Office of Chief Counsel
Internal Revenue Service

memorandum

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COPY SENT VIA FACSIMILE (208) 334-9653

date: JUL 23 2001

to: Wendy K. Reed, Revenue Agent
Internal Revenue Service, LMSB
Boise, Idaho

from: Associate Area Counsel (Large and Mid-Size Business
Seattle

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subject: [redacted] **a Limited Partnership**
Form 872 Signature Blocks

Non-Precedential Statement

This memorandum should not be cited as precedent.

This responds to your June 27, 2001, request for advice regarding [redacted]. [redacted] purchased and dissolved the three corporate partners in the partnership. You wish to obtain consents to extend the statutes of limitations relating to the flow-through partnership items and also to the corporate items.

FACTS

In [redacted], [redacted] had three partners: (1) [redacted]; (2) [redacted]'s subsidiary, [redacted]; and (3) [redacted]. [redacted] was a subsidiary in the [redacted] consolidated group.

You are examining: (1) the [redacted] partnership return; (2) [redacted]'s corporate consolidated return (which includes [redacted]), including its share of the [redacted] partnership items; and (3) [redacted]'s corporate consolidated return, including its share of the [redacted] partnership items.

The partnership filed its partnership return on [redacted]. [redacted] filed its Form 1120 on [redacted]. [redacted] filed its return on [redacted]. Therefore, you wish to obtain consents to extend the limitations periods.

You cannot obtain consents directly from the partners because they were all purchased by [redacted] (the parent, rather than any of its subsidiaries) and then dissolved. In [redacted], [redacted] purchased [redacted] and its subsidiaries. In [redacted], [redacted] purchased [redacted] and its subsidiaries. On [redacted], [redacted] dissolved the entities.

The partnership identified [redacted] as its tax matters partner (TMP). However, as stated, [redacted] dissolved [redacted] on [redacted]. Neither the Service nor the partnership has appointed a substitute TMP.

[redacted] agrees that it is liable as a successor to the partners for whatever taxes are due from the partners' interests in the partnership.

Given these facts, you asked us how to identify the taxpayers (first line on the consent forms) and who should sign and in what capacity.

DISCUSSION

The first issue is whether TEFRA applies. Small partnerships are excepted from TEFRA unless a valid consent is made under I.R.C. § 6231(a)(1)(B)(ii); Treas. Reg. § 301.6231(a)(1)-1T(b). A small partnership has ten or fewer partners, and for taxable years ending after August 5, 1997, a C corporation may be a partner in a small partnership. I.R.C. § 6231(a)(1)(B)(i).

Here, the partnership had three corporate partners. Both the partnership's and the partners' tax years ended in [redacted] and the partnership did not elect to be covered by TEFRA. Therefore, TEFRA does not apply. This means that all partnership adjustments must be made directly to each individual partner's return. Further, the limitations periods for adjusting partnership items will be determined with respect to each individual partner.

We recommend you use Form 872-I, Investor Level Consent to Extend the Time to Assess Tax and Tax Attributable to Items of a Partnership. This form will keep the limitations periods open

with respect to the Form 1120 corporate items, the [redacted] non-TEFRA partnership items, and any potential (currently unknown) TEFRA partnership items.

Another issue relates to which entities should be named on the consents. As a general rule, the common parent of a consolidated group is "the sole agent for each subsidiary in the group" and "no subsidiary has authority to act for or to represent itself in any such matter." Treas. Reg. § 1.1502-77(a). Here, Partner [redacted] was a subsidiary in the [redacted] consolidated group. Further, Partner [redacted] was a subsidiary in the [redacted] consolidated group. [redacted] is the successor to all of these entities. The consents should describe these relationships.

Based on the above, we recommend you obtain two Forms 872-I, as follows:

1. [redacted] and [redacted]

The caption (top of the Form 872-I) should state:

> [redacted], as successor to both [redacted] and [redacted], and as agent for the [redacted] consolidated group.*

You should add the following to the bottom of the Form 872-I:

> *This is with respect to [redacted] and [redacted] several liabilities for the consolidated federal income tax of the [redacted] consolidated group for the group's taxable year ending (fill in date), including but not limited to [redacted]'s and [redacted]'s liabilities as partners in [redacted].

The signature block should appear as follows:

> [redacted], by [name of a [redacted] officer, title].

2. [redacted]'s Form 872-I

The caption (top of the Form 872-I) should state:

> [redacted], as successor to both [redacted] and [redacted], and as agent for the [redacted] consolidated group.*

You should add the following to the bottom of the Form 872-I:

> *This is with respect to [redacted] and [redacted] several liabilities for the consolidated federal income tax of the [redacted] consolidated group for the group's taxable year ending (fill in date), including but not limited to [redacted] liability as partner in [redacted].

The signature block should appear as follows:

> [redacted], by [name of a [redacted] officer, title].

If our understanding of the facts (e.g., the relationships between the entities, the entities' exact names and EINs, [redacted]'s agreement that it is liable as a successor corporation) is incorrect, please let us know.

If you have any questions, or if you should need any additional information, please contact us at 206-220-5951.

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.

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By:_____
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