**Office of Chief Counsel**
**Internal Revenue Service**

# memorandum

CC:WR:LAD:LA:TL-N-5012-99
KHAnkeny

date: October 8, 1999

to: Gwendolyn Hogans, Team Coordinator

from: District Counsel, Los Angeles District, Los Angeles

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subject: **Consents to Extend the Period of Limitations for the [redacted] that were Subsidiaries of [redacted]**

DISCLOSURE STATEMENT

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ISSUES

You asked for our advice about the consents (the Consents) to extend the time to assess the tax due for the [redacted] and [redacted] tax years from the [redacted] (the [redacted], which were subsidiaries of [redacted], for:

(1) The [redacted] income tax liability under Chapter 1 of the Internal Revenue Code;

(2) Their liability for withholding of income tax on nonresident aliens and foreign corporations under Chapter 3; and

(3) Their liability for employment tax.

In particular, you asked whether [redacted] could sign the Consents and what should be in the riders attached to the Forms 872 and SS-10.

CONCLUSIONS

(1) With respect to the [redacted] income tax liability under Chapter 1 of the Code, [redacted] should sign the Consent as the sole agent for the affiliated group. The Consent may be signed by any duly authorized officer of [redacted].

(2) With respect to the [redacted] liability for the withholding of tax on nonresident aliens and foreign corporations under Chapter 3, [redacted] may sign one Consent on behalf of all of the [redacted] so long as the signatory is authorized to sign the Consent for each corporation.

(3) With respect to the [redacted] employment tax liability, [redacted] may sign one Consent on behalf of all of the [redacted] so long as the signatory is authorized to sign the Consent for each corporation.

FACTS

[redacted] and its subsidiaries, including the [redacted], filed consolidated income tax returns, Forms 1120, for [redacted] and [redacted]. They also filed withholding tax returns, Forms 1042, and employment tax returns, Forms 940 and 941, for [redacted] and [redacted]. (You requested that we not address the [redacted] tax year.)

On [redacted], [redacted] spun off the [redacted]. The [redacted] are currently subsidiaries of [redacted], which is not under audit. [redacted], Vice-President Tax for [redacted], signed other Consents on behalf of [redacted] and its subsidiaries.

DISCUSSION

(1) With respect to the [redacted] income tax liability under Chapter 1, [redacted] should sign the Consent as the sole agent for the affiliated group. The Consent may be signed by any duly authorized officer of [redacted].

With respect to the [redacted] income tax liability under Chapter 1 for [redacted] and [redacted], the Consent should be prepared in the name of [redacted] and its subsidiaries. [redacted] should sign the Consent as the sole agent for the [redacted]. "[T]he common parent in its name will give waivers . . ., and any waiver . . . so given . . . shall be considered as having also been given . . . by each such subsidiary." Treas. Reg. § 1.1502-77(a). This provision "shall apply . . . whether or not one or more subsidiaries . . . have ceased to be members of the group at any time." Id. The Consent given by [redacted] "in respect to the tax for a consolidated return year shall be applicable-- (1) To each corporation which was a member of the group during any part of such taxable year." Treas. Reg. § 1.1502-77(c).

The Consent may be signed by any duly authorized officer of [redacted]: its president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other duly authorized officer. The Regulations do not specify who may sign a Consent. However, documents generally should be signed according to the forms or Regulations prescribed by the Secretary. I.R.C. § 6061(a). Therefore, the Service applies the rules for returns, which may be signed by the corporation's president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other duly authorized officer. I.R.C. § 6062; Rev. Rul. 83-41, 1983-1 C.B. 349, *clarified and amplified*, Rev. Rul. 84-165, 1984-2 C.B. 305.

(2) With respect to the [redacted] liability for the withholding of tax on nonresident aliens and foreign corporations under Chapter 3, [redacted] may sign one Consent on behalf of all of the [redacted] so long as the signatory is authorized to sign the Consent for each corporation.

[redacted] may not sign a Consent for the [redacted] Chapter 3 tax liability as an agent under section 1.1502-77 of the Regulations. This Regulation concerns only Chapter 1 tax liability. I.R.C. §§ 1501, 1502.

But, if it would be more convenient for the [redacted] to have a single Consent for all of their Chapter 3 tax liability, [redacted] may still sign a single Consent on their behalf. (Because [redacted] is not under audit, it may be reluctant to sign a Consent on behalf of the [redacted] if that Consent would also extend the time to assess the tax due on its own liability.)

However, [redacted] must be authorized to sign the Consent on behalf of each of the [redacted]. There are two alternative bases for this authority. As discussed in section 1 of this Analysis, [redacted] would be authorized to sign on behalf of a [redacted] if the signatory of the Consent was the [redacted]'s president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other duly authorized officer. In the alternative, [redacted] would be authorized to sign on behalf of the [redacted] if the [redacted] specifically authorized the signatory by power of attorney to sign the Consent. Amesbury Apartments, Ltd. v. Commissioner, 95 T.C. 227, 242 (1990) (an accountant was authorized to sign the Form 872-P under the power of attorney signed by the partnership's general partner).

Revenue Procedure 72-38 prescribes the form. The Consent and the Rider should identify the [redacted] and contain an express agreement that the signatory is signing the Consent on behalf [redacted] and each of the [redacted]:

> 1. The name of the parent corporation and the number of subsidiary corporations named on an attached rider shall be inserted in the space provided for the name of the taxpayer on the Form 872, 872-B, or SS-10. The rider attached to the form will contain a supplemental agreement and will clearly identify the parent and the specific subsidiaries by showing the name, address, identification number, and the particular taxable year or periods, and in case of the rider attached to the Form 872-B or SS-10, the applicable excise or employment tax, of each subsidiary with respect to which the form is applicable. See Exhibits A, B, and C for the format of the riders [to the Form 872 or Form SS-10].

> 2. Both the consent and the rider shall be executed on behalf of the parent corporation and all the subsidiaries named in the rider by a duly authorized officer of the parent corporation who (1) is also a duly authorized officer of each of the subsidiaries, or (2) has been specifically authorized to execute a consent by powers of attorney, executed by each of the subsidiaries. The consent must specifically show that the person signing for the parent and subsidiaries is signing in the capacity of an authorized officer of the parent corporation and as authorized officer or attorney-in-fact for each and all of the listed subsidiaries.

Rev. Proc. 72-38, 1972-2 C.B. 813, *clarified*, Rev. Proc. 82-6, 1982-1 C.B. 409; I.R.M. § 4541.3. We have attached a copy of Revenue Procedure 72-38 and its exhibits. The exhibits help to explain the contents of the rider attached to the Form 872.

We also recommend that the "tax" be identified as the "Withholding of Tax on Nonresident Aliens and Foreign Corporations under Chapter 3 of the Internal Revenue Code as reported on Form 1042."

In sum, if [redacted] is no longer a duly authorized officer of the [redacted], each [redacted] should give him its power of attorney, specifically authorizing him to sign the Consent.

<u>(3) With respect to the [redacted] employment tax liability, [redacted] may sign one Consent on behalf of all of the [redacted] so long as the signatory is authorized to sign the Consent for each corporation.</u>

Assuming that it would be more convenient for the [redacted] to have a single Consent for all of their employment tax liability, [redacted] may sign the Consent on their behalf. As discussed in section 2 of this Analysis, the rider to the Form SS-10 should identify the [redacted] and contain an express agreement that the signatory is signing the Consent on behalf [redacted] and each of the [redacted]. Similarly, each [redacted] should give [redacted] its power of attorney, specifically authorizing him to sign the Consent.

Please call me at 213-894-3027, ext. 155, if you have any questions.

JAMES A. NELSON
District Counsel

By: _____
KATHERINE H. ANKENY
Attorney

Attachment