Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NED:BOS:TL-N-2710-99
HPBonner

date: AUG - 4 1999

to: District Director, New England District
Attention: Exam: PPQMB:DAronson

from: District Counsel, New England District, Boston

subject: [redacted]

This refers to the memorandum from your office requesting advice with respect to extension of the period of limitations for assessment of tax of the income tax liability of [redacted] for the calendar year ended [redacted].

ISSUES

1. What is the name of the taxpayer that should be used on the Consent, Form 872?

2. Who should execute the Consent, Form 872?

CONCLUSIONS

1. [redacted] is the common parent for the consolidated return year [redacted]. [redacted] was acquired by [redacted] in [redacted] as the result of a merger with [redacted], a wholly owned subsidiary of [redacted]. [redacted] survived the merger and is still in existence as a wholly owned subsidiary of [redacted] but has changed its name to [redacted]. Therefore, a consent, Form 872, to extend the time to assess income tax against [redacted] for [redacted] should be sought from [redacted], formerly known as [redacted]; the Employer Identification Number of [redacted] should be shown on the Form 872; and the caption of the consent, Form 872, should read "[redacted] Formerly Known as [redacted]".

2. The consent should be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer

or any other officer duly authorized to act on behalf of [redacted].

FACTS

[redacted] filed a consolidated income tax return for [redacted]. The period of limitations for assessment of tax for [redacted] will expire on [redacted].

During [redacted] was acquired by [redacted] as the result of a merger between [redacted], a wholly owned subsidiary of [redacted]. [redacted] survived the merger and is a wholly owned subsidiary of [redacted]. It's Employer Identification Number is unchanged but it's name has been changed to [redacted].

DISCUSSION

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters pertaining to the tax liability for the consolidated return year. Treas. Regs. § 1.1502-77 (a). The common parent in its name will give waivers and any waiver so given shall be considered to have also been given by each subsidiary. Treas. Regs. § 1.1502-77 (a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members of the group. Treas. Regs. § 1.1502-77 (a). Treas. Regs. § 1.1502-77 (c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect of a tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Regs. § 1.1502-6 (a).

Temp. Reg. § 1.1502-77T provides exceptions to the general rule. Temp. Reg. § 1.1502-77T provides for alternative agents in certain circumstances and 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. Therefore, the regulation is applicable to this case. Temp. Reg. § 1.1502-77T provides that a waiver of the statute of limitations with respect to the consolidated group given by any one or more corporations referred to in paragraph (a)(4) of the section is

deemed to have been given by the agent of the group.

Subparagraph (a)(4)(i) lists as an alternative agent the common parent of the group for all or any part of the year to which the notice or waiver applies. In this case, the common parent of the consolidated group for [redacted], [redacted] is still in existence although it is now known as [redacted]. Therefore, [redacted], formerly known as [redacted], is the proper party to give the waiver, Form 872, extending the period of limitations for assessment of tax with respect to the income tax liability of the consolidated group, [redacted] for [redacted].

[redacted], Formerly Known as [redacted], should be shown on the consent, Form 872, as the taxpayer consenting to the extension of time to assess tax for the calendar year [redacted]. The Employer Identification Number of [redacted] should be shown on the 872.

The Form 872 should be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other duly authorized officer of [redacted] on behalf of [redacted] I.R.C. Section 6062; Rev. Rul. 83-41, 1983-1 C.B. 349 clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

If you need additional assistance, do not hesitate to contact Hugh P. Bonner at (617) 565-7903.

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By: _____
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Attorney