Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:CLE:TL-N-3498-01
RSBloom

date: June 29, 2001

to: LM:NR:1486
Attn: Daniel C. Callahan & Linda Taylor

from: Associate Area Counsel, LM:MCT:CLE

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subject: **Adv. Opinion: Consent Name and Signatory**
Taxpayer: [redacted]
Year: [redacted]
Statute Expires: [redacted]

Please be advised that our National Office agrees with the advice contained in our memorandum dated June 26, 2001. The Form 872, Consent to Extend the Time to Assess Tax, extending the statute of limitations to [redacted], for the year [redacted] of [redacted] is valid **provided that** [redacted], **retained its same name after the merger** with [redacted] **and that** [redacted] **was the vice-president of** [redacted] **on** [redacted], **the date she signed the consent.**

If you have any questions regarding the above, please fell free to contact the undersigned at 216-522-3380 (ext. 3108).

JOSEPH F. MASELLI
Area Counsel
(Heavy Manufacturing, Construction and Transportation)

By: /S/ RSB
RICHARD S. BLOOM
Associate Area Counsel
(Large and Mid-Size Business)

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Taxpayer: [redacted]
Year: [redacted]
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This memorandum responds to your request for assistance dated May 30, 2001. This memorandum should not be cited as precedent. As requested, we have reviewed the following facts to determine, for purposes of extending the statute of limitations for assessment, the proper entity to execute the consent. This memorandum is subject to 10-day post review by our National Office and, therefore, is subject to modification.

ISSUES

1) What entity's name should appear as the taxpayer on the Form 872 to extend the time to assess tax for the year [redacted] of [redacted].

2) What entity's authorized officer should sign the Form 872 for the year [redacted] of [redacted].

CONCLUSIONS

1) The ideal language to describe the taxpayer on the Form 872 is "[redacted] (EIN: [redacted]) as agent for the members of the [redacted] consolidated group*." For sake of clarity, the foregoing name should be asterisked, as indicated, and at the bottom of the consent the following language should be inserted: "*This is with respect to the [redacted] consolidated group for the [redacted] taxable year."

However, we believe the consent recently obtained in the name "[redacted]" is valid and can be relied upon to extend the statute of limitations for the

consolidated group **provided** [redacted] **was the Vice President of** [redacted], **on** [redacted], **the date she executed the Form 872.**

2) An authorized officer of [redacted], should sign the Form 872 under the corporate name "[redacted], as agent for the members of the [redacted], and [redacted] consolidated group."

However, as stated in 1), above, the recently obtained consent, which is signed under the corporate name "[redacted]" is valid provided [redacted] was Vice President of [redacted], on [redacted].

FACTS

For the calendar year [redacted], [redacted], [hereinafter sometimes referred to as "[redacted]"], as parent, filed a consolidated income tax return. The return was filed on or about [redacted].

An Agreement and Plan of Merger, dated as of [redacted], was entered to among [redacted], [redacted] [hereinafter "[redacted]"] and [redacted] [hereinafter "[redacted]"]. Pursuant to the agreement, [redacted], a wholly-owned subsidiary of [redacted], acquired through a tender offer the stock of [redacted] for cash. [redacted] was then merged with and into [redacted], whereupon the separate existence of [redacted] ceased and [redacted] survived. The plan of merger was completed [redacted]. [redacted] still exists as a separate corporation.

A Form 872, Consent to Extend the Time to Assess Tax, extending the time to assess tax to [redacted], was executed with respect to the year [redacted] of [redacted]. The consent reflects the taxpayer's name as "[redacted]" and was executed under the same name. [redacted]'s EIN was typed at the top right hand corner of the Form 872. The consent was signed on behalf of the taxpayer by [redacted] on [redacted]. It was signed on behalf of the Commissioner on [redacted]. The Form 872 has the additional language covering TEFRA entities added thereto.

LAW and ANALYSIS

I.R.C. § 1501 grants affiliated groups of corporations the privilege of filing returns on a consolidated basis. If consolidated returns are filed, the members of the group consent

to be bound by the legislative regulations promulgated pursuant to the authority in I.R.C. § 1502.

Under Treas. Reg. § 1.1502-77(a), the common parent of the consolidated group is the sole agent for each subsidiary in the group and duly authorized to act in its own name in all matters relating to the consolidated tax liability of the group. The common parent remains the agent for the members of the group for any years during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. An agreement entered into by the common parent extending the time within which an assessment may be made in respect of the tax for a consolidated return year shall be applicable to each corporation which was a member of the group during any part of such taxable year. Treas. Reg. § 1.1502-77(c).[1]

As with any waiver of the statute of limitations, it must be executed by an authorized officer of the corporation. Any officer, who is authorized to sign a corporate income tax return, may also sign a consent to extend the time to assess tax (waiver), whether or not that person was the same individual who signed the return. Rev. Rul. 83-41, 1983-1 C.B. 349. I.R.C. § 6062 provides that corporate returns with respect to income can be signed by any officer authorized to act in such capacity. Officers who are explicitly listed with signing authority under section 6062 include the president, vice-president, treasurer, assistant treasurer and chief accounting officer.

We note that the recently obtained consent (waiver) was executed in the name of "[redacted]" rather than "[redacted], as agent for the members of the [redacted] consolidated group" as suggested above. Despite the differences in the taxpayer name on the consent, we believe (**subject to the comments which follow**) the consent is valid and can be relied upon to extend the statute of limitations. It appears clear from the face of the waiver

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[1]In 1988, temporary regulations were issued under I.R.C. § 1502. Temp. Treas. Reg. § 1.1502-77T(a) provides alternative agents to act for the group when the corporation that is the common parent of the group ceases to be the common parent. [redacted] ceased to be the common parent of the group, but since it still exists and was the common parent of the group for the year [redacted], it can execute the waiver of the statute of limitations for the entire affiliated group for such year. Temp. Treas. Reg. § 1.1502-77T(a)(3) & (4).

that the parties intended to extend the period of limitations for the [redacted] taxable year of the [redacted] affiliated group. The EIN appearing in the upper right hand corner of the Form 872 is that of [redacted]. The taxpayer name was [redacted] and the Form 872 was signed by the V.P. under the corporate name [redacted]. Provided [redacted], who signed as V.P., actually held such position with [redacted] at the time she signed the consent, the consent was signed by an appropriate officer who had actual authority to bind [redacted] and the affiliated group. The omission of the agent language should be considered no more than a drafting error or mutual mistake which is subject to reformation, and it certainly should not be fatal to the consent. See San Francisco Wesco Polymers, Inc. v. Commissioner, T.C. Memo. 1999-146.

In the event [redacted] was not an appropriate officer of [redacted] at the time she signed the consent, a new consent must be obtained. In such case, the new consent should be drafted as suggested above. You may want to use the new Form 872-I, "Investor Level Consent to Extend the Time to Assess Tax and Tax Attributable to Items of a Partnership." The form contains the TEFRA entity language. Also, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual (IRM). Specifically, IRM 121.2.22.3 requires use of Letter 907 (DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929 (DO) to return the signed form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer, the authorized manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that § 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy this requirement, Publication 1035, "Extending the Tax Assessment Period," must be given to the taxpayer when you solicit the statute extension.

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. Also, if you have any questions regarding the above, please fell free to contact the undersigned at 216-522-3380 (ext. 3108).

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