



OFFICE OF
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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Assistant Chief Counsel (Field Service) CC:DOM:FS

SUBJECT: Internal Revenue Service National Office Field Service
Advice

This Field Service Advice responds to your memorandum dated October 1, 1998. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

A =
B =
FYE-1 =
Date 1 =
Date 2 =
Date 3 =
Date 4 =

ISSUE: Whether a Form 872 (Consent to Extend the Time to Assess Tax) is a valid waiver when it refers to the successor in interest of B, but the cover letter correctly refers to B.

CONCLUSION: The Form 872 can be defended as a valid waiver of the period of limitation for B.

FACTS: The Service has issued a notice of deficiency to B for B's FYE-1 tax liability. B has filed a petition in Tax Court alleging in part that the Form 872 was not valid for FYE-1.

On Date 1, B's shareholders began the process of liquidating B into A. On Date 2, B filed its federal income tax return for FYE-1. B filed its certificate of dissolution on Date 3.

On Date 4, a Form 872 was obtained for FYE-1. The corporate name was listed as "A, Successor in Interest to B." The EIN was the EIN for B. The form was signed by the person who was president of both A and B. The revenue agent who prepared the form was aware that B had liquidated into A. The cover letter to the form states that the form was for FYE-1 of B. In addition, A had not filed a tax return for FYE-1.

LAW AND ANALYSIS

The Service generally has three years from the date the return was filed to assess the tax. I.R.C. § 6501(a). The Service and the taxpayer may, however, extend the period of limitation any time before the three-year period has expired. I.R.C. § 6501(c)(4). In this case, Date 4 was within three years of Date 2. Therefore, if the notice is valid, the period of limitations is extended under I.R.C. § 6501(c)(4).

In this case, B contends that the Form 872 extended the period of limitations with respect to A, but not for B. B bases its argument on the fact that the name and EIN of the taxpayer in the upper right corner of the agreement is that of A. Although a Form 872 is not a contract, contract principles apply because I.R.C. § 6501(c)(4) requires that the Service and the taxpayer enter into a written agreement. *Woods v. Commissioner*, 92 T.C. 776, 780 (1989); *Piarulle v. Commissioner*, 80 T.C. 1035, 1042 (1983).

Woods involved a Form 872-A that was not ambiguous, but misstated the intent of the parties. In that case, the parties signed a written extension that referred to "Solar Environments, Inc. #43-1156200." The parties intended to extend the period of limitations for "Solar Equipment, Inc. #43-1156196." The cover letter also erroneously referred to Solar Environments. For the year at issue, *Woods* had no interest in Solar Environments. The court found that this was a case of mutual mistake. The court noted that where "a written agreement does not conform with the actual agreement between the parties, a court may reform the writing to conform with the parties' intentions." *Woods*, 92 T.C. at 782.

The instant case is distinguishable from *Woods* in two minor and, we think, insignificant, respects. First, the cover letter in *Woods* copied the mistake made on

the Form 872-A. In the present case, the cover letter correctly states the parties' intention to extend the period of limitation for B. Second, the taxpayer in *Woods* had no interest in Solar Environments during the year for which the limitations period was extended. In the present case, A was the successor to B and the same person was president of both A and B.

We think there is sufficient evidence showing that the taxpayer and the Service intended to extend the period of limitation for B, rather than for A. First, the cover letter states that the extension applies to B. Second, the EIN listed in the extension is that of B. Third, the parties were involved in negotiations involving B's liability for FYE-1. Fourth, A never filed a tax return for FYE-1.¹

In light of the above, we recommend that this case falls within the parameters of *Woods* and that the Service should argue that the Tax Court should reform the extension to reflect the intentions of the parties.

If you have any further questions, please call (202) 622-7940.

¹ If A was not in existence for FYE-1, it would not be required to file a tax return and would not have any tax liability for that period. If A was in existence and was required to file a tax return for FYE-1, the period of limitations would be open indefinitely under I.R.C. § 6501(c)(3) and there would have been no need for the parties to execute an extension.