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MEMORANDUM FOR ASSOCIATE AREA COUNSEL, CHICAGO (GROUP 2)
LARGE AND MID-SIZE BUSINESS CC:LM:RFP:CHI:2

FROM: Curt G. Wilson *\/s\/ Curt G. Wilson*
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SUBJECT: Validity of Consents (From 872) executed by Field Specialists

This Chief Counsel Advice responds to your memorandum dated June 5, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

BACKGROUND:

This matter involves the authority to execute consents extending the period of limitation on assessment (Form 872) pursuant to section 6501(a)(4) of the Internal Revenue Code by a Team Manager of a Financial Products Field Specialists group in the Large and Mid-size Business (LMSB) Division.

In accordance with Congressional mandate contained in the Internal Revenue Restructuring and Reform Act of 1998 (RRA), the Internal Revenue Service has been undergoing a reorganization for the past two years. See Pub. L. No. 105-206, § 1001, 112 Stat. 685, 689-690 (1998). As part of the reorganization, many previously existing positions were abolished and a number of new positions were created. Nonetheless, for a majority of Service employees, especially those at the lower levels, business continues as usual. Although some of these employees have new job titles and many report to different managers, their responsibilities and position descriptions remain the same.

Before the reorganization, the field structure consisted of four geographic regions, each led by a Regional Commissioner. The regions were further subdivided into districts. Each district was headed by a District Director. The District Directors were responsible for all of the work required to be performed in their district. To accomplish this, they were given broad authority to act and perform certain functions on behalf of the Commissioner of Internal Revenue, including but not limited to executing consents waiving the statute of limitation on assessment and collection. See generally Commissioner's Delegation Orders 42 and 193; Treas. Reg. § 301.7701-9(b).

Each district housed, among others, an examination and a collection division. The district examination divisions were further subdivided into groups. Each group was responsible for audits of certain groups or classes of taxpayers. One of those groups specialized in audit of financial products cases. To the extent the group had primary responsibility over a case, the group, supervised by a Group Manager, was also responsible for monitoring the statute of limitation on assessment for the taxable periods under audit. If the examiner assigned to the case was unable to complete the audit within the applicable assessment period, the examiner would solicit a waiver of the assessment statute from the taxpayer. If the taxpayer agreed to extend the assessment period, the consent was accepted and executed on behalf of the District Director by the Group Manager.

As part of the restructuring, the three-tier geographic structure described above was replaced with four operating divisions, each serving a specific group of taxpayers with similar needs. Each operating division is headed by a Division Commissioner. Division Commissioners, like District Directors, have broad authority to act on behalf of the Commissioner in fulfilling and furthering the Service's mission.

The Large and Mid-Size Business (LMSB) Division serves corporations and partnerships with more than $5 million in assets. It is organized around five specialized industry segments, commonly referred to as Industries. Each Industry is headed by an Industry Director and has one or more Director, Field Operations (DFO), who reports directly to the Industry Director. The Industries are customer-focused. Responsibilities encompass all pre-filing, filing, and post filing activities. As such, each Industry provides end-to-end tax administration services to a particular class of large and mid-size businesses nationwide.

The LMSB Division also houses a Field Specialists organization (FSO). The FSO is headed by a Director, Field Specialists (DFS), who reports directly to the Division Commissioner. The FSO is closely aligned with the five industry segments. Staffed with specialists rather than generalists, the FSO provides the necessary expertise and support to the five industry groups. Its responsibilities include providing complete domestic and international tax administration services to meet the needs of mid-size and large businesses within assigned Industries, participating in the examination function by providing support to the appropriate Industry, and by conducting fair, efficient, and timely examinations in their respective specialty areas. This unique organizational arrangement ensures fair and consistent treatment of taxpayers across the five Industries and faster resolution of issues.

While the five Industries consists primarily of generalists and the FSO is staffed primarily with specialists, the two organizations are virtually the same in every other respect. For example, comparison of DFO and DFS position descriptions show a similarity of function and responsibility, except, of course, that the DFS is charged with managing an organization of specialists while the DFOs manage organizations staffed with generalists. Likewise, the Territory Manager position in the Field Specialists organization is framed around management of a program, in a given geographic area, involving the application of technical expertise to examinations in the specialty area, while the Territory Managers under the DFOs manage programs with a much broader customer base and compliance activities. Finally, the Team Managers (previously Group Managers) in both organizations perform the same basic functions and are charged with processing cases in the same way. The only substantive difference between the two positions is, again, the fact that the Team Managers in the Specialists organization manage highly skilled technical employees who examine highly complex issues and transactions and provide specialty expertise to the other examination teams, while the Team Managers in the five Industries manage generalists who conduct examinations that do not involve speciality issues and transactions requiring the kind of expertise the Field Specialists provide.

In accordance with this alignment of responsibilities, the group specializing in audits of financial products cases under the old structure became a “Financial Products Fields Specialists” group and fell under the jurisdiction of the Director, Field Specialists, in the newly created LMSB Division. Notwithstanding the restructuring, however, the group continues to be responsible for auditing the same class of taxpayers and for monitoring the statute of limitation on assessment with respect to these cases as they did prior to the reorganization. Thus, as before, when an examiner is unable to complete the audit within the applicable assessment period, a consent extending the statute of limitation is solicited from the taxpayer. If the taxpayer agrees to extend the assessment period, the consent is signed by the Team Manager (previously Group Manager), on behalf of “Director, Field Specialists” (previously District Director).

LAW AND ANALYSIS:

Generally, the Service has 3 years from the date the return is filed to examine the return and to assert a deficiency. Section 6501(a). The taxpayer and the Service, however, may agree to extend this period. Section 6501(c)(4). In order to be valid, the agreement must be (1) in writing, (2) entered into prior to the expiration of the statutory assessment period or previously agreed upon extension, (3) signed by the taxpayer or the taxpayer’s representative, and (4) executed on behalf of the Commissioner by an authorized Service official. Section 6401(c)(4); Treas. Reg. § 301.6501(c)-1(d). Also Rhode v. United States, 415 F.2d 695 (9th Cir. 1969).

There is no question that the first three requirements necessary for a valid consent were met in the present situation. The issue is whether the Team Manager who executed the consents on behalf of “Director, Field Specialists of Internal Revenue” was a duly authorized delegate of the Commissioner. For the reasons enumerated below, we conclude that the Team Manager who signed the consents at issue had the requisite authority to accept the waivers.

Statutory and Regulatory Provisions

Section 6501(a)(4) provides in relevant part as follows:

> Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title . . . both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(emphasis added). As used in the Code, the term "Secretary" means the Secretary of the Treasury "or his delegate," which may include "any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described . . " Section 7701(a)(11)(B); (a)(12) (emphasis added).

With respect to consents extending the period of limitation on assessment, Treas. Reg. § 301.6501(c)-1 provides that such agreements shall be executed by a district director or an assistant regional commissioner. The regulation does not mention the Commissioner of Internal Revenue. Treasury regulations under section 7701, however, provide that, if a function is vested by the Code in the Secretary or his delegate and the applicable Treasury Regulation (here, Treas. Reg. § 301.6501(c)-1) provides that such function may be performed by the assistant regional commissioner or district director, the provision constitutes a delegation by the Secretary of the authority to perform such function to the designated officer or employee. See Treas. Reg. § 301.7701-9(b). Furthermore, if such authority is delegated to a subordinate of the Commissioner, the provision constitutes a delegation of authority by the Secretary to the Commissioner and a redelegation thereof by the Commissioner to the employee. See Treas. Reg. § 301.7701-9(b).[1] This is sometimes referred to as the principle of serial redelegation.

Unless redelegation is prohibited or restricted (which, in the case of statutory extensions, it is not), the delegate identified in the regulation may redelegate the authority "to any officer or employee performing services under his supervision and control." Treas. Reg. § 301.7701-9(c). Moreover, the Commissioner may redelegate the authority to a subordinate of the designated officer or employee and "may also redelegate authority to perform such function to other officers or employees under his supervision and control and, to the extent he deems proper, may authorize further redelegation of such authority." Id. The Commissioner may limit the extent to which any officer or employee under his supervision and control shall perform any such function. Id. See also Treas. Reg. § 301.7701-9(d).

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[1] Where the Treasury Regulation does not specify the delegate through which the Commissioner assumes implied authority, the Commissioner may, nevertheless, claim authority through Treasury Order 150-10, which provides that the Commissioner is "responsible for the administration and enforcement of the Internal Revenue laws." See also Section 7803(a)(2).

<u>The Objectives of Delegations</u>

The Service uses written delegations of authority to redelegate authority from the Secretary to various officers. The objectives, scope, and impact of delegation orders are discussed in Chapter 4 of IRM 1.2.3, which provides in pertinent part as follows:

> 4.2 (1) The objectives of Delegations of Authority are to:
>
> > a. vest authority at the point where immediate responsibility has been placed . . . .
>
> 4.2 (2) To meet these objectives, authority should be delegated directly to the lowest level expected to take final action . . . Delegating authority to the lowest level for action means that:
>
> > a. Every intervening line supervisory position up to and including the Commissioner has the same authority . . .
>
> 4.3 (2) Delegation Orders . . . remain in effect until revoked or superceded . . . .
>
> 4.3.1 (1) Existing Delegations of Authority made by a Service official remains the responsibility of the position no matter who serves as incumbent. It is treated as if it was ordered by the new incumbent unless or until he/she revises or revokes the authority.
>
> 4.3.1 (2) When organizational changes are made which change title/designation, without substantive changes in functional activity, existing Delegation Orders remain in effect until updated by the appropriate authority.

IRM 1.2.3.4.2 (April 28, 2000). Thus, the primary objective of a delegation order is to vest front line employees and their immediate supervisors with the requisite authority to perform the duties. <u>Id.</u> Unless specifically stated otherwise, delegation orders are <u>not</u> intended to take away authority previously granted to persons serving in positions that require the exercise of such authority both before and after the effective date of a revised delegation order. <u>See</u>, <u>e.g.</u>, Manual Transmittal, IRM 1.2.2 (November 24, 1999); IRM 1.2.3.4.3.1(2).

<u>Delegations Prior to Reorganization</u>

The authority to redelegate and limit the authority to execute consents extending the statute of limitation on assessment has been exercised by the Commissioner in Commissioner's Delegation Order (CDO) 42. As in existence prior to the stand-up of the LMSB division, CDO 42 provided, in relevant part, as follows:

> [The] authority [to sign all consents fixing the period of limitations on assessment or collection] may be redelegated but not below the following levels . . . :
>
> Collection — Revenue Officers; Collection Support function managers Grade GS–7 or higher; Automated Collection Branch managers, Grade GS–7 or higher; and Tax Examiners GS–7 or higher;
>
> Examination — Reviewers, Grade GS–11 or higher; Group managers (including large case managers); Chiefs, Planning and Special Programs and personnel assigned thereto Grade GS–11 or higher; Returns Classification Specialists and Returns Classification Officers, Grade GS–11 . . . .

CDO 42 ¶ 2.e - f (Rev. 28) (September 13, 1995).

The authority set forth in CDO 42 was further redelegated by various local orders. As relevant here, a typical local delegation order would have provided as follows:

> Pursuant to the authority vested . . . by Commissioner of Internal Revenue Delegation Order No. 42 (as revised), I hereby delegate authority to sign all consents fixing the period of limitation on assessment or collection to the incumbent of, and persons acting in, positions down to the levels shown below:
>
> > Examination Division
> >
> > Group Managers
> > Section Chiefs (Planning & Quality Management Branch)
> > Fraud Suspense Coordinators - GS-13 - (P & QMB)

See DD-Ill-12 (February 9, 1996).

Delegations as Amended to Confirm to New Organizational Structure

On November 24, 1999, the Deputy Commissioner transmitted the first of two updates to Commissioner Delegation Order system (formerly Commissioners Delegation Order Handbook). The update was explained as follows:

> As we phase in the new organization some new units will go into effect while districts, regions and the National Office are still operating. For example, the new Tax Exempt and Government Entities (TE/GE) organization will begin operating in the December 1999 - January 2000 time frame, administering the tax laws for TE/GE taxpayers, and managing administrative functions like travel and personnel actions for

> TE/GE employees. At the same time, District Directors and other officials will perform these functions for taxpayers and employees not assigned to TE/GE.
>
> To ensure that the new divisions and units have the authority they need as they begin operations, the Commissioner and Deputy Commissioners chartered a team to update the National Delegation Orders. These will empower the new organizations to perform their missions while maintaining authority in the current organization.
>
> This revision includes new titles that reflect the changes in the organization to date. "Notes" inserted into each Delegation Order identify the new titles. In some instances new titles were inserted into existing paragraphs and are identified by bolded text. Also, in cases where positions had previously been abolished, new titles were inserted and bolded.

Manual Transmittal, IRM 1.2.2 (November 24, 1999).

One of the numerous delegation orders that were updated in November 1999 to conform to the new organizational structure was CDO 42. As revised, CDO 42 expressed in a Note appended to paragraph 1 that the authority to execute consents extending the statute of limitation on assessment on behalf of the Commissioner was additionally delegated to "L/MSB Directors of Compliance [and] Directors, Field Operations. . . ." <u>See</u> IRM 1.2.2.23, CDO 42 ¶ 1 Note (Rev. 28) (Supp. November 24, 1999). Delegates were additionally authorized to redelegate the authority to a level no lower than Chief Review and Assistance; personnel assigned to the Examination District Office Support Unit, GS-11 or higher; Document Matching Branch; Customer Service Branch managers; Revenue Officer Reviewers; and Customer Service Center Branch Managers (among others). CDO 42 ¶ 2 Note. The delegation order continued the delegation of authority to Regional Commissioners and District Directors.

On November 8, 2000, a second update to the CDOs was issued under a transmittal from the Deputy Commissioner. Although published on November 8, 2000, the update was effective October 2, 2000. In relevant part, the manual transmittal stated as follows:

> In November 1999 we issued a revision of this IRM to include new titles reflecting the changes in the organization. These were inserted into paragraphs using "Notes" or into existing text using a bold font. This revision includes additional new titles or other modifications that reflect the changes in the organization to date.

Manual Transmittal, IRM 1.2.2 (November 8, 2000).

The update of CDO 42 provided for the following delegates in the LMSB organization to have the authority to execute consents fixing the period of limitation on assessment on behalf of the Commissioner: "LMSB Director, International [and] Directors, Field Operations." IRM 1.2.2.24, CDO 42 ¶ 1 Note (Rev. 28) (Supp. October 2, 2000).[2] These delegates were further authorized to redelegate the authority to a level no lower than "LMSB Team Managers." CDO 42 ¶ 2 Second Note.

Although the October 2000 CDO 42 does not list the LMSB Division Commissioner as an authorized delegate, the principle of serial redelegation discussed above ensures that all of the officials in the chain of command between the Commissioner and the Directors, Field Operations (DFOs), including the Division Commissioner, have the requisite authority to execute consents on behalf of the Commissioner. See IRM 1.2.3.4.2(2). See also IRM 1221(2) (May 16, 1990; superseded); Treas. Reg. § 301.7701-9(b). This ensures that the officials supervising lower level delegates hold the same authority as those they supervise and, thus, are able to, in effect, supervise the use of that authority. See IRM 1.2.3.4.2(2).

In addition to the authority delegated to the Division Commissioners by virtue of CDO 42, Division Commissioners are also authorized to:

> take actions previously delegated to District Directors, Regional Commissioners, Directors of Service Centers, and Assistant Commissioners by Treasury Regulations, Treasury Decisions, or Revenue Procedures for matters under their jurisdiction or cases under their responsibility; and to delegate same to officers and persons under their supervision, except where prohibited by law or where inconsistent with [a CDO]."

IRM 1.2.2.107, CDO 193 ¶ 6 (Rev. 6) (November 8, 2000) (emphasis supplied). Accordingly, although not listed in Treas. Reg. § 301.6501(c)-1, the LMSB Division Commissioner can consent to a taxpayer's waiver of the period of limitation on assessment either pursuant to CDO 193 or under the principle of serial redelegation. Likewise, he can redelegate this authority and can permit his delegates to further redelegate the authority, as long as the redelegation is not "inconsistent with" CDO 42. CDO 193 ¶ 6-8.

Exercising their authority, the Division Commissioners, for purposes of efficiency and administration, have set up uniform systems of division delegation orders that redelegate authority delegated to them and their subordinates by the CDOs, Treasury Regulations, and other sources of authority. These division-wide delegations resemble and accomplish the same purpose as prior local delegations by Regional

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[2] This revision substituted the term "Director, International" for the language "Directors of Compliance" and continued the delegation to the Directors, Field Operations.

Commissioners and District Directors.[3] They exist to transmit redelegable authority within any limitations of the superior delegation.

On August 21, 2000, the LMSB Division Commissioner delegated to LMSB Territory Managers and Team Managers the authority "to sign their names on behalf of the Director of Field Operations to all consents fixing the period of limitations on assessments." See LMSB Division Delegation Order 001-42 (August 21, 2000). The order further provides that "when consent agreements are executed by the delegates of the Director of Field Operations, the Director's name (which may be written, typed or stamped) should be placed directly above his/her title," and an illustration is provided. Id. The directive mirrors the procedures in existence prior to the reorganization.

In addition, on March 21, 2001 (and made effective October 1, 2000), the LMSB Commissioner delegated to "All LMSB Directors and Deputy Directors" the authority to take actions previously delegated to District Directors . . . by Treasury Regulations . . . for matters under their jurisdiction or cases under their responsibility; and to delegate same to officers and persons under their supervision." LMSB Division Delegation Order 026-193 (March 21, 2001). The delegation is subject to the restrictions set forth in CDO 193 and CDO 42. Both orders contain standard ratification language. See LMSB Division Delegation Orders 001-42 (August 21, 2000) and 026-193 (March 21, 2001).

[3] The practice of redelegating the authority delegated by the Commissioner to an official's line subordinate is longstanding and specifically referenced in prior delegation order guidance. See IRM 1223(3) (May 16, 1990; superseded). Although the reference to this principle has been omitted from the more streamlined current guidance, we do not regard the omission as a change in technical position. See Manual Transmittal IRM 1.2.3.4 (April 28, 2000) (Mentioning only changes to procedures for preparing, revising, and rescinding delegation orders).

Other Means of Transmitting Authority

The Service has historically recognized that delegations of the Commissioner's authority can be transmitted in a number of formats and ways, not all of which are styled "orders." See IRM 1.2.3.4.4; accord IRM 1222 (May 16, 1990; superseded). For example, authority can be transmitted by properly crafted memorandum or by "functional statement.[4]" Id. These statements define a group of activities performed to achieve an organization's mission. IRM 1.2.3.4.4.1. As historically interpreted, such statements constitute a delegation of authority to the responsible official, who is the incumbent of the position or head of the organizational entity to which the assignment is made. See IRM 1222(3)(June 5, 1989), superseded by, IRM 1.2.3.4 (April 28, 2000). This includes the authority to perform whatever official acts are necessary to exercise such functions and carry out the Service's mission, including the issuance and signing of official documents. IRM 1.2.3.4.4.1.

Analysis

The version of CDO 42 that was effective on and after October 2, 2000, and is also effective today, is the version published on November 8, 2000. This version of the CDO delegates the authority to sign consents within LMSB operating division to DFOs and the Director, International. See CDO 42 ¶ 1 Note (Rev. 28) (Supp. October 2, 2000). No delegation to other LMSB officials is expressly made. Id. Similarly, LMSB Division Delegation Order 001-42 redelegates the authority to execute consents extending the period of limitation on assessment to Team Managers, and their line superiors, Territory Managers: "to sign their names on behalf of the Director of Field Operations." See LMSB Division Delegation Order 001-42 (August 1, 2000). It also does not reference the DFS. The Order makes no mention of the Director, International, or the DFS. Nonetheless, it is a proper, albeit more detailed, delegation of authority granted to the DFOs by CDO 42.

Notwithstanding the lack of an express mention of the DFS in CDO 42, however, we conclude that Team Managers in the Field Specialists organization, who perform the same function as Team Managers in the five Industry organizations and are responsible for monitoring and protecting the applicable limitation statutes, have the requisite authority to execute consents extending the assessment period on behalf of the Commissioner. First, neither version of CDO 42 was meant to alter or supersede existing delegations of authority to the extent a duly authorized delegate continued to

[4] Historically, functional statements have been published in IRM 1.1 and, prior to that, in IRM 1100. Functional statements, such as those included in stand-up packages sent to the Commissioner, have not yet been incorporated into IRM 1.1.

hold a functionally equivalent position and to discharge the same duties as prior to the reorganization. See generally IRM 1.2.3.4; Manual Transmittal, IRM 1.2.2 (Nov. 24, 1999). This is evident from the language and the structure of these orders.

Additionally, despite the recent amendments to CDO 42, no substantive changes in the delegation of authority were made. The addition of new titles to CDO 42 was necessitated by changes in the Service's organizational structure; not by an administrative policy decision to alter the chain of delegation. All of the post-reorganization delegation orders incorporate and continue the prior delegations. For example, CDO 42, which has been revised twice since the beginning of 1999, and will continue to be revised as the Service refines its new structure, still contains references to District Directors and Regional Commissioners. See also CDO 193 (Rev. 6) (November 8, 2000). This is not to say that the current CDO 42 continues to be a valid and enforceable delegation of authority to positions that no longer exist. Rather, the continued reference to DDs and RCs demonstrates that the changes were not designed to replace the prior structure but only to fill in gaps created by the restructuring. The natural implication of this is that the Service and the Commissioner intended persons whose position and responsibilities remained virtually the same throughout the reorganization to perform their duties without lapse in the necessary authority.

The legislative history of RRA 98 supports this conclusion. See Pub. L. No. 105-206, § 1001, 112 Stat. 685, 689-690 (1998). With respect to section 1001, the legislative history provides, in pertinent part, as follows:

> The IRS Commissioner is directed to restructure the IRS by eliminating or substantially modifying the present-law three-tier geographic structure and replacing it with an organizational structure that features operating units serving particular groups of taxpayers with similar needs. . . . The legality of IRS actions will not be affected pending further appropriate statutory changes relating to such a reorganization (e.g., eliminating statutory references to obsolete positions).

H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 194 (June 24, 1998). While the history is not specifically directed at delegations within the control of the agency, it stands to reason that the legality of less important regulatory and administrative delegations (as opposed to statutory ones) should also not be affected pending further appropriate changes relating to the reorganization.

Further, the minimal change in the functional responsibility of group/team managers before and after the stand-up of LMSB supports the conclusions that no substantive change in the delegation of authority to these individuals was contemplated. As noted above, prior to the stand-up of LMSB Division, Group Managers in the Examination Division were responsible for monitoring the statute of limitation on assessment on cases assigned to their group. Although the title of the Group Manager changed to Team Manager and Team Managers no longer report to a District Director, their function and that of their group remain virtually the same. In fact, responsibility for certain cases, including responsibility for monitoring and protecting the assessment statute, has typically stayed with the same group.

The responsibility to monitor applicable statute of limitation is also not limited to Team Managers in Field Operations. Team Managers whose teams audit cases in the Field Specialists organization are likewise responsible for monitoring and protecting the limitation periods. Without authority to accept consents extending the statutory period, the Team Managers would not be able to perform their respective functions It stands to reason, therefore, that the Commissioner intends that individuals serving in the position of a Team Manager in the LMSB division, whether in the DFO or DFS parts of the organization, have the authority to execute consents on his behalf.

The case law supports this interpretation. See Mecom v. Commissioner, 101 T.C. 374 (1993), aff'd 40 F.3d 385 (5th Cir. 1994); Cindrich v. Commissioner, T.C. Memo 1984-294, aff'd without opinion,770F.2d 1067 (3d Cir. 1985). In both Cindrich and Mecom, the Tax Court was called upon to determine the validity of consents extending the statute of limitation on assessment signed by Service officials holding titles not mentioned in the local delegation order. CDO 42 effective at the time of Mecom delegated the authority to execute consents to District Directors and authorized a redelegation to reviewers, Grade GS-11; group managers; case mangers; and return program managers. Mecom, 101 T.C. at 387, citing CDO 42 (Rev. 12) (May 24, 1979). The District Director, however, failed to expressly name all of these positions in the local delegation order. The taxpayer argued that a consent signed by a case manager and a "classifier/screener" were invalid because they were not executed by a duly authorized delegate of the Commissioner.

The Tax Court found the consents valid. The court focused on position equivalency between group manager, case manager, and a classifier/screener. The court noted:

> Both positions are held by supervisors, who are assigned responsibility for seeing that the period of limitation for cases within their group is kept open, and who are called on to sign consents extending the time to assess tax in carrying out their responsibility.

Mecom, 101 T.C. at 388. The court further stated:

> Where different titles are used to describe the same position, person holding either title are delegated the necessary authority to sign consents.

Id. at 390, citing Cindrich, supra.

Although there are differences between Mecom and Cindrich and the present situation, these distinctions are not meaningful when the purpose and scope of a delegation order is considered. The holdings of Mecom and Cindrich afford positions, performing the

same function under different titles, the authority that is delegated to either position. In the instant situation, the delegation order expressly mentions Team Managers in the five industries but not Team Managers who perform the same duties within the Field Specialists organization. The express inclusion of DFO Team Managers does not, however, necessitate nor imply that DFS Team Managers are excluded.
Team Managers under both DFOs and the Director, Field Specialists, are expected to process cases in the same way, including obtaining consents when necessary to protect the statute. Internal documents describe the Field Specialists organization as "aligned with the five industry groups," participating in the examination function by providing support in their respective specialty areas, and supporting the examination function by conducting efficient, fair, and timely examination in their respective area. See LMSB Employee Reference Guide, p. 5 (September 29, 2000). The Organizational Blueprint referred to this organization as "Examination Specialists," who would conduct "efficient, fair, and timely examinations in their respective specialty areas." Doc. 11052, IRS Organizational Blueprint, pp. 4-6 - 4-7 (Rev. 4-2000).

In addition, the Team Manager position description for both organizations is very similar, except that the position of a Team Manager in the DFS organization is framed around managing Field Specialists who examine specialty issues and transactions and who provide specialty expertise, while the Team Managers under the DFOs manage examinations that do not involve specialty issues and transactions requiring such speciality expertise. Similarly, the Territory Manager position description for both organizations is very similar, except that the Territory Manager position in the DFS organization is framed around the management of a program, in a given geographic area, involving the application of technical expertise to examinations in the specialty area, while the Territory Manager's in the DFOs organizations manage more broadly based customer service and compliance activities.

Finally, the levels of management in both organizations are virtually parallel. Both organizations have front-line Team Managers and second level Territory Managers. The only discernible difference is that the Field Specialists organization has an intervening GS-15 level, rendering the DFS the first executive in charge of Team and Territory Managers. In this respect, he is the same as a DFO. A comparison of DFO and DFS position descriptions also shows a great similarity of function, except that, again, the DFS is charged with managing a comprehensive domestic and international tax administration program for specialists as opposed to generalists. While the DFS is responsible for the provision of complete domestic and international tax administration services to meet the needs of LMSB entities within assigned industries, his organization is made available to support generalist examination teams as well.

Applying these facts to the reasoning adopted by the courts in Cindrich and Mecom leads us to conclude that the Team Managers in the Field Specialists organization possess requisite authority to execute consents extending the statute of limitation on assessment on behalf of the Commissioner.

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 Branch 2, Administrative Provisions and Judicial Practice at (202) 622-4940, if you have any further questions.