Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:LN:TL-N-4759-01
EYWu

date:

to: Hank Ito, LMSB Laguna Niguel

from: June Y. Bass, Associate Area Counsel (LMSB)
Erica Y. Wu, Attorney eyw

subject: Taxpayer: [redacted]
Tax Years: [redacted] and [redacted]
Issue: Restricted Consent to Extend the Time to Assess Tax
Statute of Limitations: [redacted] - [redacted]
[redacted] - [redacted]

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.

This memorandum responds to your facsimile on August 2, 2001, requesting our review of the language on a draft Form 872, Consent to Extend the Time to Assess Tax. This memorandum should not be cited as precedent.

FACTS[1]

[redacted] is the common parent of an affiliated group of corporations ("Taxpayers") which file consolidated corporate income tax returns. [redacted] is a wholly-owned subsidiary of [redacted], a Japanese corporation.

Taxpayers' returns for fiscal years ended [redacted] and [redacted] are currently under audit. The statute of limitations on assessment for both years will expire on [redacted]. At this time, the Exam has resolved all the issues

[1] We have relied upon facts presented to us orally by you. We have not undertaken any independent investigation of the facts of this case. If the facts stated herein and your understanding of the facts differ, you should not rely on this advice. Instead, you should contact this office immediately.

raised during the audit except for certain transfer pricing disputes.[2] Taxpayers have agreed to extend the assessment period to [redacted], provided the scope is limited to transfer pricing adjustments. To accomplish this goal, Exam proposes a Form 872 using the following restrictive language:

> The amount of any deficiency assessment is to be limited to that resulting from any adjustment to the distribution, apportionment, or allocation of gross income, deductions, credits, or allowances under I.R.C. Section 482, including any consequential changes to other items based on such adjustment.

RECOMMENDATIONS

We recommend that you use the language below for the restricted consent. The restrictive language on the consent form should be placed in the space between the printed text of the form and the first signature line. However, if space is limited, the restrictive language can be placed on an attachment and "SEE ATTACHED STATEMENT" should be placed in the space between the printed text and the first signature line of the restricted consent form.

The restrictive language on the Form 872 should read as follows:

> The amount of any deficiency, setoff, penalty, addition to tax and/or interest assessment shall be limited to that resulting from any transfer pricing adjustments under I.R.C. § 482, including any consequential changes to other items based on such adjustments.
>
> As used herein, the term "transfer pricing" shall include cost-sharing arrangements.
>
> As used herein, the term "adjustment" means any change or changes to an item(s), whether reported or not reported on the return. The

---

[2] An Advance Pricing Agreement("APA") covering the years at issue is currently being negotiated. That APA, once entered, will resolve the transfer pricing disputes.

> change can be in amount, taxable status, allocation, character, etc.
>
> As used herein, the term "consequential changes" means any direct or indirect effect.

We also recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual ("IRM"). Specifically, the Statute of Limitations Handbook, IRM 121.2.22, provides procedures for processing consents to extend the statute of limitations on assessment. In particular, note that IRM 121.2.22.3 sets forth procedures to comply with the notification that the Service must provide taxpayers on each occasion when the taxpayer is requested to extend the statute of limitations by consent. The IRM requires that this notification be made to the taxpayer by sending or presenting Letter 907(DO) and sending or presenting Publication 1035, which together inform the taxpayer of its right to refuse to extend the limitation period, the right to request the extension to be limited to a particular issue and the right to request the limitation period to be limited to a specific date.

We have coordinated this advice with National Office using the NSAR pre-review procedures. Please contact Erica Wu at (949)360-3433 if you have any questions.