Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-895-99
TJMontague

date:

to: District Director, Manhattan District
Attn: Charles Shepard
Case Manager, Group 1154

from: District Counsel, Manhattan CC:NER:MAN

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subject: [redacted]

E.I.N. [redacted]

Taxable Years Ended: [redacted], [redacted] and [redacted]

Statutes of Limitations Expire: [redacted]

Uniform Issue List Nos: 6501.08-00; 1502.77

DISCLOSURE STATEMENT

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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.

This responds to your request for assistance in determining the appropriate language to be used on the consent form extending the statute of limitations on assessments (Form 872) for the

above referenced taxpayer's [redacted], [redacted] and [redacted] taxable years. We have spoken with Richard Heinecke of the National Office, who advised us concerning this issue.

ISSUE:

1. Who is the proper entity to extend the statute of limitations on assessment for the taxpayer for the taxable years [redacted], [redacted] and [redacted].

FACTS:

THIS ADVICE IS RENDERED ON THE BASIS THAT ALL THE REPRESENTATIONS AND FACTS IN THIS MEMORANDUM ARE CORRECT. WE RECOMMEND THAT YOU VERIFY THIS INFORMATION. IF ANY OF THE REPRESENTATIONS AND/OR FACTS ARE INCORRECT OR CANNOT BE SUBSTANTIATED, WE MAY NEED TO MODIFY OUR ADVICE.

For the taxable years [redacted], [redacted] and [redacted], [redacted] (E.I.N. [redacted]), a corporation formed under the laws of the State of Delaware, was the common parent of an affiliated group of corporations and filed a consolidated U.S. Corporate Income Tax Return (Form 1120) with its affiliates.

On or about [redacted], [redacted] (E.I.N. [redacted]) entered into an Agreement and Plan of Merger ("Merger Agreement") with [redacted] one of its subsidiaries. Pursuant to the [redacted] Merger Agreement, [redacted] was merged with and into [redacted] and ceased to exist as a separate entity. [redacted] emerged as the surviving corporation and thereafter was known as [redacted].

On or about [redacted], [redacted] (E.I.N. [redacted] completed a corporate restructuring to create a holding company structure. The holding company restructuring was accomplished through a merger under section 251(g) of the Delaware General Corporation Law so that all stockholders of [redacted] (E.I.N. 52-1822078) at the effective time of the merger became stockholders of the new holding company which took the [redacted] name (and a new E.I.N. of [redacted] and the new holding company's subsidiary changed its name to [redacted] (E.I.N. 52-1822078). Thus, the following reflects the corporate structure before and after the [redacted] restructuring:

<u>Before</u> [redacted]:

[redacted]
(E.I.N. [redacted]
[redacted]
Subsidiaries

<u>After</u> [redacted]:

[redacted]
(E.I.N. [redacted]
[redacted]
[redacted]
(E.I.N. [redacted]
[redacted]
Subsidiaries

DISCUSSION

In general, the statute of limitations on assessment expires three years from the date a taxpayer files a tax return for such tax year. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations prior to the expiration of the statute of limitations period. The Service created Form 872 ("Consent to Extend the Time to Assess Tax") for this purpose.

In the case of a consolidated group, guidance as to the appropriate entity to enter into a consent to extend the statute of limitations on assessment can be found in the consolidated return regulations. Treas. Regs. §1.1502-1 <u>et seq.</u> Pursuant to the consolidated return regulations, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. §1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having been given or executed by each such subsidiary. Treas. Reg. §1.1502-77(a). Unless there is an agreement to the contrary, an agreement entered into by the common parent extending the time within which an assessment of income tax may be made for the 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).

The common parent remains the agent for the members of the group for any year during which it is 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. See Treas. Reg. §1.1502-77(a); Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985). Accordingly, as a general rule, the common parent remains the proper party to extend the statute of limitations for any taxable year for which it was the common parent, as long as it remains in existence.

In the subject case, pursuant to the [redacted] Merger Agreement, [redacted] (E.I.N. [redacted] emerged as the surviving corporation and is in existence today. The only significant change for [redacted] (E.I.N. [redacted] as a result of the [redacted] Merger Agreement was that its name was changed to [redacted] (E.I.N. [redacted]. Pursuant to the [redacted] restructuring, the only significant change for [redacted] (E.I.N. [redacted] was that its name was changed to [redacted] (E.I.N. [redacted] and the name of its new parent holding company became [redacted] (E.I.N. [redacted].

In light of the above, the name of the taxpayer that should appear on the Form 872 is as follows:

"[redacted] (E.I.N. [redacted], formerly [redacted] (E.I.N. [redacted], formerly [redacted] (E.I.N. [redacted]."*

*[redacted] (E.I.N. [redacted], as common parent agent of the affiliated group of corporations formerly [redacted] (E.I.N. [redacted], formerly [redacted] (E.I.N. [redacted], [redacted].

The "*" should be placed in the bottom margin of the first page of the Form 872.

In the case of a corporate return, section 6062 provides that a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. Since the rules applicable to the execution of an original return also apply to a consent to extend the statute of limitations, any such consent may be signed by the above-noted individuals. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev.

Rul. 84-165, 1984-2 C.B. Thus, in the subject case, any current officer of [redacted] (E.I.N. [redacted]), of the type set forth in section 6062 may sign the consent.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the Form 872, and IRM 4541.1(8) 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 responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). 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.

If you have any questions regarding this matter, please contact Tyrone J. Montague at (212) 264-1595 Ext. 224.

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