



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

MEMORANDUM FOR PETER R. HOCHMAN
DISTRICT COUNSEL, NORTHERN CALIFORNIA DISTRICT
CC:WR:NCA:SF

Attention: Paul J. Krug

FROM: DEBORAH A. BUTLER
ASSISTANT CHIEF COUNSEL (FIELD SERVICE)
CC:DOM:FS

SUBJECT: Consents to Extend Time to Assess Tax (Forms 872)
Proper Party to Execute Consents for Consolidated Group

This Field Service Advice responds to your memorandum dated March 24, 2000. 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

Corporation A =
Corporation B =
Corporation C =
Corporation D =
Corporation E =
Corporation F1 =
State Y =
Country Z =

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Name A =
 Name B =
 xx-xxxxxxx =
 Year1 =
 Date1 =
 Date2 =
 Date3 =
 Date4 =
 Date5 =
 Date6 =
 Date7 =
 Date8 =

ISSUES

1. What language should be used to describe the taxpayer on each of the Forms 872?
2. What corporate name should be entered on the reverse side of the Forms 872?
3. Which corporate officers may sign the Form 872 for the taxpayer?

CONCLUSIONS

1. On the Form 872 with respect to the consolidated return year ended Date2, the taxpayer should be described as follows:

Name A (EIN xx-xxxxxxx) (currently known as Name B (EIN xx-xxxxxxx)), and
 Subsidiaries^{*}

Place an asterisk at the bottom of the first page of the Form 872 and insert the following:

^{*} This is with respect to the consolidated return liability of the Name A (EIN xx-xxxxxxx) consolidated group for the tax year ended Date2.

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On the Form 872 with respect to the consolidated return year ended Date4, the taxpayer should be described as follows:

Name B (EIN xx-xxxxxxx) and Subsidiaries*

Place an asterisk at the bottom of the first page of the Form 872 and insert the following:

* This is with respect to the consolidated return liability of the Name B (EIN xx-xxxxxxx) consolidated group for the tax year ended Date4.

2. The corporate name on the reverse side of each Form 872 should be Name B.
3. Each Form 872 should be signed by one of the current officers of Corporation B who may execute an original return pursuant to I.R.C. § 6062.

FACTS

Corporation A (now known as Corporation B) was incorporated in State Y on Date1. For the fiscal year ended Date2, Corporation A and its subsidiaries filed a consolidated corporate income tax return.

On Date3, Corporation C, a wholly owned subsidiary of Corporation A, merged into Corporation A. On the same date, Corporation A, the surviving corporation in the merger, changed its name to Corporation B. For the fiscal year ended Date4, Corporation B and its subsidiaries filed a consolidated income tax return.

In Year1, Corporation D, a State Y corporation owned indirectly by Corporation E, a Country Z corporation,¹ merged into Corporation B, which was the surviving corporation. In the merger, the shareholders of Corporation B received cash for their stock, and their ownership interest in Corporation B terminated. The merger was treated as a purchase for accounting purposes and was a taxable transaction for Corporation B's shareholders.

In Date5, the Tax Officer of Corporation B executed a Form 872 (Consent to Extend the Time to Assess Tax) for the consolidated return year ended Date2, to Date7. In a memorandum dated September 10, 1999, we provided Field Service Advice confirming that the consent had been executed by the proper party and was valid. On Date6, the Tax Officer executed a new Form 872 for the consolidated return year ended Date2, extending the period of limitations to Date8.

¹ Corporation D was wholly owned by Corporation F1, a foreign corporation, which was a wholly owned subsidiary of Corporation E.

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The Examination Division is proposing to secure another Form 872 for the consolidated return year ended Date2, and a Form 872 for the consolidated return year ended Date4.

LAW AND ANALYSIS

As discussed in our memorandum dated September 10, 1999, Treas. Reg. §§ 1.1502-77 and 1.1502-77T provide rules for determining the proper party to execute Forms 872 for a consolidated return year. In general, the common parent of a consolidated group is the group's agent for all matters relating to the consolidated tax liability except for certain specified matters. Treas. Reg. § 1.1502-77(a). In particular, any waiver given by the common parent is considered as having been given by each subsidiary in the consolidated group. Treas. Reg. § 1.1502-77(a).

As also discussed in our prior memorandum, the regulations under I.R.C. § 6501(c)(4) do not specify who may sign consents to extend the period of limitations on assessments. In the absence of such a specific provision, the rules under I.R.C. § 6062 governing the execution of original returns generally apply to the execution of a Form 872. See Rev. Rul. 83-41, 1981-1 C.B. 349, *clarified and amplified* by Rev. Rul. 84-165, 1984-2 C.B. 305. Accordingly, a Form 872 may be signed by a corporation's president, vice-president, treasurer, chief accounting officer or any other officer duly authorized to sign for the corporation.

In this case, Corporation A was the common parent for the consolidated return year ended Date2. Although Corporation A changed its name to Corporation B after the merger with Corporation C on Date3, it remained the common parent (as Corporation B) for the consolidated return year ended Date4. In the Year1 merger with Corporation D, Corporation B was the surviving corporation and continues to exist through the present. Accordingly, Corporation B (formerly known as Corporation A) is the proper party to execute the Forms 872 for the consolidated return years ended Date2 and Date4.

Issue 1: Language describing the taxpayer on the Forms 872.

For the language to describe the taxpayer on each Form 872 for the tax years ended Date2 and Date4, see Conclusion 1 above.

Issue 2. Corporate name on reverse side of Form 872.

Because Corporation B is the agent for each of the consolidated return years ended on Date2 and Date4, its name should appear in the "Corporate Name" line on the reverse side of each Form 872.

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Issue 3. Corporate officers who may sign.

Each Form 872 should be signed by one of the current officers of Corporation B who may execute an original return pursuant to I.R.C. § 6062, i.e., the president, vice-president, treasurer, chief accounting officer or any other duly authorized officer.

Please call if you have any further questions.

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By: ARTURO ESTRADA
Acting Chief
Corporate Branch

cc: Regional Counsel CC:WR
Assistant Regional Counsel (LC) CC:WR