Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:RMD:DEN:TL-N-6417-99
WRDavis

date: OCT 28 1999

to: District Director, Rocky Mountain District

from: District Counsel, Rocky Mountain District, Denver

subject: [redacted]:
Request to Designate Agent Pursuant to Treas. Reg. § 1.1502-77(d)

We have been asked to review the aforementioned taxpayer's letter dated [redacted], and to opine as to whether you should approve the designation of an agent to act for the common parent of an affiliated group. That letter notifies the Service of the impending cessation of existence of [redacted], the common parent of an affiliated group of corporations that have filed consolidated federal income tax returns, and requests your approval of the designation of [redacted], to act as agent for each subsidiary in the group in [redacted]'s place upon the merger of [redacted] with [redacted]. For the foregoing reasons, we recommend that you approve the designation.

Background

On [redacted], [redacted] and [redacted] announced the signing of a definitive merger agreement under which [redacted] would acquire ownership of [redacted]. On [redacted], [redacted] announced that [redacted], was set as the date for its shareholders of record to receive information regarding the special shareholders meeting to consider [redacted]'s merger with [redacted]. From the taxpayer's [redacted] letter, it appears that, if approved, [redacted] will thereafter be merged into [redacted], a wholly-owned subsidiary of [redacted].

[redacted], the proposed agent, was incorporated on [redacted]. [redacted], the case manager for the current [redacted] examination, informs us that, to his knowledge, [redacted] was part of the consolidated group for which [redacted] was the common parent for all open taxable years.

Analysis

Treas. Reg. 1.1502-77, "Common parent agent for subsidiaries," addresses, among other things, the effect of the termination of a common parent's existence. There, in pertinent part, it provides that

> If the common parent corporation contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it shall forthwith notify the district director with whom the consolidated return is filed of such fact and designate, subject to the approval of such district director, another member to act as agent in its place to the same extent and subject to the same conditions and limitations as are applicable to the common parent. . . . Until a notice in writing designating a new agent has been approved by such district director, any notice of deficiency or other communication mailed to the common parent shall be considered as having been properly mailed to the agent of the group; or, if such district director has reason to believe that the existence of the common parent has terminated, he may, if he deems it advisable, deal directly with any member in respect of its liability.

Treas. Reg. § 1.1502-77(d).

Conclusion

Based upon our review of the letter, the applicable regulations, and the facts as we know them, we recommend that you approve [redacted]'s designation of [redacted] as agent, pursuant to Treas. Reg. § 1.1502-77(d).

We note that, pursuant to the language of the designation, the effective date upon which [redacted] can act as agent for each subsidiary in the consolidated group depends upon the date upon which the merger is consummated. Further, we believe that such designations may only be effective for those taxable years during which alternative agent was a member of the consolidated group, a concern that appears not to affect the extent of this designation. We offer no opinion at this time, however, as to the proper party that will be authorized to extend any periods of limitation for [redacted] once the merger is consummated.

Feel free to direct any questions regarding this matter to William Davis, the attorney assigned to this matter, at (303)

844-2214 ext. 259.

MARTIN B. KAYE
District Counsel

By: _____
JERRY L. LEONARD
Assistant District Counsel

cc: Richard Annett MS 4208DEN