



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR _____, Special Litigation Assistant
CC:LM:RFP: _____:TL-N-5970-00

FROM: Jasper L. Cummings, Jr.
Associate Chief Counsel (Corporate) CC:CORP

SUBJECT: Agent for the Group

This Chief Counsel Advice responds to your memorandum dated January 24, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

A	=
B	=
C	=
D	=
E	=
Date K	=
Date L	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=

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Year 5	=
Year 6	=
Year 7	=
Year 8	=
Year 9	=
Year 10	=
Year 11	=
Year 12	=
<u>a</u>	=
<u>b</u>	=

ISSUES

1. Are the Forms 1120X for taxable Years 1 through and including 3 filed by B on behalf of A (the "Amended Returns") valid for the purpose of filing a timely claim for refund by A?
2. Who is the proper party to receive any overpayment or notice of deficiency that results from the final determination of the examiners concerning the Amended Returns?
3. Who is the proper party to execute the Forms 872 (Consent to Extend Time to Assess Tax) for the B consolidated group's taxable Years 6 and 7 (the "Waivers")?
4. What language should be used to identify the taxpayer on the Waivers?

CONCLUSIONS

1. The Amended Returns filed by B on behalf of A are valid for the purpose of filing a timely claim for refund by A.
2. A is the proper party to receive any overpayment or notice of deficiency that results from the final determination of the examiners concerning the Amended Returns.

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3. E is the proper party to execute the Waivers.
4. The proper language to use on the Waivers is "E (E.I.N. XX-XXXXXXX), as successor by merger to B (E.I.N. XX-XXXXXXX) and as agent for the former B and Subsidiary Companies Consolidated Group.*" Put an asterisk immediately thereafter (as shown). At the bottom of page 1 of Form 872, the following language should be added (including the asterisk):

*With respect to the consolidated tax liability of B and Subsidiary Companies for the tax periods ending on Date K and Date L.

FACTS

Prior to Year 6, A was the common parent of, and filed consolidated returns for, the group A consolidated group for taxable Years 1 through and including Year 5. A also executed Forms 872 for Years 1 through and including 5.

In Year 6, the A group reorganized. Pursuant to this reorganization, A formed a wholly owned subsidiary, B, which in turn formed a wholly owned subsidiary, C. C merged with and into A, with A surviving, causing A to become a wholly owned subsidiary of B. In a private letter ruling, the Service held that the A group would continue with B as the new common parent (hereafter the "B consolidated group"). B filed consolidated Forms 1120 for the B consolidated group for each of the taxable Years 6 through and including 10 and Forms 872 for Years 6 through and including 9. B also filed the Amended Returns on behalf of A, seeking refunds for taxable Years 1 through and including 3.

In Year 12, B entered into a stock exchange and merger agreement with D and E, a subsidiary of D. Pursuant to this agreement, D and E effected a common stock exchange, pursuant to which D became a wholly owned subsidiary of E in a transaction intended to constitute a § 351 exchange. B then merged with and into E, with E surviving, in a transaction intended to qualify as a § 368(a) reorganization. As a result of this corporate restructuring, A became a wholly owned subsidiary of E. Following this restructuring, E was a% (more than 50%) owned by the former shareholders of D and b% owned by the former shareholders of B.

Exam proposes to secure the Waivers to extend the statute of limitations for the assessment of tax for the B group's taxable Years 6 and 7.

LAW AND ANALYSIS

Section 6402(a) provides that the overpayment of tax will be credited and the excess of such credit will be refunded only to the "person who made the overpayment." Under § 7422(a), a claim for refund must be "duly" filed before a

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refund action may be maintained in any court. To be duly filed within the meaning of § 7422, a claim must comply with the requirements of § 6511. Wall Industries Inc. v. United States, 10 Cl. Ct. 82, 95 (1986). Section 6511 requires that a claim for refund for overpayment of tax be filed “by the taxpayer” within a specified period. Section 7701(a)(14) defines the “taxpayer” as “any person subject to any internal revenue tax.”

Section 1501 grants members of an affiliated group the privilege of filing a consolidated return upon the condition that they consent to be bound by all of the consolidated return regulations.

In joining in the filing of a consolidated return, each corporation consents to the designation of an agent to act for members of the affiliated group. Treas Reg. § 1.1502-77(a). Under § 1.1502-77(a), the common parent of the consolidated group is the agent for the group and it alone has authority to file consolidated returns, enter into closing agreements, file waivers, receive notices of deficiency and file refund claims, among other things, with regard to consolidated return years. The regulations provide for a few exceptions, not applicable here, where the common parent is not the agent of the consolidated tax return group for the year in question. See §§ 1.1502-77(a), 1.1502-75(d).

Solely with respect to notices of deficiency and waivers of the statutes of limitations for taxable years for which the due date (without extensions) of the consolidated return is after September 7, 1988, § 1.1502-77T provides for alternative agents for the group in cases where a corporation that is the common parent of the group ceases to be the common parent, whether or not the group remains in existence. In such cases, acceptable alternative agents for the consolidated group include a successor to the former common parent in a transaction to which § 381(a) applies.

Courts have held that, after a restructuring pursuant to which the old common parent ceases to be the common parent but remains a member of the group and the group is treated as remaining in existence under § 1.1502-75(d), both the new common parent and the old common parent are agents for the affiliated group with respect to taxable years preceding such restructuring. See Union Oil v. Commissioner, 101 T.C. 130 (1993).

Under § 1.1502-77(a), A remains the agent for the members of the A consolidated group for the group’s taxable Years 1 through and including 3. Thus, A is the proper entity to extend the statute of limitations on behalf of the A consolidated group for the group’s consolidated taxable years 1 through 3. Under the rationale of Union Oil, supra, either A or B could have filed a claim for refund on behalf of the A consolidated group with respect to such years; thus, the Amended Returns filed by B on behalf of A are valid for the purpose of filing a timely claim for refund by A. Under these facts, as the sole remaining agent for the A consolidated

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group's taxable Years 1 through and including 3, A is the proper party to receive any overpayment or notice of deficiency that results from the final determination of the examiners concerning the Amended Returns.

Under § 1.1502-77T(a)(4)(ii), E, as the successor by merger to B in a transaction to which § 381(a) applies, is an alternative agent for B and the B consolidated group with respect to notices of deficiency and waivers of the statutes of limitations. Accordingly, E is the proper party to execute the Waivers.

The proper language to use on the Waivers is "E (E.I.N. XX-XXXXXXX), as successor by merger to B (E.I.N. XX-XXXXXXX) and as agent for the former B and Subsidiary Companies Consolidated Group.*" Put an asterisk immediately thereafter (as shown). At the bottom of page 1 of Form 872, the following language should be added (including the asterisk):

*With respect to the consolidated tax liability of B and Subsidiary Companies for the tax periods ending on Date K and Date L.

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.

Please call Lisa A. Fuller at (202) 622-7750 if you have any further questions.

Jasper L. Cummings, Jr.
Associate Chief Counsel (Corporate)
By: Michael J. Wilder
Senior Technical Reviewer