly owned subsidiary of [redacted]. [redacted] is the highest tier domestic corporation of [redacted], a German corporation, and it regularly files a consolidated return on behalf of its domestic subsidiaries.

On [redacted], [redacted] was merged into [redacted].

ANALYSIS

The common parent of a consolidated income tax is the proper party to extend the statute of limitations on behalf of itself and the consolidated group, in accordance with Treas. Reg. § 1.1502-77, and it remains so as long as it remains in existence.

Temporary Treas. Reg. § 1.1502-77T(a)(4)(ii) provides that a successor to a former common parent that has ceased to exist can act as an alternative agent for the old consolidated group.

The facts in the instant case indicate that the common parent for the [redacted] group in [redacted] and [redacted], did not survive the [redacted] merger with [redacted], and as such it is no longer in existence. Accordingly, any Forms 872 or 872-A for the [redacted] consolidated returns for [redacted] and [redacted] should be prepared in the name of "[redacted], **successor by merger to** [redacted]".

Additionally, at the bottom of the first page of the Form 872 (or Form 872-A), add the following language:

> **"* This is in respect to the consolidated tax liability of the [redacted] consolidated group for the taxable year(s) ended _____."**
> [Fill in blank as appropriate for [redacted] and/or [redacted].]

In addition, we recommend having an officer of [redacted], sign the Form 872 (or Form 872-A) and noting on the signature block on page 2 of the Form 872 (or Form 872-A) as follows:

> **[name of current officer]**
> **[title of officer]**
> [redacted]

This concludes our advice and recommendation. Our advice is subject to the Office of Chief Counsel's ten day post-review procedures. If the Office of Chief Counsel alters or revises our advice, they will contact us within ten working days from their receipt of our advice. We therefore recommend that before issuing the Forms 872 to the taxpayer, you wait until the ten day period expires and we confirm that no alterations or revisions

were made to our proposed advice. Please feel free to call Attorney John R. Gilbert at 215-597-3442 with any additional questions you may have.

JAMES C. FEE, JR.
Associate Area Counsel (LMSB)

cc: (via email only)
Division Counsel (LMSB) [TSS4510]
Harve Lewis, Senior Litigation Counsel (HQ) (CC:LM:MTC:SLC)