Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:CLE:TL-N-6889-00
CAFisher

date: JAN 4 2001

to: Section Chief, Technical Support Staff
Cincinnati, Ohio
LM:MCT:1704:AGB
Akron, OH Attn: Tony Bonfiglio, Team Manager
Scott Berends, Revenue Agent

from: Associate Area Counsel, LM:MCT, Cleveland, Ohio

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subject: [redacted]
Form 872 for Tax Years [redacted] and [redacted]
U.I.L. 1502.77-00

This responds to your request for advice regarding the proposed Form 872 for [redacted] for tax years [redacted] and [redacted]. We have had no prior contacts with the Office of Chief Counsel regarding this request. Our advice is provided pursuant to the 10-Day Post Review procedures of CCDM (35)3(19)4(4), as the issues herein involve primarily well-settled principles of law. We are required under these procedures to forward a copy of this memorandum to Office of Chief Counsel for review. We will inform you of their response as soon as it is received.

Disclosure

This document may contain 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 Service, including taxpayer(s) involved, and its use within the Service should be limited to those with a need to review the document in relation to the subject matter or case discussed herein. This document is also tax information of the instant taxpayer which is subject to section 6103 of the Internal Revenue Code[1].

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[1] All section references hereinafter, unless otherwise indicated, are to the Internal Revenue Code as in effect during the years in issue.

Facts

The Service is currently examining the [redacted], [redacted], and [redacted] Forms 1120 of [redacted] and subsidiaries. Your request indicates that the statute of limitations for the [redacted] return is currently open by consent until [redacted]. The consent is captioned: [redacted] (formerly [redacted]) It appears from the copy of the first page of the [redacted] return that it was received by the Service on [redacted], and thus it appears that the [redacted] statute of limitations is open without extension at least until [redacted].

The request for advice indicates that all of the outstanding stock of [redacted] was acquired by [redacted] on [redacted] and that [redacted] and its subsidiaries became wholly-owned subsidiaries of [redacted]. However, your proposed Form 872 for [redacted] indicates in the caption thereof that [redacted] is the successor by merger to [redacted]. On [redacted] we spoke with the requesting revenue agent, who indicated that [redacted] is now a wholly-owned subsidiary of [redacted], and is thus still in existence. The agent also indicated that [redacted] was formerly known as [redacted] and that it filed a request for extension to file its [redacted] return under the name [redacted]. However, it filed its [redacted] return as [redacted], formerly known as [redacted]. The agent indicates that the change from [redacted] to [redacted] was nothing more than a name change, and was not the result of a merger or some other organizational restructuring.

Law

The general rule is that the common parent of a consolidated group remains the agent for the members of its group for a particular year during which it was the common parent. Treas. Reg. Sec. 1.1502-77(a); Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985); Southern Pacific Co. v. Commissioner, 84 T.C. 395 (1985). This agency continues for as long as the common parent remains in existence under state law, even if consolidated returns are not filed in subsequent years and even if corporations join or leave the group. Treas. Reg. Sec. 1.1502-77(a); Craigie, Inc., supra; Southern Pacific, supra. However, if the parent's corporate existence is terminated then its agency for the members of its group is also terminated. See, Southern Pacific, 84 T.C. at 401.

Recommendations

Caption Given that [redacted] a) was the common parent/agent of its affiliated group for tax years [redacted] and [redacted] and b) is still in existence, then pursuant to Treas. Reg. Sec. 1.1502-77, [redacted] is the proper entity to execute the Form 872 on behalf of the group. As such, we recommend that the Form 872 be captioned simply as follows:

[redacted]
(formerly [redacted])

Address The address line should, of course, reflect [redacted] current address. We recommend that you confirm that address with [redacted].

EIN The Form 872 should reflect the EIN of [redacted].

Signature The Form 872 should be executed by an appropriate corporate officer for [redacted].

If you have any questions regarding the foregoing, please contact the undersigned at (216) 522-3380.

RICHARD S. BLOOM
Associate Area Counsel

By: _____
CHRISTOPHER A. FISHER
Senior Attorney