Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NJD:NEW:TL-N-2028-00
RABaxer

date: April 18, 2000

to: Chief, Examination Division, New Jersey District E:1112

from: District Counsel, New Jersey District, Newark

---

subject: [redacted]
TIN: [redacted]
Tax Period: [redacted]
Tax period of new consolidated group

This memorandum has been prepared in response the request from Case Manager Patrick Kelly, Examination Group 1112 for assistance and guidance from our office with respect to the above taxpayer.

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.

ISSUE

What is the correct taxable period to be used by [redacted] (formerly [redacted]) after the acquisition of [redacted] on [redacted].

FACTS

The memorandum is based upon the facts set forth in the letter from [redacted], Vice-President of Taxes. If the factual statement is incorrect, please notify this office so that we may determine the effect, if any, on the advice rendered.

On [redacted], [redacted] and its consolidated subsidiaries, EIN [redacted] ("Old [redacted]") were acquired by and

merged into [redacted] (formerly [redacted]), EIN [redacted] ("New [redacted]").

[redacted]'s letter has proposed that Old [redacted] be allowed to file a final consolidated return for the full year [redacted] and that the activity of Old [redacted] from [redacted] be included in full in that return. Additionally, New [redacted] would file a return for its year ended [redacted] that would include no activity relating to Old [redacted]. [redacted]'s summary is that for tax purposes, Old [redacted] would be treated as having been merged into New [redacted] as of [redacted]. The sole purpose for this proposed action is administrative convenience.

DISCUSSION

Treas. Reg. § 1.1502-76(b)(5) at one time set forth the "30-day rules" that [redacted] is trying to invoke. However, the Service recognized that these rules created numerous inconsistencies that were not easily resolved, could lead to substantial complexity, and created unintended tax planning opportunities. As such, Treas. Reg. § 1.1502-76(b) was amended by Treasury Decision 8560, 1994-2 CB 200 to eliminate the 30-day rules. The final regulations eliminated the 30-day rules for all subsidiaries that became or ceased to be members of consolidated groups on or after January 1, 1995.

Old [redacted] will have to file a final consolidated return for the short period ending [redacted]. The taxable activities of the Old [redacted] companies for the period [redacted] will have to be included in the consolidated return of New [redacted] for its taxable year ended [redacted].

If you have any question or require further information, please contact Robert A. Baxer at (973) 645-2598.

/s/
PATRICK E. WHELAN
Assistant District Counsel

NOTED:

/s/
MATTHEW MAGNONE
District Counsel

cc: Patrick Kelly - Examination Group 1112