Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:CTR:HAR:TL-N-3022-00
SCBest

date: MAY 25 2000

to: Chief, Examination Division, Connecticut-Rhode Island District
ATTN: Robert Arrigo, Case Manager

from: District Counsel, Connecticut-Rhode Island District

subject: [redacted]

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ISSUE:

Who is the proper party to execute a Form 872 for the [redacted] consolidated group ([redacted]), for the [redacted] through [redacted] taxable years?
UIL: 6501.04-05

CONCLUSION:

As informally discussed with Attorney Daniel Heins of our National Office, we believe that [redacted], as successor in interest, is the proper party to extend the limitations period for the [redacted] consolidated group's [redacted] through [redacted] tax liabilities.

FACTS:

As part of its [redacted] examination, the Examination Division for the Connecticut-Rhode Island District (Exam) is conducting an audit of [redacted] for the [redacted]-[redacted] taxable years. During these years, [redacted], a company

organized under the laws of Australia, owned [redacted] of the stock of [redacted]. In turn, [redacted] owned [redacted] of the outstanding stock of certain domestic corporations, including [redacted], a Texas corporation. For [redacted], [redacted] filed a consolidated return acting as parent for its group, including [redacted]

On or about [redacted] [redacted] sold its interest in [redacted] to an unrelated third party, [redacted] ([redacted]), a Delaware corporation.

On [redacted], the following events occurred:

1. [redacted] was merged into [redacted] with [redacted] emerging as the survivor.

2. [redacted] was merged into [redacted] ([redacted]), a Delaware corporation and a subsidiary of [redacted] with [redacted] emerging as the survivor.

3. Most of the other major subsidiaries of the [redacted] group were merged into [redacted], and [redacted] both Delaware corporations, with [redacted] and [redacted] emerging as the survivors.

According to a letter dated [redacted] from [redacted], Corporate Tax Director for [redacted], some time in [redacted] and [redacted] were also merged into [redacted]. Therefore, at present it appears that the entire [redacted] consolidated group is out of existence and [redacted] is now the common parent of the new group.

Discussion

Treas. Reg. § 1.1502-77(a) provides generally that a group's common parent 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. The common parent in its name will give waivers, and any given shall be considered as having also been given or executed by each subsidiary in the consolidated group. Thus, if a group restructuring causes a change in the common parent and a Form 872 is needed for a pre-change year of the group, the previous common parent continues to act as agent for signing the waiver. This is the case as long as the former common parent continues its

corporate existence, even if it is no longer a common parent at the time the waiver is required.

Here, by virtue of the various mergers, [redacted] the former common parent for the [redacted] consolidated group ceased to exist. Treas. Reg. § 1.1502-77(d) provides that if the old common parent actually terminates its corporate existence, different rules apply. In that event, an entity designated by the old common parent can act as agent for the old group, subject to the approval of the district director. If the old common parent fails to make such a designation or a designation is not approved by the district director, the surviving members of the old group can designate an agent. If neither the old parent nor the surviving members make such a designation, the district director may deal with the group members on an individual basis. In this case, neither [redacted] nor any members of the old group have designated an agent for the old group. Further, it appears that the entire group ceases to exist and have been merged into [redacted].

In this case, on [redacted] [redacted] as [redacted] [redacted] successor, merged into [redacted] and, therefore, ceased to exist under Delaware law on that date. See 8 Del. Code § 259(a) (1996). As the surviving corporation in the [redacted] merger, [redacted] became a successor in interest, and its current officers can execute the consents validly extending the statute of limitations for the [redacted] consolidated group pre-merger years. Pleasanton Gravel Co. v. Commissioner, 85 T.C. 839 (1985); Popular Library, Inc., v. Commissioner, 39 T.C. 1092 (1963). Additionally, [redacted] would be an alternate agent for the [redacted] group under Treas. Reg. § 1.1502-77T(a)(4)(ii) (The merger under Delaware law would qualify as a reorganization under I.R.C. § 368(a)(1)(A) and thus would be a transaction to which I.R.C. § 381(a) applies).

We recommend that the name of the taxpayer read on side one of the Form 872 as follows:

> [redacted], EIN # ..., successor in interest to [redacted], EIN #..., successor in interest to [redacted], EIN #...

At the bottom of side one, place an asterisk and state the following:

This is with respect to the tax liabilities of the consolidated group [redacted] and subsidiaries.

Additionally, the Form 872 should be signed on the reverse side by a current officer or a currently authorized representative of [redacted]. Further, upon requesting the signing of the Form 872, please notify [redacted] of its rights under section 3461(b) of the IRS Restructuring and Reform Act of 1998 (RRA 98) to refuse to sign the consent, etc.

Based on informal advice from the National office, it concurs with our opinion. However, please note that 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 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.

If you have any questions, or need any further information, please call Stephen C. Best at (860)290-4075.

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Acting District Counsel

By: _____
STEPHEN C. BEST
Attorney