

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:MSR:MWD:MIL:TL-N-LO-4358-00
JPKnap

date:

SEP 11 2000

to: Chief, Exam Division, Midwest District

from: District Counsel, Midwest District, Milwaukee

Subject: [REDACTED]
Authority to Sign Forms 872 and Settlements

This is in response to your memorandum dated July 18, 2000 in which you requested advice regarding which entities have the authority to sign agreements binding [REDACTED] and related entities with regard to extensions of time to assess (Forms 872) for various years.

Facts

[REDACTED] filed a consolidated return for the year ended [REDACTED]. [REDACTED] (same EIN as above) filed a consolidated return for the year ended [REDACTED].

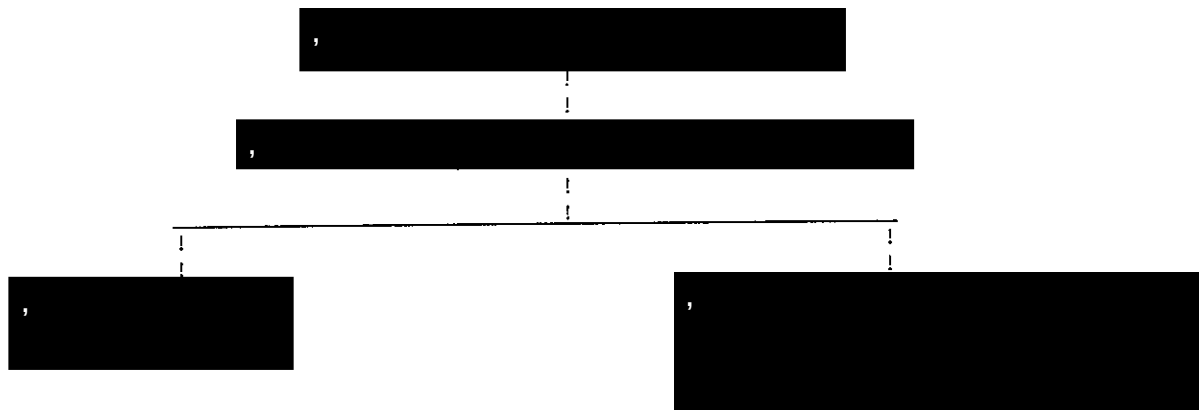
In a previous memorandum, we advised you as to which entities are empowered to sign agreements and extensions for the two returns mentioned in the above paragraph, and we need not repeat that advice here.

Effective on [REDACTED], [REDACTED] underwent a major reorganization. A pre-existing company known as [REDACTED] exercised certain options to purchase a controlling interest in [REDACTED]. For income tax return purposes, this effectively terminated the [REDACTED] consolidated group. That consolidated group's last return was a short-year tax return for the [REDACTED]-month period ended [REDACTED].

As part of the purchase and reorganization mentioned above, the following actions were implemented: (1) [REDACTED] (the new common parent) incorporated a new

subsidiary entity known as [REDACTED] solely for the purpose of holding its interest in the old consolidated group; (2) [REDACTED] underwent the dissolution procedures provided in state corporate law and ceased to exist; (3) [REDACTED] transferred stock in [REDACTED] to [REDACTED] so that [REDACTED] became a subsidiary of [REDACTED] (4) [REDACTED] was merged into a pre-existing corporate subsidiary of [REDACTED] known as [REDACTED] thus ceased to exist as a separate corporate entity; and (5) [REDACTED] was made a subsidiary of [REDACTED].

The corporate arrangement post-[REDACTED] described in the preceding paragraph can be illustrated as follows:

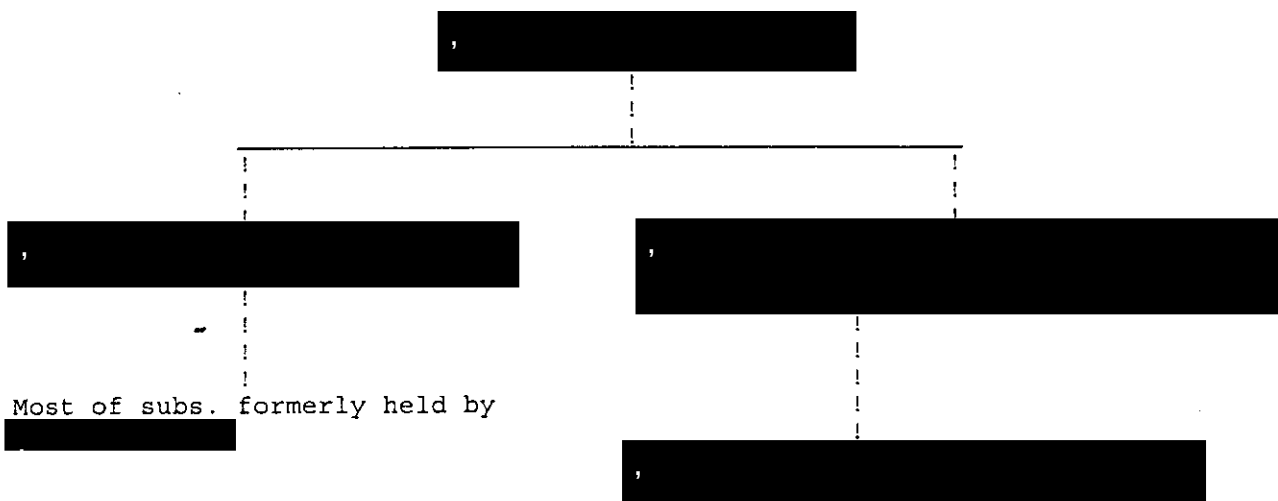


As mentioned above, [REDACTED] filed its last return for the period ended [REDACTED]. You have requested our advice as to what entity currently has the authority to sign an extension for that return.

[REDACTED] filed consolidated returns for itself and its subsidiaries for the years ended [REDACTED], [REDACTED], and [REDACTED].

The taxpayers underwent further minor reorganizations after [REDACTED] and a major reorganization in [REDACTED]. The minor changes were as follows: Beginning in [REDACTED], [REDACTED] ceased filing separate returns and was included in the consolidated return of [REDACTED]. [REDACTED]'s last separately-filed return was for the year ended [REDACTED]. Beginning in [REDACTED], [REDACTED] ceased

In the [REDACTED] reorganization the name of the existing consolidated parent [REDACTED] was changed to [REDACTED] (EIN unchanged). A new company was created known as [REDACTED] (also known as "Newco"). Most of the companies that had been a part of the old parent (i.e. [REDACTED]) were transferred to Newco. Most of the companies held by [REDACTED] stayed in the new [REDACTED]. Newco and [REDACTED] had a common parent, [REDACTED]. Thus, after the [REDACTED] reorganization, the corporate organizational chart was as follows:



None of the returns filed after [REDACTED] are currently under examination. The [REDACTED] reorganization is relevant, however, in determining the correct party to sign a Form 872 for earlier returns.

Issues

What companies presently have authority to execute agreements to adjust taxes and to extend the time to assess (Form 872) for the following entities and years:

1. [REDACTED]
for the short year ended [REDACTED].
2. [REDACTED] for the
years ended [REDACTED], [REDACTED], and [REDACTED].
3. [REDACTED]
for the year ended [REDACTED].
4. [REDACTED]
for the year ended [REDACTED].
5. [REDACTED]
for the year ended [REDACTED].

Law

As a general rule, a common parent is the sole agent for each subsidiary in its affiliated group in all matters relating to the tax liability for the consolidated return year. This includes agreeing to increased assessments and executing waivers of the statute of limitations. Treas. Reg. §§ 1.1502-77(a) and 1.1502-77(c); Southern Pacific Co. v. Commissioner, 84 T.C. 375 (1985). Any such waiver executed by the common parent in the name of that parent is considered binding as if given by each member of the group. As adjustments to the subsidiaries impact on the tax liability of the parent in a consolidated return, the parent and not the subsidiary must sign the forms relating to the given year.

Treas. Reg. § 1.1502-75(d)(2)(i) provides for situations where the parent in a consolidated return has undergone a reorganization or other change which does not affect the basic terms of its existence. According to that Regulation, "the common parent corporation shall remain as the common parent irrespective of a mere change in identity, form, or place of organization of such common parent corporation."

Temp Reg. § 1.1502-77T provides that in situations where the parent in a consolidated return has ceased to exist, or has undergone a reorganization whereby it ceases to be the common parent, alternative agents are designated. Temp. Reg. § 1.1502-77T applies to waivers of the statute of limitations for taxable

years for which the due date (without extensions) of the consolidated return is after September 7, 1988.

Temp. Reg. § 1.1502-77T provides that a waiver of the statute of limitations (e.g. Form 872) with respect to the group given by any one or more corporations referred to in paragraph (a)(4) of the section is deemed to be given by the agent of the group.

Paragraph (a)(4) provides that a corporation will be deemed an alternative agent in any one of four specified situations. Subparagraph (a)(4)(ii) lists as an alternative agent a successor to the former common parent in a transaction in which I.R.C. § 381(a) applies. Section 381(a) applies, in part, to an acquisition of assets of a corporation by another corporation in a transfer to which I.R.C. § 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in specified subparagraphs of I.R.C. § 368(a)(1). Temp Reg. 1.1502-77T(a)(4)(ii) also applies where a subsidiary is liquidated in to the parent. An I.R.C. § 332 liquidation is also a transaction to which § 381(a) applies.

Analysis

Our analysis of what entity may extend the statute of limitations for the returns at issue is as follows:

1. [REDACTED]
return for the short year ended [REDACTED].

After filing a return as the parent of a consolidated group for the year ended [REDACTED] (old) [REDACTED] underwent dissolution procedures under state law and ceased to exist. In a previous memorandum, we explained that (as of [REDACTED]) [REDACTED] was authorized to sign a Form 872 for the liabilities of [REDACTED] and its subsidiaries for the year ended [REDACTED]. For the same reasons given in that memorandum, [REDACTED] (as of [REDACTED]) was also authorized to sign a Form 872 for [REDACTED] for the [REDACTED] year. In [REDACTED], there was a major reorganization. In that reorganization, [REDACTED] emerged as the new [REDACTED] with the EIN unchanged, i.e. [REDACTED] 1431799. Under these circumstances, we believe that the new

entity had the same form or identity as the old entity under Treas. Reg. § 1.1502-75(d)(2)(i). We therefore recommend that the Form 872 be signed by an appropriate officer of [REDACTED] and read:

[REDACTED]
[REDACTED] as successor to [REDACTED]
[REDACTED] and as alternative agent
for the [REDACTED]
[REDACTED] consolidated group.*

* This is with respect to the consolidated tax liability of the [REDACTED] consolidated group for the group's short taxable year ended [REDACTED].

2. [REDACTED] returns for the years ended [REDACTED], [REDACTED], and [REDACTED].

As mentioned above, [REDACTED] filed returns as the parent of a consolidated group for the years ended [REDACTED], [REDACTED], and [REDACTED]. In the reorganization of [REDACTED], that company emerged unchanged as the new [REDACTED]. Although the parent company has lost some of its subsidiaries, the new company clearly retains the same identity as the old and therefore can sign a Form 872 binding on all companies that were included in the consolidated returns for [REDACTED]. We therefore recommend that the Form 872 be signed by an appropriate officer of [REDACTED] and read:

[REDACTED]
[REDACTED] formerly known as [REDACTED]
[REDACTED] consolidated group.*

This is with respect to the consolidated tax liability of the [REDACTED] consolidated group for the group's taxable years ended [REDACTED], [REDACTED], and [REDACTED].

3. [REDACTED]
return for the year ended [REDACTED].

[REDACTED] filed its last separate return for the year ended [REDACTED]. thereafter it was included in consolidated returns filed by [REDACTED] and [REDACTED].

Although [REDACTED] is included in consolidated returns, it maintains a separate corporate existence to this day with an unchanged EIN. Under these circumstances, it is clear that [REDACTED] itself (through an appropriate officer) can and must sign an extension for its [REDACTED] return. We therefore recommend that the Form 872 for the year at issue read:

[REDACTED].

4. [REDACTED]
returns for the years ended [REDACTED]
and [REDACTED].

[REDACTED] filed separate returns for the years ended [REDACTED] and [REDACTED]. It was thereafter included in consolidated returns filed by [REDACTED]. [REDACTED] has a continuous, separate corporate existence from before [REDACTED] to the present. Despite filing consolidated returns for years after [REDACTED], its own corporate officers are responsible for extending the time to assess for the separately-filed returns. We therefore recommend that they sign Forms 872 for the years [REDACTED] and [REDACTED] reading:

[REDACTED]
[REDACTED]

5. [REDACTED]
return for the year ended [REDACTED].

In the reverse of the companies discussed in the two preceding paragraphs, [REDACTED] filed consolidated returns with a parent in earlier years and a separate return in later years. [REDACTED]'s first separately-filed year was the year ended [REDACTED]. [REDACTED] maintains a separate corporate existence to the present. It follows that the Form 872 for [REDACTED] for [REDACTED] should be sign by an appropriate officer of [REDACTED] and should read:

[REDACTED]

We hope that this memorandum addresses your concerns. If you have any questions, contact J. Paul Knap at (414) 297-4246.

MARK J. MILLER
District Counsel

By: 15/ J. Paul Knap
J. PAUL KNAP
Attorney

cc: Revenue Agent Gregory Myers