Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:PNW:POR:TL-N-6635-99
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date:

to: Ronald Giebenhain, Revenue Agent
Exam Group 1406
Pacific-Northwest District
Portland MS 0146

from: Shirley M. Francis
Attorney

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Associate District Counsel

Pacific-Northwest District
Portland

subject: CEP Examination: [redacted]
Taxpayer: [redacted]
Taxable Years: [redacted] and [redacted]

This is in response to your memorandum dated November 4, 1999, concerning the above-referenced taxpayer.

Issues

1. Who is the proper party to execute the Forms 872, Consent to Extend the Time to Assess Tax, for the [redacted] for the taxable periods ending [redacted] and [redacted]?

2. What is the proper language to identify the taxpayer on the Forms 872?

Conclusions

1. [redacted] is the proper party to execute the Form 872 for each of the taxable periods on behalf of the consolidated group. The Form 872 may be signed by a current officer of the [redacted]

2. We recommend that the Form 872 for the taxable period

ending [redacted] contain the caption "[redacted] (EIN: [redacted]), formerly [redacted]" followed by an asterisk. At the bottom of the form, we would add the following: "*With respect to the consolidated tax liability of the [redacted] (EIN: [redacted], formerly [redacted] consolidated group for the taxable period ending [redacted]."

We recommend that the same caption and language be used for the Form 872 for the taxable period ending [redacted], other than to state the different taxable period.

Facts

The [redacted] was incorporated on [redacted], and its principal office was located in [redacted] Texas. It filed consolidated returns as the parent corporation for the [redacted] consolidated group for the taxable period ending [redacted], and for the taxable period ending [redacted].

On [redacted], the [redacted], a wholly owned subsidiary of [redacted], acquired the [redacted] by a stock purchase. [redacted] is an Oregon company, with its principal office in [redacted]. For the taxable periods ending [redacted], and [redacted], the [redacted] was included in the consolidated return filed by the [redacted] consolidated group.

On [redacted], the [redacted] sold all of the stock in the [redacted] to an independent third party. At an unknown date, the [redacted] changed its name to the [redacted], but the corporation is still in existence. That is, it has not merged with another corporation, and it has the same employer identification number.

On its Form 1120, U.S. Corporation Income Tax Return, for the taxable period ending [redacted], the [redacted] consolidated group reported a net operating loss in the amount of $[redacted]. It filed a Form 1139, Corporation Application for Tentative Refund, on or about [redacted], to carry the net operating loss back to the taxable years ending [redacted], [redacted], and [redacted], resulting in refunds totaling $[redacted].

You asked about the content and the execution of the

Forms 872, in conjunction with the examination of the taxable periods ending [redacted], and [redacted], for the [redacted] consolidated group.

Discussion

The facts of this case fall under the general rule that the common parent for a consolidated group is the proper party to represent the members of the group. Once a consolidated return is filed, the parent for that particular taxable year becomes the group's agent for the purposes of procedural matters concerning the group's tax liability for that year. Treas. Reg. § 1.1502-77(a). See also Union Oil Co. of Cal. v. Commissioner, 101 T.C. 130, 135 (1993).

The [redacted] was renamed as the [redacted] Notwithstanding the name change, and the changes in the ownership of the stock in the [redacted] after the taxable periods at issue, the corporation is still in existence. Under Treas. Reg. § 1.502-77(a), it has the authority to execute the Forms 872 for the taxable periods ending [redacted] and [redacted] on behalf of the consolidated group for each of those taxable years.

Because of the changes that occurred over the years, we recommend that you caption the Form 872 for the taxable period ending [redacted], as "[redacted] (EIN: [redacted], formerly [redacted]," followed by an asterisk. At the bottom of the form, we would add the following: "*With respect to the consolidated tax liability of the [redacted] (EIN: [redacted], formerly [redacted] consolidated group for the taxable period ending [redacted]." We would also use that caption and language for the Form 872 for the taxable period ending [redacted], except to state the different taxable period.

We understand that various other ownership changes took place after [redacted], with respect to the members of the consolidated group. Any changes within the group do not affect the parent's authority as the agent for the group for the taxable years for which the consolidated returns were filed, including the authority to execute the Forms 872.

Finally, each Form 872 should be signed by a current officer of the [redacted]. Although I.R.C. § 6501(c)(4) does not specify who may execute a consent on behalf of a corporation, the Service's position is that the rules for the execution of a corporate tax return also apply to the execution of a consent to

extend the time for an assessment. Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

A corporate return may be signed by the company's president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer who is authorized to do so. I.R.C. § 6062. Under I.R.C. § 6064, an individual's signature on a corporate return is presumed to be authentic, and constitutes prima facie evidence that he or she was authorized to sign it. Hence, any current officer of the [redacted] may execute a Form 872 on behalf of the consolidated group, regardless of whether he or she was an officer when the particular consolidated return was filed.

If you have any questions or if we can be of any assistance, please call attorney Shirley Francis at 326-3100, ext. 228.