Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:SCA:LN:TL-N-3201-00
JMMarr

date:

to: Joyce Lew, Acting Case Manager, Examination Division CE:1105
Patricia Lozano, Team Coordinator, Long Beach POD CE:1105

from: Joyce M. Marr, Attorney
June Y. Bass, Assistant District Counsel
Southern California District Counsel, Laguna Niguel

subject: [redacted]
Tax Years [redacted] **and** [redacted]
TIN: [redacted]

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.

This is in reply to your request for advice on whether a consent you hope to secure from [redacted] to extend the statute of limitations for the former [redacted] consolidated group will remain valid after the anticipated liquidation of [redacted].

ISSUE

If a consent to extend the statute of limitations for assessment of income taxes against the former [redacted] consolidated group for the tax years [redacted] through [redacted], inclusive, is executed by [redacted] as a successor agent for the [redacted] consolidated group for such tax years, whether the consent will remain effective after [redacted] is liquidated.

CONCLUSION

Yes, the consent will remain valid after [redacted] is liquidated and possibly dissolved. We recommend that you ensure that [redacted] is still in existence at the time the Form 872 is obtained from [redacted] and executed by the Service.

FACTS[1]

The [redacted] affiliated group ceased to exist when [redacted] was dissolved in [redacted] and its assets transferred to one of its subsidiaries.

You have indicated that the time to assess income taxes against the [redacted] consolidated group for the tax year [redacted] will expire in September [redacted], without the execution of a valid consent to extend the statute of limitations. You have further indicated that without the execution of additional Forms 872, the statute of limitations on assessment for the tax years [redacted] through [redacted], inclusive, will expire in [redacted].

You have indicated that the remaining members of the [redacted] consolidated group, who were members of that group for the tax years in question, have designated [redacted], as a successor agent (subject to the District Director's approval).[2] [redacted]'s controller recently informed you that [redacted] will be liquidated sometime in [redacted]. You have asked [redacted] to execute a Form 872

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[1]Our understanding of the facts of this case is based upon information received in telephone conversations with Team Coordinator Patricia Lozano. If the actual facts are different from those stated herein, our legal conclusions and recommendations might be different.

[2]We previously rendered advice dated August 9, 1999, concerning the remaining members of the [redacted] group designating [redacted] as a successor agent (subject to the District Director's approval) for the taxable years [redacted], [redacted], and [redacted]. A copy of such advisory opinion is affixed hereto.

for the [redacted] group for the tax years in question before it is liquidated. Thus far, you have been not been able to provide us any details concerning [redacted]'s anticipated liquidation, including whether there are plans to also dissolve [redacted].

DISCUSSION

The common parent of an affiliated group filing a consolidated return is the agent for the group for most tax procedural matters, including the signing of Form 872. Treas. Reg. § 1.1502-77(a). When the common parent no longer exists, the remaining members of the group may designate as a successor agent one of the remaining members (subject to the district director's approval) or the district director may deal directly with any member of the group concerning its tax liability. Treas. Reg. § 1.1502-77(d).

Although an extension agreement is not a contract, contract principles are relied upon to interpret the parties' agreement. Kronish v. Commissioner, 90 T.C. 684, 693 (1988). Where obligations created in a contract need not be performed by a corporation itself, they are not discharged by the dissolution of the corporation, just as obligations which are not personal in character survive the death of an individual. Williston on Contracts, sec. 1960 (3d ed. 1978); see Estate of Herr v. Commissioner, T.C. Memo. 1992-88. The obligations contained in the consents to extend the statute of limitations for the [redacted] consolidated group which are to be executed for the remaining group members by [redacted], as a corporation designated as an agent for the group pursuant to Treas. Reg. § 1.1502-77(d), are not personal to [redacted]. Therefore, provided that the extension agreements are executed by both parties before any dissolution of [redacted], the extension agreements will remain effective following [redacted]'s dissolution. Id.

Please contact the undersigned at (949) 360-2688 if you have any questions concerning the foregoing or if you require further assistance.

JOYCE M. MARR
Attorney