Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:HMT:[redacted]:2:POSTF-116270-02
[redacted]

date: May 1 2002

to: Manager, Team [redacted],
Attn: Revenue Agent [redacted]

from: Associate Area Counsel (LMSB/1), [redacted]

subject: [redacted], Inc.
Consent to Extend the Statute of Limitations

This memorandum responds to your request for assistance dated March 20, 2002. This memorandum should not be cited as precedent.

ISSUE

What is the proper name and language to be used on a Form 872 - Consent to Extend the Statute of Limitations and a Power of Attorney for a company that has been acquired by and merged into a subsidiary of another company?

FACTS

The consolidated income tax returns of [redacted], Inc. and Subsidiaries ([redacted]) for the periods ending [redacted], [redacted] and [redacted] are currently under examination.

For the taxable periods at issue, [redacted] was the parent corporation of [redacted] subsidiaries, [redacted], Inc. (EIN [redacted]) ([redacted]); [redacted], Inc. (EIN [redacted]) ([redacted]); and [redacted], Inc. (EIN [redacted]) ([redacted]).

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On [redacted], [redacted] and its [redacted] subsidiaries were acquired in a tax-free merger by [redacted], Inc. ([redacted]) (EIN [redacted]). [redacted] was treated as a separate stand alone subsidiary of [redacted] until [redacted], [redacted].[1]

On [redacted], [redacted] merged with and into [redacted], Inc. ([redacted]) (EIN [redacted]), another subsidiary of [redacted].[2] With respect to [redacted] subsidiaries, which were acquired by [redacted] through the merger: (1) [redacted] was merged with and into [redacted], Inc. on [redacted]; (2) [redacted], Inc. changed its name to [redacted], Inc. ([redacted]) on [redacted]; (3) [redacted] was merged with and into [redacted] on [redacted],; and (4) [redacted] continues to operate as a subsidiary of [redacted].

[redacted] files a consolidated tax return which includes [redacted] and [redacted]. A Power of Attorney is currently on file for [redacted], Inc.

ANALYSIS

Consent to Extend the Statute

Generally, the name of the taxpayer shown on the return can be used on the consent. Refer to I.R.M. 121.2.22.6.2. In this case, the exam team has informed us that the taxpayer was merged into another subsidiary of the parent corporation. The common parent of a consolidated group is generally considered the group's agent for all matters relating to the consolidated tax liability. Treas. Reg. § 1.1502-77(a). See also, FSA 200132001

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[1] When [redacted] and its subsidiaries were acquired and merged on [redacted], [redacted] was the parent of [redacted] (EIN [redacted]). In [redacted], however, [redacted] changed its name to [redacted] and [redacted] changed its name to [redacted], Inc. [redacted], [redacted] (the former [redacted]) then merged with a wholly owned subsidiary of the former [redacted], with [redacted], Inc. left as the surviving corporation. Thus, at the end of the day, [redacted] had become the parent of [redacted], Inc.

[2] [redacted], Inc. and its subsidiaries, [redacted], Inc. and [redacted], Inc. were also acquired by [redacted] on [redacted].

([redacted]). The following language should be used for the taxpayer's name on the consent form:

> [redacted], Inc. (EIN: [redacted]) as successor in interest, by merger, to [redacted], Inc. and Subsidiaries (EIN: [redacted]).

Please ensure that the name of the corporation on the consent is the same as the name reflected on the corporate charter, including all articles and punctuation. Also please ensure that the merger agreement includes no limitations or exclusions on the successor's liability.

The signature line of the Form 872 must reflect the authority of the officer signing the form for the taxpayer. Since the ultimate parent of the group ([redacted]) is not signing the consent, it will be necessary to show the parent corporation's ownership interest, as well as the signing officer's authority to act on its behalf. We have a statement signed by [redacted], Chief Financial Officer of [redacted], stating that he is authorized to execute any necessary tax documents and discuss the tax returns of [redacted]. Therefore, [redacted] may sign the consent.

Please note that Section 6501(c)(4)(B) requires the IRS to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative, to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitation period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872, or provide some other written form of the Section 6501 requirement (such as with a Letter 907).

Regardless of which method you use to notify the taxpayer, you should document your actions in this regard in the case file. Although Section 6501(c)(4)(B) does not provide a sanction or penalty on the Service for failure to comply with the notification requirement, a court might conclude that an extension of the statute of limitations is invalid if the Service did not properly notify the taxpayer. Thus, it is important to document your actions in this regard in the case file.

Power of Attorney

Treasury Regulation § 601.503(c)(3) requires that, in the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation. The officer must certify that he has such authority. Treasury Regulation § 601.504(a) states that a Power of Attorney would be required where the taxpayer wishes to authorize a recognized representative to, among other things, execute a consent to extend the statutory period for assessment or collection of a tax.

It appears in the present case, that the taxpayer is acting on its own behalf and that a duly authorized officer of the corporate taxpayer will be signing the consent to extend the statute of limitations. We believe a Power of Attorney is not necessary in this situation as it would effectively give the taxpayer authority to act on its own behalf. If the taxpayer wished to designate someone other than a duly authorized officer to act on its behalf, the Power of Attorney would be necessary. Since [redacted] has submitted a letter stating that, as an officer of [redacted], he is authorized to act on behalf of [redacted] regarding the latter's tax liabilities, it is not necessary to also obtain a Power of Attorney from him.

DISCLOSURE STATEMENT

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.

This advice is subject to post-issuance review by the National Office. Therefore, we request that you wait ten days from the date of receipt of this advice before acting on it.

[redacted]
Associate Area Counsel
(Large and Mid-Size Business)

By: _____
[redacted]
Senior Attorney (LMSB)