



OFFICE OF
CHIEF COUNSEL

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

CC:DOM:FS:CORP

August 5, 1999

Number: **199946010**

Release Date: 11/19/1999

UILC: 1502.77-00

6213.08-00

7121.00-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

ASSISTANT DISTRICT COUNSEL

ATTN:

FROM:

DEBORAH A. BUTLER

ASSISTANT CHIEF COUNSEL (FIELD SERVICE) CC:DOM:FS

SUBJECT:

Agent for the Group

This Field Service Advice responds to your memorandum dated June 7, 1999. 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:

Old X =

New X =

Y =

HC =

Z =

Date 1 =

Date 2 =

Date 3 =

Date 4 =
 Date 5 =
 Date 6 =

ISSUES:

With respect to the proposed waivers and closing agreements: (a) what is the proper language to identify the taxpayer on them and (b) who is the proper party to execute them?

CONCLUSION:

The following language should be used on the waivers and on the closing agreements:

HC, successor to Old X, as agent for the Old X and Subsidiaries consolidated group.

FACTS:

On Date 2, Old X acquired Y by merging Y into Old X with Old X surviving. For Federal income tax purposes, the acquisition was treated as a reverse acquisition within the meaning of Treas. Reg. ' 1.1502-75(d)(3). Thus, the consolidated group of which Y had been the common parent was treated as continuing in existence with Old X as the new common parent.

Old X filed a final consolidated Federal income tax return for the tax year ending Date 1, as the parent of the Old X and Subsidiaries consolidated group.

Old X filed a consolidated return for the tax year ending Date 3, as the parent of the group of which Y had been the parent (and which included the former members of the Old X group).

On Date 4, HC, a wholly owned subsidiary of Z, acquired Old X by merging Old X into HC with HC surviving. Upon the merger, Z changed its name to New X. For Federal income tax purposes, the acquisition was treated as a reverse acquisition within the meaning of Treas. Reg. ' 1.1502-75(d)(3). Thus, the consolidated group of which Old X had been the common parent was treated as continuing in existence with Z as the new common parent.

On Date 6, New X (formerly known as Z) and Subsidiaries filed an Application for Automatic Extension of Time to File Corporation Income Tax Return (Form 7004) for the year ending Date 5 with the name of the taxpayer as New X and Subsidiaries (fka Old X).

Exam proposes to secure Waivers of Restrictions on Assessment and Collection of Deficiency, Form 870 (Awaivers@) and Combined Closing Agreements for a Final Determination of Tax Liability and Specific Matters (Aclosing agreements@) from Old X for the tax years ending Date 1 and Date 3.

LAW AND ANALYSIS

Law

Treas. Reg. ' 1.1502-77(a) provides that the common parent, with exceptions not relevant here, shall be for all purposes Athe sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year.@

Treas. Reg. ' 1.1502-77(a) further provides that Athe common parent in its name will give waivers, give bonds, and execute closing agreements, offers in compromise, and all other documents, and any waiver or bond so given, or agreement, offer in compromise, or any other document so executed, shall be considered as having also been given or executed by each such subsidiary.@

Finally, Treas. Reg. ' 1.1502-77 provides that the Aprovisions of this paragraph shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.@

Analysis

For the years ending on Date 1 and Date 3, HC is the proper party to extend the statute of limitations of the group of which Old X was the parent for its tax years ending Date 1 and Date 3. This is because HC became the successor to the common parent of the group for those years and the new common parent of the group as a result of the reverse acquisition. See Union Oil Company of California v. Commissioner, 101 T.C. 130 (1993). See also Treas. Reg. ' 1.1502-77(a). Thus, we agree with your recommendation that the following language should be used on the waivers and on the closing agreements:

HC, successor to Old X, as agent for the Old X and Subsidiaries consolidated group.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

Because HC became the parent of the Old X group in a reverse acquisition, it is unnecessary to consider applying Treas. Reg. ' 1.1502-77(d). Instead, the Service can rely on the rationale of Union Oil. For that reason, we agree that it is unnecessary to require each former member of the Old X group to sign waivers or closing agreements.

We also agree that the Service should not require the taxpayer, HC, to supply a corporate resolution authorizing a designated corporate officer to execute the waivers and closing agreements. These documents can be executed by either the current president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer of HC who currently is duly authorized to act. See Rev. Rul. 84-165, 1984-2 C.B. 305.

Finally, as noted above, on Date 6, New X (fka Z) and Subsidiaries filed a Form 7004 for the year ending Date 5 with the name of the taxpayer as New X and Subsidiaries (fka Old X). However, you believe that the correct name for the taxpayer on Form 7004 is New X (fka Z) and Subsidiaries. We agree. A consequence of this conclusion is that the extension is invalid. In that case, the taxpayer would be subject to penalties for not timely filing its 1998 return.

We note, however, that the current name of the taxpayer is correct. Thus, it is questionable whether the Service could (let alone should) impose penalties simply because the information stated in the parenthetical is incorrect. Moreover, it does not appear that the Service was harmed by this incorrectly worded form. Finally, there is no evidence that the taxpayer was attempting to deceive the Service. Therefore, there appears no basis to take any further action (except perhaps to notify the taxpayer that the form was incorrectly worded).

Please call if you have any further questions.

By: _____
ARTURO ESTRADA
Acting Branch Chief
Corporate Branch

cc: