Office of Chief Counsel
Internal Revenue Service

memorandum

TL-N-5730-00
JForsberg

date: October 11, 2000

to: Mark Cohen, Group 1625, Bloomington, MN

from: Associate Area Counsel (LMSB), St. Paul, MN

---

subject: [redacted] (formerly [redacted])
Form 872 for the TYEs [redacted] through [redacted]

Our advice has been requested as to the proper party to execute, and the proper form for, a Form 872 for the [redacted] consolidated group's taxable years ending [redacted], through [redacted]. For the reasons discussed, we believe that the Form 872 should executed on behalf of the old [redacted] group by [redacted].

FACTS

[redacted] was a Minnesota corporation which filed consolidated returns as the common parent of a consolidated group (the "[redacted] group"). [redacted] was a Delaware corporation which also filed consolidated returns as the common parent of a consolidated group (the "[redacted] group"). [redacted] was a wholly-owned subsidiary of [redacted].

In [redacted], [redacted] and [redacted] merged in a transaction intended to be a tax-free reorganization under I.R.C. § 368(a). On [redacted], the utility assets of [redacted] were contributed to [redacted]. Also on [redacted] the stock of [redacted] was converted into [redacted] stock and [redacted] was merged into [redacted] with [redacted] being the surviving corporation. Immediately thereafter, [redacted] amended its articles of incorporation to change its name to "[redacted]". Under MINN STAT. §302A.641, Subd. 2(e) and DEL. CODE, Title 8, § 259(a), [redacted] as the surviving corporation in the merger, assumed all liabilities of [redacted].

The taxpayer has indicated that the transaction was a reverse merger. Based on the representations made in the Plan of Merger as to the capitalization of [redacted] and [redacted] and the conversion ratio for [redacted] stock into [redacted] stock, it appears that the shareholders of [redacted] held a majority of the stock of [redacted] following the merger and that the transaction was indeed a reverse acquisition for purposes of Treas. Reg. §1.1502-75(d)(3). Plan of Merger, Preamble & 2.1(b). Accordingly, under Treas. Reg. §1.1502-75(d)(3), the [redacted] group ceased to exist upon completion of the merger, the [redacted] group is treated as remaining in existence, and [redacted] (now [redacted]) became the new common parent.

DISCUSSION

Treas. Reg. § 1.1502-77(a) provides generally that the common parent of a consolidated group is the sole agent for each subsidiary in the group for any consolidated return year. Expressly included in the authority of the common parent is the power to execute waivers. Treas. Reg. § 1.1502-77(a) further provides that its provisions shall apply "whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time."

In the present case, the [redacted] ceased to exist on [redacted], with the reverse acquisition. However, the corporate existence of [redacted] (now [redacted]) continued unabated, albeit under a new name and as the new parent of the [redacted] group. Accordingly, [redacted] continues as agent for the [redacted] group's pre-merger years, notwithstanding that the group itself has ceased to exist. Thus, [redacted] (now [redacted]) can continue to execute waivers for the [redacted] group's pre-merger taxable years (including the years [redacted] through [redacted].

In preparing the Form 872, we suggest that:

1. The taxpayer's name read:

[redacted], formerly [redacted], as agent for the consolidated group*

The following footnote should be put at the bottom of the page:

* with respect to the consolidated income tax liability of [redacted].

2 The EIN of [redacted] should be used as the taxpayer's EIN.

3. The signature block should use name "[redacted] (formerly [redacted]", and should be executed by a current officer of [redacted].

If you have any questions respecting this matter, please call Jack Forsberg at 290-3473, ext. 227.

REID M. HUEY
District Counsel

By: Jack Forsberg
JACK FORSBERG
Special Litigation Assistant

cc: Associate Chief Counsel (Procedure and Administration)