Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MIC:DET:TL-N-559-00
RSBloink

date: FEB 28 2000

to: Chief, Examination Division, Michigan District
Attn: Branch 1 Case Manager Larry Strong

from: District Counsel, Michigan District, Detroit

subject: **Proposed Closing Agreement and Statute Extensions -**
[redacted]

This memorandum responds to your January 31, 2000, request for assistance regarding the proper party to sign income tax extensions, employment tax extensions, and employment tax closing agreements for [redacted] (formerly [redacted] in years prior to [redacted]. This issue is being coordinated with George Johnson of our National Office. The advice in this memorandum is subject to ten day post-review in the National Office, pursuant to CCDM (34)3(19)4, and should not be relied upon for a period of twenty days.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

ISSUES

1. Who is the appropriate taxpayer to execute income tax extensions for the [redacted] group for years prior to [redacted].

2. Who is the appropriate taxpayer to execute employment tax extensions for [redacted] for years prior to [redacted].

3. Who is the appropriate taxpayer to execute an employment tax closing agreement for [redacted] for years prior to [redacted].

CONCLUSIONS

1. "[redacted] (formerly [redacted]" is the proper party to execute income tax extensions.

2. "[redacted] (formerly [redacted]" is the proper party to execute employment tax extensions.

3. "[redacted] (formerly [redacted])" is the proper party to execute employment tax closing agreements.

FACTS

On [redacted], [redacted] entered into a Combination Agreement with [redacted]. This agreement resulted in [redacted] becoming a wholly owned subsidiary of [redacted]. Immediately following this combination agreement [redacted] owned all the stock of two U.S. corporations, [redacted] and [redacted] (formerly [redacted]). Prior to the [redacted] taxable year, [redacted] and [redacted] filed U.S. consolidated returns as parents of their respective consolidated groups.

On [redacted], [redacted] and [redacted] entered into the enclosed Stock Transfer and Capital Contribution Agreement. Pursuant to this agreement [redacted] contributed its [redacted] stock into [redacted], and in exchange, [redacted] issued [redacted] new [redacted] shares to [redacted]. As such, [redacted] became a wholly owned subsidiary of [redacted]. The parties treated this transaction as a reverse acquisition under Treas. Regs. §1.1502-75(d)(3)(i)(b), as the [redacted] shares contributed by [redacted] to [redacted] exceeded the value of [redacted] shares

originally held by [redacted]. Nonetheless, the [redacted] consolidated group remains in existence after this transaction pursuant to Treas. Reg. §1.1502-75(d)(3)(i)(b).

DISCUSSION and ANALYSIS

Issue 1:

The common parent, "shall be 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." Treas. Reg. §1.1502-77(a). However, in the context of this reverse acquisition, the consolidated group of which [redacted] was formerly the common parent remains in existence pursuant to Treas. Reg. §1.1502-75(d)(3)(i)(b). Furthermore, Treas. Reg. §1.1502-77T(a)(4)(i) provides the old common parent of the still existing group is an appropriate agent to bind the group. Therefore, the old common parent, [redacted], is the proper party to execute the income tax extensions. *See*, Union Oil Company of California v. Commissioner, 101 T.C. 130 (1993). The extensions should be executed with the following language, "[redacted] (EIN XX-XXXXXX)(formerly [redacted]." The extension should be signed by a current officer of [redacted] authorized to sign, and his/her title should appear below the signature.

Issues 2&3:

Similarly, in the context of employment tax, [redacted] is the appropriate party to bind [redacted] for years prior to the [redacted] taxable year. As such, both the extension and the closing agreement should be executed as follows, "[redacted] (EIN XX-XXXXXX)(formerly [redacted]).".[1] These should be signed by an authorized officer of [redacted], and his/her title should appear below the signature.

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[1] If the extension or closing agreement were intended to additionally bind the subsidiaries of [redacted], then the procedures of Rev. Proc. 72-38, 1972-2 C.B. 813, must be followed.

We hope the following has addressed your concerns with respect to these statute extensions and closing agreements. If you should have any questions concerning this advice, please contact the undersigned at (313)237-6433.

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District Counsel

By: _____
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Attorney

cc: Ted Stein
Dave Cook