Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-2651-00
LLDavidow

date:

to: Chief, Examination Division, Manhattan
Attention: Murray Lipsky, Case Manager

from: District Counsel
Manhattan

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subject: **Response to Request for Assistance**
Re: [redacted] (EIN [redacted])
Review of Form 872 (Consent to Extend the Time to Assess Tax)
UIL # 6501.08-17

THIS DOCUMENT MAY INCLUDE CONFIDENTIAL INFORMATION SUBJECT TO THE ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGES, AND MAY ALSO HAVE BEEN PREPARED IN ANTICIPATION OF LITIGATION. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE IRS, INCLUDING THE TAXPAYER(S) INVOLVED, AND ITS USE WITHIN THE IRS SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW THE DOCUMENT IN RELATION TO THE SUBJECT MATTER OF THE CASE DISCUSSED HEREIN. THIS DOCUMENT IS ALSO TAX INFORMATION OF THE INSTANT TAXPAYER WHICH IS SUBJECT TO I.R.C. § 6103.

In accordance with the provisions of section (35)3(19)4 of the Internal Revenue Manual, your office has requested our advice on the question discussed below. This advice is subject to review by the National Office, pursuant to paragraph (4) of that section.

Question Presented:

Is the Form 872 (Consent to Extend the Time to Assess Tax) described below effective to extend the statute of limitations on assessment for the affiliated group pursuant to its terms (i.e., to [redacted]), notwithstanding the fact that [redacted] was no longer the parent of the group at the time that the Consent was executed?

Facts:

For the taxable years ended [redacted] and [redacted], [redacted] was the parent of an affiliated group of corporations filing consolidated returns. In the year [redacted]

[redacted] acquired [redacted] in a reverse acquisition. As a result of the transaction, former shareholders of [redacted] acquired between [redacted] and [redacted] percent of the [redacted] stock. [redacted] survived, and remains a subsidiary of [redacted].

The IRS is currently engaged in an audit of [redacted] and one or more of its affiliated corporations for the group's [redacted] and [redacted] years. At some time on or before [redacted], the taxpayer and the IRS agreed that they would extend the statute of limitations on assessment to [redacted]. To this end, the parties executed a Form 872 (Consent to Extend the Time to Assess Tax) (the "Consent"). On [redacted], the Consent was executed on behalf of "[redacted]" by [redacted], [redacted]'s "V.P.-Domestic Tax." On [redacted], the Consent was executed on behalf of the IRS by C.R. Baugh, the District Director of Internal Revenue, and Murray Lipsky, the case manager on the audit.

On the face of the Consent, the taxpayer is identified as "[redacted]." [redacted]'s correct employer identification number, [redacted], is given in the appropriate space. The remaining blanks on the front page of the Consent have been completed to show that kind of tax to which the extension relates is "Federal Income tax" and that the extension relates to the returns for the periods ended on [redacted] and [redacted].

The sole concern of the audit team is whether the fact that [redacted] is no longer the parent of the group, and was not the parent of the group at the time that the Consent was executed, invalidates the Consent.

Discussion:

Under Treas. Reg. § 1.1502-77(a), the common parent of an affiliated group is the agent for that group for a wide range of purposes, including the execution of a consent to extend the statute of limitations of that group. With certain limited exceptions (none of which is relevant here), the common parent is the "sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year." With respect to "waivers" - a term that would include consents to waive the statute of limitations on assessment on Form 872 - this paragraph states that the common parent "in its name will give waivers ... and any waiver ... so given ... shall be considered as having also been given or executed by each such subsidiary."

Under Treas. Reg. § 1.1502-77(c), an "agreement entered into by the common parent extending the time within which an assessment may be made ... for a consolidated return year shall be applicable ... [t]o each corporation which was a member of the group during any part of such taxable year."

Treas. Reg. § 1.1502-77T(a) specifically anticipates the situation in which the corporation that was the common parent of the group during the years to which a consent to extend the statute of limitations relates has ceased to be common parent of the group at the time that the consent is executed. That section designates the "alternative agents" of group in any case in which the common parent "ceases to be the common parent, whether or not the group remains in existence under §1.1502-75(d)." Under Treas. Reg. § 1.1502-77T(a)(3), a waiver of the statute of limitations with respect to the group given by any one or more corporations referred to in paragraph (a)(4) of this section is deemed to be given by the agent of the group.

The alternative agents listed in paragraph (a)(4) are as follows:

(i) The common parent of the group for all or any part of the year to which the ... waiver applies,

(ii) A successor to the former common parent in a transaction to which section 381(a) applies,

(iii) The agent designated by the group under §1.1502-77(d), or

(iv) If the group remains in existence under §1.1502-75(d)(2) or (3), the common parent of the group at the time ... the waiver [is] given.

In the present case, the group would be considered to have remained in existence under Treas. Reg. § 1.1502-75(d)(3) (relating to reverse acquisitions), and thus either clause (i) or clause (iv) is potentially applicable.[1] Thus, under Treas. Reg.

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[1]As relevant hereto, Treas. Reg. § 1.1502-75(d)(3) provides that if one corporation (the "first corporation") acquires the stock (or substantially all the assets) of another corporation (the "second corporation") in exchange for stock of the first corporation and, as a result of the transaction, the former shareholders of second corporation own (immediately after the acquisition) more than 50 percent of the fair market value of the outstanding stock of the first corporation, then "any group of which the first corporation was the common parent immediately

§ 1.1502-77T(a), either [redacted] (as the common parent of the group for the years to which the waiver applies) or [redacted] (as the common parent of the group at the time the waiver is given) may serve as the agent for the group of which [redacted] was the common parent during the years to which the Consent relates.

Conclusion:

As explained above, Treas. Reg. § 1.1502-77T(a) makes clear that the fact [redacted], in executing the Consent, had the capacity to bind all the members of group of which it had been the common parent during the audit years to which the Consent related, notwithstanding that it had ceased to be the common parent of that group at the time the Consent was executed.

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By: _____
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Noted:

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before the acquisition shall cease to exist as of the date of acquisition, and any group of which the second corporation was the common parent immediately before the acquisition shall be treated as remaining in existence (with the first corporation becoming the common parent of the group)."