Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FS:LI:TL-N-3858-01
DRMirabito

date: July 2, 2001

to: Mary Faraldo, Group Manager, Group 1518
Attention: Richard Saul, Revenue Agent

from: Jody Tancer, Associate Area Counsel, LMSB
(Financial Services:Long Island)

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subject: [redacted]

Statute of Limitations expires [redacted]

This responds to your memorandum dated June 19, 2001 requesting advice on whether the Service may rely on a delegation of signature authority provided by the purchaser of the taxpayer, [redacted], for purposes of executing a Form 872. The subject taxable year statute of limitations expires on [redacted]. This memorandum should not be cited as precedent.

ISSUES

1. What is the proper entity to execute a Form 872 for [redacted] and its Subsidiaries for the taxable year [redacted]?

2. What is the proper caption and signature block for the Form 872 to extend the statute of limitations for [redacted] and its Subsidiaries' taxable year [redacted]?

3. Who is the proper party to execute the Form 872 for [redacted] and its Subsidiaries' taxable year [redacted]?

4. May the revenue agent have a person authorized by a Delegation of Authority from the entity purchasing [redacted] subsequent to the calendar year [redacted] execute the subject Form 872?

CONCLUSIONS

1. The Form 872 should be executed by [redacted].

2. The caption of the subject Form 872 should reference [redacted] and the signature block should refer only to [redacted]

3. A current president, vice-president, treasurer, assistant treasurer, or chief accounting officer of [redacted] should execute the Form 872 as agent.

4. The revenue agent should not have anyone from the purchasing entity execute a Form 872 on behalf of [redacted].

FACTS

The facts, as we understand them, are as follows:

According to the copy you provided, on [redacted] ([redacted] or the taxpayer) filed a consolidated Form 1120 for the calendar year [redacted]. The return is headed, "[redacted], the EIN listed on the return is [redacted], and the return was executed by [redacted], Vice President.

In [redacted], the taxpayer was sold to [redacted] in a stock sale.[1] Apparently, the Agreement and Plan of Merger is voluminous so only selected sections have been provided to us. The Agreement and Plan of Merger is dated as of [redacted] and is among [redacted] (the Parent and sole shareholder of the Subsidiary), [redacted] (the Subsidiary), [redacted], and [redacted], as [redacted] Shareholders' Representative. The Agreement states that the Subsidiary shall be merged with and into [redacted] and the taxpayer shall be the surviving corporation of the merger. Further, [redacted] is to continue its corporate existence under the laws of the State of New York while the separate existence of the Subsidiary shall cease, and all the rights, privileges, powers, and assets of the Subsidiary shall vest in [redacted].

The taxpayer provided to the revenue agent a Delegation of Signing Authority dated [redacted] from [redacted] (identified

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[1] The Agreement and Plan of Merger states that the parties intend the Agreement to qualify as a plan of reorganization for purposes of, and for the transactions to qualify as, a reorganization under Internal Revenue Code §§ 368(a)(1)(A) and 368(a)(2)(E). The agent has not asked, and we express no opinion on, whether the Agreement qualifies as a reorganization under the stated Code provisions.

in the document as the "Corporation") appointing its Director of Taxation as "the authorized representative of the Corporation to sign, for and on behalf of the Corporation, any and all documents related to taxation in all jurisdictions in which [redacted] is doing business." The Delegation of Signing Authority does not mention the taxpayer or state that [redacted]'s Director of Taxation is authorized to act for [redacted]. We understand that the revenue agent seeks advice on whether he may rely on this Delegation of Signing Authority for purposes of extending the statute of limitations for the taxpayer's [redacted] year.

We assume for purposes of this memorandum that the taxpayer still exists. If this assumption is incorrect or you have any reason to think that [redacted] no longer exists, please contact this office immediately as our advice herein likely would change.

ANALYSIS

1. Issue 1.: Who is the proper entity to execute the Form 872 for [redacted] and its Subsidiaries?

Internal Revenue Code § 6501 generally provides that the Service must assess income tax within three years of the filing date of the return. However, under § 6501(c)(4), a taxpayer and the Service may consent in writing to extend the time for making an assessment.

Treas. Reg. § 1.1502-77(a) provides that the common parent, with exceptions which we understand do not apply here, shall be for all purposes "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." In addition, that regulation states that "the common parent in its name will give waivers ... and ... execute ... all other documents, and any waiver ... agreement ... or any other document so executed, shall be considered as having also been given or executed by each subsidiary." Third, according to this regulation, its provisions "shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time."[2]

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[2] The regulation further provides that, upon giving notice to the common parent, the district director may deal directly with any member of the group; please contact this office for further assistance if you intend to utilize this section of the regulation. Please note that the current proposed regulations substitute the Commissioner for the district director.

This regulation was authorized by the legislative mandate contained in Internal Revenue Code § 1502, is legislative in character, and thus has the force and effect of law. First Chicago Corporation v. Commissioner, 96 T.C. 421, 439 (1991).

In light of the provisions of the pertinent regulation and the fact that [redacted] still exists, we take the position that the taxpayer should execute the subject Form 872.

2. Issue 2.: How should the Form 872 be captioned?

a. The CAPTION of the Form 872 should read as follows:

"[redacted]" and put an asterisk (*) after it.

The * should read as follows:

"* With respect to the consolidated tax liability of [redacted] consolidated group for taxable period (insert calendar year in issue)."

If the Form 872 is more than one page in length, the * section should be placed on the bottom of the first page. If the Form 872 is only one page in length, the * section should be included in the caption and should immediately follow "[redacted]".

b. The SIGNATURE BLOCK should read as follows:

[Name of current officer of [redacted]

[Title of officer]

[redacted]**

The ** should read as follows:

"** As agent for [redacted]

[redacted] consolidated group for taxable period (insert calendar year in issue)."

The ** section should be on the line immediately following "[redacted]."

3. Issue 3: Who Should Execute the Form 872?

The Form 872 should be executed as indicated in section 2. above. Internal Revenue Code § 6061 provides that any return, statement or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. However, the regulations under § 6501(c)(4) do not specify who may sign such agreements. Accordingly, the Service will apply the rules applicable to the execution of the original returns to the execution of agreements waiving the limits on assessment and collection under Internal Revenue Code § 6501. Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305. Internal Revenue Code § 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. Further, any such officer may sign a waiver, whether that person was the same individual who signed the return. In addition, the fact than an individual's name is signed on a return is prima facie evidence that the person is authorized to execute the return. Therefore, any such officer may sign a consent.

Accordingly, we suggest that you have [redacted] (Vice President) sign the Form 872 to be executed by the taxpayer as she signed the Form 1120 for the year in issue. However, you must be sure she still holds that position (or any of the other positions noted in § 6062) with the taxpayer. In addition, any other officer specified in § 6062 may sign the Form 872.

Alternatively, you may have any other officer duly authorized by the taxpayer execute the Form 872; if such person is going to sign the Form 872 and you have a question regarding whether they have been duly authorized to take such action, please contact this office for further assistance.

4. Issue 4: May someone from [redacted] execute a Form 872 on behalf of the taxpayer?

As noted above, since [redacted] still exists, the agent should NOT have [redacted]'s Director of Taxation or its current president, vice-president, treasurer, assistant treasurer, or chief

accounting officer sign the Form 872.

Further, the agent should NOT rely on the Delegation of Signing Authority from [redacted] because we do not think the Delegation of Signing Authority is equivalent to a power of attorney and does not authorize [redacted] to act as a representative or agent for [redacted]. Statement of Procedural Rules § 601.504, Requirements for filing power of attorney, requires a power of attorney when a taxpayer wishes to authorize a recognized representative to execute a consent to extend the statutory period for assessment or collection of a tax. Further, Statement of Procedural Rules § 601.502 sets forth the individuals who may be a recognized representative and § 601.503 sets forth the requirements for a power of attorney. As stated above, based on the facts available to us, it does not appear that the Delegation of Signing Authority is a valid power of attorney. Our conclusion is based on the facts that the Delegation: (1) does not reference [redacted]; (2) states that the Director of Taxation as authorized representative of [redacted] may "sign, for and on behalf of [[redacted]], any and all document related to taxation in all jurisdictions in which [redacted] is doing business." (emphasis added); (3) does not specify any taxable year for which [redacted] may act on behalf of [redacted]; and (4) is not signed by anyone, much less anyone with even apparent authority to permit [redacted] to act as its agent, from [redacted]. To our knowledge, the revenue agent has no indication that [redacted] has authorized [redacted] to act as its agent. Therefore, based on the facts provided, the revenue agent should NOT rely on the Delegation as a valid authorization and should NOT have anyone from [redacted] execute any Form 872 on the taxpayer's behalf.

Should the revenue agent develop further facts on whether [redacted] authorized [redacted] to sign waivers of the statute of limitations on its behalf or receive a Form 2848 or other document apparently satisfying the requirements of § 601.503, you should contact this office.

Please note that the Service should comply with the notice requirements of § 6501(c)(4)(B) in securing an extension of the statute of limitations. Further, please note that these notice requirements must be provided each time an extension is requested and applies to each such request made after December 31, 1999.

This opinion is based upon the facts set forth herein. It might change if the facts are determined to be different. If the facts change, this opinion should not be relied upon. Please note that under routing procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result

in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office, which should be in approximately 10 days. In the meantime, the conclusions reached in this memorandum should be considered to be only preliminary.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

JODY TANCER
Associate Area Counsel
(Large and Mid-Size Business)

By:_____
DIANE R. MIRABITO
Attorney
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