Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:RMD:DEN:TL-N-417-00
MJCooper

date:

to: Chief, Examination Division, Rocky Mountain District
Attn: Joyce Schulte , Case Manager E:2:8
Richard Michalski, Team Coordinator

from: MICHAEL J. COOPER
Special Trial Attorney

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subject: Request for District Counsel Assistance
Extension of Statute of Limitations
[redacted] Year: [redacted]

Your memorandum dated January 24, 2000 requests our help in drafting consents to extend the statute of limitations with regard to the consolidated returns of the former [redacted] consolidated group for TYE [redacted] as well and the former [redacted] for TYE [redacted] and [redacted]. (See Tab A). This memorandum relates to [redacted]. Our advice on [redacted] is contained in a separate memo.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103 and contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the intended recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

SUMMARY OF CONCLUSIONS

Under Treas. Reg. §1.1502-77T(4)(ii), New [redacted] may execute a consent extending the statute of limitations for the former [redacted] consolidated group for TYE [redacted]. New [redacted] is also the transferee of Old [redacted]. We also recommend that you secure a transferee agreement, Form 2045, and transferee statute consent from New [redacted].

FACTS

For taxable years [redacted], [redacted], formerly [redacted], ("Old [redacted]"), a Delaware corporation, [redacted], filed a consolidated return with its subsidiaries (the "[redacted]").

On [redacted], Old [redacted] became a subsidiary of New [redacted] in the following transaction: [redacted] ("New [redacted]"), EIN [redacted], and two subsidiaries, [redacted] Mergco and [redacted] Mergco, were incorporated in Delaware. [redacted] Mergco was merged into Old [redacted], Old [redacted] surviving. Old [redacted] gave up its name and changed it to [redacted] It retained EIN [redacted]. New [redacted] then adopted the name [redacted] (See Tab B). [redacted] Mergco was merged into [redacted], a transaction relating to the [redacted] consent but unrelated to the [redacted].

On [redacted], a Consent to Extend the Time to Assess Tax, Form 872, for [redacted] was signed by an authorized officer of Old [redacted] for the [redacted]. This consent expires on [redacted].[1] (See Tab A)

On [redacted], Old [redacted] merged into New [redacted], New [redacted] surviving. Also on [redacted], [redacted], a wholly owned subsidiary of [redacted], merged into New [redacted], which was the survivor in a stock-for-stock transaction. Thus, New [redacted] became a wholly owned subsidiary of [redacted]. New [redacted] remains in existence and has a duly appointed corporate officer available to sign consents. (See Tab C).

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[1] This consent was signed on behalf of the District Director on [redacted] after the [redacted]th merger of Old [redacted] into New [redacted]. The fact that consent was not accepted by the Service until after the merger may raise questions about the efficacy of this consent.

DISCUSSION

Consents for Consolidated Groups - General

Treas. Reg. §1.1502-77 provides that the common parent of a consolidated group is the exclusive agent for the group except for certain enumerated exceptions not pertinent here. Treas. Reg. §1.1502-77(a). No subsidiary that is a member of the group has any authority to act for itself. Id. The authority of the common parent includes granting extensions of time to assess and collect tax. The authority of the parent exists whether or not a consolidated return is made for any other year or whether or not one or more subsidiaries have joined or ceased to be members of the group.

Treas. Reg. 1.1502-77T, effective for years for which a return is due (without extensions) after September 7, 1997, provides that if a common parent ceases to be the common parent of a consolidated group a waiver of the statute of limitations may be given by various designated alternative agents. This applies "whether or not the group remains in existence."

Under Treas. Reg. §1.1502-77T, there are four possible alternative agents:

i. the common parent of the group for all or any part of the year;

ii. a successor to the former common parent in a transaction to which I.R.C. §381(a) applies;

iii. the agent designated by the group under Reg. §1.1502-77(d);[2] or

iv. If the group remains in existence under Treas. Reg. §1.1502-77(d)(2) or (3), the common parent of the group at the time the waiver is given.

Recommendations for the Consent:

We recommend that you obtain an extension of the transferee statute, Form 977, and a transferee agreement, Form 2045, from New [redacted] in addition to a Form 872. These Forms should be filled out as follows:

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[2] Treas. Reg. §1.1502-77(d) provides that if the common parent goes out of existence, it may designate another member of the group to act as agent, or, if it fails to do so, the remaining members of the group may make the designation by notifying the District Director.

Form 872:

Treas. Reg. §1.1502-77T(a)(4)(ii) provides that a successor to the former common parent in a transaction to which I.R.C. §381(a) applies is an alternative agent for the consolidated group. Old [redacted] is the former common parent. New [redacted] is the successor to Old [redacted] in a statutory merger, an I.R.C. § 368(a)(1)(A) reorganization. Section 381(a) applies to such a reorganization. Therefore, New [redacted] is the successor to the former common parent and is an alternative agent of the [redacted] for TYE [redacted].

The line for the taxpayer's name of the Form 872 at the top of the Form 872 should read as follows:

> [redacted] *EIN* [redacted], *Successor By Merger to* [redacted], *EIN* [redacted], *as agent for the* [redacted]*.

We also recommend that you add the following footnote at the bottom of the signature page:

> **With respect to the consolidated income tax liability of the* [redacted], *EIN* [redacted].

On the reverse of the Form, in the place for signatures, the Corporate Name should be as follows:

> [redacted], *EIN* [redacted], *Successor by Merger to* [redacted], *EIN* [redacted], *as Agent for the* [redacted]

In the signature block immediately following the Corporate Name, in the space labeled "Corporate Officer(s) Sign Here," we recommend that you ensure that the person signing the consent is actually a current officer of New [redacted] and that his signature block contain a typed or legibly printed name and title.

Form 977:

Name (at top of front of Form):

> [redacted], *EIN* [redacted]

Paragraph beginning with "The amount of the liability and ending with "due from:"

[redacted], EIN [redacted], with respect to the consolidated income tax liability of [redacted] (EIN [redacted].

Tax Periods Ended: *December 31, [redacted]*

Corporate Name of Transferee:

[redacted] EIN [redacted], as transferee of [redacted], EIN [redacted] common parent and agent for the [redacted]

Blank for Corporate Officer's Signature:

_____

Joe Smith

Blank for corporate officer's Title:

Full Corporate Title or Position

Form 2045:

Name of Transferor:

[redacted]

Space for Transferor's Social Security or Employee Identification Number:

EIN [redacted]

Name of Transferee:

[redacted]

Space for Transferee's Social Security or Employee Identification Number:

EIN [redacted]

Date Incorporated:

Insert Applicable Dates for both Old [redacted] and New [redacted]

State Incorporated:

Insert Delaware

Tax Years:

December 31, [redacted]

Signer's name:

[redacted], EIN [redacted]

Signature:

Name of Signing Officer should be typewritten or legibly printed in addition to his or her written signature..

Title:

Full Corporate Title or Position (typed or legibly printed)

Sample copies of Forms 872, 977, and 2045 are attached for your guidance.(See Tab F). If you have any questions about the matters discussed in this memorandum or any other matters, please call me at 303-844-2214, ext. 242.

MICHAEL J. COOPER
Special Trial Attorney

Attachments