Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:MAN:2:POSTF-102670-02
VATaverna

date: 1/17/2002

to: Phyllis Newman
Acting Territory Manager, Financial Services, Territory 1100
Attn: [redacted], Team Manager, Group 1106

from: Area Counsel, LMSB (Financial Services)

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subject: [redacted]
Form SS-10 Tax Year [redacted]
[redacted]
Form SS-10 Tax Year [redacted]
[redacted]
Form SS-10 Tax Year [redacted]

Consent to Extend the Statute of Limitations on Assessment
Statute of Limitations Expires: [redacted]

UIL Nos. 6501.08-00, 6501.08-09, 6501.08-17

We write in response to your request of January 11, 2002 for advice in the above-captioned matter. This memorandum should not be cited as precedent. Specifically you have requested that we provide you with advice on the appropriate language to use on Forms SS-10 (Consents to Extend the Time to Assess Employment Taxes) to extend the statute of limitations on assessment of the employment taxes of [redacted] for the taxable year [redacted]; [redacted] for the taxable year [redacted]; and [redacted] for the taxable year [redacted].

Due to the imminent expiration of the statute of limitations on assessment of employment taxes, the taxpayer was unable to provide merger documentation. Rather, by letter dated [redacted], [redacted], Vice President & Division Head, Federal Tax Audits of [redacted] provided the information contained in the facts section of this memorandum. We strongly suggest that the merger documentation be obtained to verify the facts contained herein. Accordingly, this opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon.

You should be aware that, under routing procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office, which should be in approximately 10 days. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

Issue

What specific language should be used on the Form SS-10, Consent to Extend the Statute of Limitations on Assessment of the employment tax liabilities, of [redacted] and [redacted] for the [redacted] tax year.

Conclusion

[redacted]

"[redacted] (EIN: [redacted]) as successor in interest by way of merger with [redacted] (EIN: [redacted])"

The EIN of [redacted] (EIN: [redacted]) should be entered in the upper right hand corner of the Form SS-10.

[redacted]

We advise that two Forms SS-10 be obtained captioned as follows:

1. "[redacted] (EIN: [redacted]), as successor in interest by way of merger with [redacted] (EIN: [redacted])"

The EIN of [redacted] (EIN: [redacted]) should be entered in the upper right hand corner of the Form SS-10.

2. "[redacted] (EIN: [redacted]) (formerly [redacted] (EIN: [redacted])), as successor in interest by way of merger with [redacted] (EIN: [redacted])"

The EIN of [redacted] (EIN: [redacted]) should be entered in the upper right hand corner of the Form SS-

10.

[redacted]

"[redacted] (EIN: [redacted]), as successor in interest by way of merger with [redacted] (EIN: [redacted])"

The EIN of [redacted] (EIN: [redacted]) should be entered in the upper right hand corner of the Form SS-10.

Facts

For the taxable year [redacted], [redacted] and Affiliates ("[redacted]")(EIN: [redacted]), a Delaware corporation, was the common parent of an affiliated group of corporations, including [redacted] ("[redacted]") (EIN: [redacted]) and [redacted] ("[redacted]") (EIN: [redacted]). You are presently conducting an employment tax examination of [redacted], [redacted] and [redacted] for the [redacted] taxable year.

On or about [redacted], pursuant to an Agreement and Plan of Merger, [redacted] merged with and into [redacted] ("[redacted]")(EIN: [redacted]). [redacted] was the surviving corporation. The new corporation is known as [redacted] (EIN: [redacted]).

On or about [redacted], [redacted] merged with and into [redacted] (EIN: [redacted]). [redacted] was the surviving corporation. According to [redacted], "the surviving corporation changed its name to [redacted] with EIN: [redacted]." The information provided by [redacted] does not state whether [redacted] changed its name at the time of the merger or subsequently thereto. However, the name of the surviving corporation is [redacted].

On or about [redacted], [redacted] merged with and into [redacted] (EIN: [redacted]. [redacted] was the surviving corporation. The new corporation is known as [redacted] (EIN: [redacted]).

Discussion

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on

assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment. For employment taxes, the form used by the Service to extend the limitations period on assessment is Form SS-10 (Consent to Extend the Time to Assess Employment Taxes).

Unlike the income tax liability of a consolidated group, where, as a general rule, the common parent acts as sole agent for each member of the group, each member of a consolidated group must act on its own behalf with respect its own employment tax liabilities. See I.R.C. § 1501 and the regulations thereunder. Each member is, therefore, responsible for entering into its own consent to extend the statute of limitations with respect to its employment tax liabilities. In the case of a merged corporation, the surviving or resulting corporation in a merger under state law may validly sign an extension agreement on behalf of the transferor (predecessor) corporation for a period before the transfer. Rev. Rul. 59-399, 1959-2 C.B. 488; See also Popular Library Inc. v. Commissioner, 39 T.C. 1092 (1963); Union Bleachery v. Commissioner, 97 F.2d 226 (4th Cir. 1938).

The caption of the Forms 872 extending the statute of limitations should read as follows:

[redacted]

"[redacted] (EIN: [redacted]) as successor in interest by way of merger with [redacted] (EIN: [redacted])"

The EIN of [redacted] (EIN: [redacted]) should be entered in the upper right hand corner of the Form SS-10.

[redacted]

Due to the current uncertainty whether [redacted] changed its name to [redacted] (EIN: [redacted]) at the time of the merger or subsequently thereto, we advise that you obtain two Forms SS-10.

In the event that the name of the merged corporation was determined at the time of the merger, the following caption is applicable.

"[redacted] (EIN: [redacted]), as successor in interest by way of merger with [redacted] (EIN: [redacted])"

The EIN of [redacted] (EIN: [redacted]) should be entered in the upper right hand corner of the Form SS-10.

If the name of the merged corporation changed subsequent to the merger, the following caption is applicable.

"[redacted] (EIN: [redacted]) (formerly [redacted] (EIN: [redacted])), as successor in interest by way of merger with [redacted] (EIN: [redacted])"

The EIN of [redacted] (EIN: [redacted]) should be entered in the upper right hand corner of the Form SS-10.

[redacted]

"[redacted] (EIN: [redacted]), as successor in interest by way of merger with [redacted] (EIN: [redacted])"

The EIN of [redacted] (EIN: [redacted]) should be entered in the upper right hand corner of the Form SS-10.

Procedural Considerations

Please note that Section 3461 of the I.R.S. Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service, each time that it requests a taxpayer to extend the limitations period, to advise the taxpayer of the right (i) to refuse to extend the statute of limitations on assessment, or, in the alternative, (ii) to limit an extension to particular issues or for specific periods of time. To satisfy this requirement, you should provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the consent. You should also document your actions in this regard in the case files.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IRM. Specifically, the IRM requires use of Letter 907(DO) to solicit a Form 872, Letter 928(DO) as a follow-up letter to Letter 907(DO)(when appropriate), and Letter 929(DO) to transmit a copy of the executed consent to the taxpayer. See IRM Handbook No. 121.2.22.3 and No. 121.2.22.4.2. Dated copies of both letters should be retained in the case file(s) as directed. When the signed Form 872 is received from the taxpayer, the authorized manager should promptly sign and date it in accordance with

Treasury Regulation § 301.6501(c)-1(d) and IRM, Handbook No. 121.2.22.5.10. The manager must also update the respective statute of limitations in the continuous case management statute control files and properly annotate Form 895 or equivalent. See IRM, Handbook No. 121.2.22.5.11(1)(g). In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Should you have any questions regarding this matter, please contact Viviana Taverna of this office at (212) 436-1508.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL
Area Counsel, LMSB
(Financial Services)

By: _____
VIVIANA TAVERNA
Attorney (LMSB)