Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:MWD:MIL:TL-N-AO-3269-99
GWBezold

date: July 27, 1999

to: Chief, Examination Division, Midwest District
Attn: Steve Anderson E:1213

from: District Counsel, Midwest District, Milwaukee

subject: **Consents to Extend the Statute of Limitations for [redacted] and [redacted] after Merger with [redacted]**

This memorandum responds to your request for our advice regarding the appropriate means of extending the statute of limitations for [redacted], and [redacted], for [redacted] and [redacted] (the Bank) after Merger with [redacted].

ISSUES

1. Who is the proper party to execute Forms 2045 (Transferee Agreement) and 977 (Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary) for the tax liabilities of the [redacted] consolidated group for the taxable year [redacted]?

2. What is proper language to use on the Forms 977 and 2045 for the tax liabilities of the [redacted] consolidated group's taxable year [redacted]?

3. Who is the proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the [redacted] consolidated group for its taxable years [redacted] and [redacted], and the short taxable year ended [redacted]?

4. What is proper language to use on the Form 872 for the [redacted] consolidated group for its taxable years [redacted] and [redacted], and the short taxable year ended [redacted]?

5. Will the Forms 872 for the [redacted] consolidated group for its taxable years [redacted] and [redacted], and the short taxable year ended [redacted], also operate to extend the statute of limitations for making an assessment against [redacted] as a

transferee?

6. Whose name should appear on the audit reports and who can sign them?

CONCLUSION

1. [redacted] is the proper party to execute Forms 2045 (Transferee Agreement) and 977 (Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary) for the tax liabilities of the [redacted] consolidated group for the taxable year [redacted].

2. The proper language to use on the Forms 977 and 2045 for the tax liabilities of the [redacted] consolidated group's taxable year [redacted] is "[redacted] (E.I.N. XX-XXXXXXX) as transferee of [redacted] (E.I.N. XX-XXXXXXX)." (Properly filling in the blanks on these forms will result in this language.) The forms must be signed by an officer of [redacted]. We recommend that you confirm the names and TINs of both [redacted] and [redacted]. Additionally, you will need to check the merger agreement to make sure it states [redacted] assumes the liabilities of [redacted].

3. [redacted] is the proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the [redacted] consolidated group for its taxable years [redacted] and [redacted], and the short taxable year ended [redacted].

4. The proper language to use on the Form 872 for the [redacted] consolidated group's taxable years [redacted] and [redacted], and the short taxable year ended [redacted] is "[redacted] (E.I.N. XX-XXXXXXX) as successor in interest to both [redacted] (E.I.N. XX-XXXXXXX) and [redacted] (E.I.N. XX-XXXXXXX).*" Put an asterisk immediately thereafter (as shown). At the bottom of the page, the following language should be added (including the asterisk):

> *This is with respect to the consolidated tax liability of the [redacted] (E.I.N. XX-XXXXXXX) consolidated return group for the taxable years [redacted] and [redacted], and the short taxable year ended [redacted].

The forms must be signed by an officer of [redacted].

5. Assuming the Form 872 is operative, it automatically extends the transferee statute of limitations under I.R.C.

§ 6901(c)(1). In an overabundance of caution, however, we recommend you secure Forms 977 and 2045 for the years [redacted], [redacted] and the short year ended [redacted]. These years could merely be added to the Form 2045 for [redacted]. You will most likely need separate Forms 977 for each year since the statute of limitations varies. We remind you that the date extended to should be more than one year from the expiration of the normal three year statute.

6. The audit reports should be addressed to "[redacted] (E.I.N. XX-XXXXXXX), as successor by merger of [redacted] (E.I.N. XX-XXXXXXX)." The forms must be signed by an officer of [redacted].

FACTS

[redacted] was incorporated in [redacted] for the purpose of becoming the holding company for [redacted] upon [redacted] conversion from a [redacted] [redacted] to a [redacted] A process called demutualization. The transaction was consummated in [redacted]. As we understand the transaction, [redacted] became a wholly-owned subsidiary of [redacted]. The former account holders of [redacted] became the shareholders of [redacted]. For [redacted], [redacted] filed consolidated returns as the common parent of the group for the years [redacted], [redacted], [redacted], and the short year ended [redacted].

[redacted] created [redacted], a wholly-owned subsidiary, for the specific purpose of facilitating the acquisition of [redacted] by [redacted]. The transaction occurs on [redacted]. In the transaction [redacted] is merged into [redacted] with [redacted] surviving and [redacted] ceasing to exist. As a result, [redacted] temporarily becomes a direct, wholly-owned subsidiary of [redacted]. [redacted] is then liquidated into [redacted] and dissolved. Then the merger of [redacted] into [redacted] follows with [redacted] going out of existence.

[redacted]'s short taxable year ended [redacted], generated a large net operating loss that was carried back to [redacted] and [redacted]. The Examination Division (Exam) currently has the short taxable year under audit and [redacted] and [redacted] to the extent of the carryback. Exam, however, may expand the audit beyond the NOL and to include [redacted], if its preliminary investigation shows expansion is warranted and extensions of the statute of limitations can be obtained. The regular three-year statute of limitations for [redacted] expired on [redacted]. The regular three-year statute of limitations for [redacted] expires on [redacted], unless Exam can obtain an extension.

ANALYSIS

[redacted] and [redacted] the common parent and wholly-owned subsidiary, respectively, of the [redacted] consolidated group, both merged into [redacted] and ceased to exist as of [redacted]. It appears the merger qualifies as a statutory merger and that [redacted] is a "successor" under state law, as such, [redacted] is now the proper party (alternative agent) to execute Forms 872 with respect to the tax liabilities of the [redacted] consolidated group. Treas. Reg. § 1.1502-77T(a)(4)(ii). The normal three-year statute of limitations under I.R.C. § 6501 for [redacted]'s [redacted], [redacted] taxable years and the short year ended [redacted], has not expired. It has, however, expired for the [redacted] taxable year.

Under I.R.C. § 6901(c)(1), the Service has 1 year after the expiration of the normal period of limitations for assessment (here, [redacted] within which to make assessment against the initial transferee (here, [redacted]). Thus, for [redacted] the Service has until [redacted], to assess transferee liability against [redacted] or to obtain an extension of the statute of limitations under I.R.C. § 6901. You should secure Forms 2045, Transferee Agreement, and a Form 977, Consent to Extend the Transferee statute of limitations, from [redacted]. The transferee forms should read as follows:

> [redacted] (E.I.N. XX-XXXXXXX) as transferee of [redacted] (E.I.N. XX-XXXXXXX)."

Properly filling in the forms will result in this language. The forms must be signed by an officer of [redacted]. Under the officer's name, you should type in his or her title and the name "[redacted]." We recommend that you confirm the names and TINs of both [redacted] and [redacted]. Additionally, you will need to check the merger agreement to make sure it states [redacted] assumes the liabilities of [redacted]. See Southern Pacific Transportation Co. v. Commissioner, 84 T.C. 387, 394 (1985).

For extending the statute of limitations for the [redacted] group's [redacted], [redacted] and [redacted], taxable years, we recommend the following caption:

> "[redacted] (E.I.N. XX-XXXXXXX) as successor in interest to both [redacted] (E.I.N. XX-XXXXXXX) and [redacted] (E.I.N. XX-XXXXXXX).*"

Put an asterisk immediately thereafter (as shown). At the bottom of the page, the following language should be added (including the asterisk):

> *This is with respect to the consolidated tax liability of the [redacted] (E.I.N. XX-XXXXXXX) consolidated return group for the taxable years [redacted] and [redacted], and the short taxable year ended [redacted].

[redacted] is included because of its several liability for the [redacted] consolidated group's tax liability, Treas. Reg. §1.1502-6(a), and it was separately merged into [redacted]. As with the Forms 2045 and 977, the Form(s) 872 must be signed by an officer of [redacted]. Under the officer's name, you should type in his or her title and the name "[redacted]."

In an overabundance of caution, we recommend you secure Forms 977 and 2045 for the years [redacted], [redacted], and the short year ended [redacted]. These years could merely be added to the Form 2045 for [redacted]. You will most likely need separate Forms 977 for each year since the statute of limitations varies. If a court determines that the Forms 872 were invalid for whatever reason and, therefore, the applicable statute of limitations expired, the Service would be protected. We remind you that under I.R.C. § 6901(c)(1), the statute of limitations is one year later than the normal three-year statute under I.R.C. § 6501. For example, for [redacted] the normal three year statute under I.R.C. § 6501 expires on [redacted]. The transferee statute under I.R.C. § 6901(c)(1) expires on [redacted]. Accordingly, the Form 977 should extend the statute beyond that date.

The audit reports should be addressed to "[redacted] (E.I.N. XX-XXXXXXX), as successor in interest to [redacted] (E.I.N. XX-XXXXXXX)." As with the Forms 872, 977, and 2045, the reports must be signed by an officer of [redacted] and indicating his or her title.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice 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 Examination or Appeals 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

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If you have any questions or need further information, please contact me at (414) 297-4240.

(Signed) George W. Bezold

GEORGE W. BEZOLD
Attorney

AWB
27 Jul 99