



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

OFFICE OF
CHIEF COUNSEL

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Response Date: May 23, 2002

INTERNAL REVENUE SERVICE NATIONAL OFFICE LEGAL ADVICE

MEMORANDUM FOR Associate Area Counsel

FROM: Associate Chief Counsel (Corporate) CC:CORP:B03

SUBJECT: Proper Parties to Execute Forms 872

This Chief Counsel Advice responds to your memoranda dated March 30, 2001, and May 7, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Corporation A =

Corporation B =

Corporation C =

Corporation D =

Corporation E =

Corporation F =

Corporation G =

Date 1 =

Date 2 =

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Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Date 10 =
Date 11 =
Date 12 =
Date 13 =
Date X =
Date Y =

ISSUES

- (1) Who is the proper party to execute a Form 872 for Corporation A for the period ended Date 3?
- (2) Who is the proper party to execute Forms 872 for Corporation A for the periods ended Date 9 and Date 11?
- (3) Who is the proper party to execute Forms 872 for Corporation B for the period ended Date 3 and the final consolidated return on Date 7?
- (4) How should Forms 872 and Forms SS-10 be executed for the members of the former Corporation B consolidated group that filed separate returns for the periods ended Date 9 and Date 11?
- (5) What language should be included for the Form 872 for Corporation E for the taxable period ended Date 11?

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CONCLUSIONS

ISSUE 1:

Two Forms 872 should be obtained: one from Corporation A and one from Corporation E. On the first Form 872, the following language should be used:

Corporation A (EIN xx-xxxxxxx) as alternative agent under Temp. Reg. § 1.1502-77T for the members of the Corporation B and Subsidiaries consolidated group.*

Put an asterisk after “group.” At the bottom of the Form 872, write:

*This is with respect to the Corporation B and Subsidiaries consolidated group for the taxable year ending Date 3.

On the second Form 872, the following language should be used:

Corporation E (EIN xx-xxxxxxx), formerly Corporation D (EIN xx-xxxxxxx), formerly Corporation C (EIN xx-xxxxxxx), as successor in interest to Corporation B and Subsidiaries (EIN xx-xxxxxxx) and as alternative agent under Temp. Reg. § 1.1502-77T for the members of the Corporation B and Subsidiaries consolidated group.

Put an asterisk after “group.” At the bottom of the Form 872, write:

*This is with respect to the Corporation B and Subsidiaries consolidated group for the taxable year ending Date 3.

ISSUE 2:

A Form 872 should be obtained from Corporation E. The following language should be used:

Corporation E (EIN xx-xxxxxxx), formerly Corporation D (EIN xx-xxxxxxx), formerly Corporation C (EIN xx-xxxxxxx), as successor in interest to Corporation B and Subsidiaries (EIN xx-xxxxxxx) and as alternative agent under Temp. Reg. § 1.1502-77T for the members of the Corporation B and Subsidiaries consolidated group.

Put an asterisk after “group.” At the bottom of the Form 872, write:

* This is with respect to the Corporation B and Subsidiaries consolidated group for the taxable period ending on Date 7.

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From Date 8 through Date 9 and then Date 10 through Date 11, Corporation A filed separate returns. Therefore, the proper party to execute a Form 872 for these time frames is an authorized party from Corporation A.

ISSUE 3:

A Form 872 should be obtained from Corporation E. The following language should be used:

Corporation E (EIN xx-xxxxxxx), formerly Corporation D (EIN xx-xxxxxxx), formerly Corporation C (EIN xx-xxxxxxx), as successor in interest to Corporation B and Subsidiaries (EIN xx-xxxxxxx) and as alternative agent under Temp. Reg. § 1.1502-77T for the members of the Corporation B and Subsidiaries consolidated group.

Put an asterisk after “group.” At the bottom of the Form 872, write:

*This is with respect to the Corporation B and Subsidiaries consolidated group for the taxable year ending Date 3, and the final consolidated return for the taxable period ending on Date 7.

ISSUE 4:

Each member of the former Corporation B consolidated group that filed separate returns and is still in existence is the proper party to execute a Form 872 for that period. If a member of the group filed a separate return but is not currently in existence, then that member’s successor is the proper party to execute a Form 872. Alternatively, Rev. Proc. 72-38 can be followed to execute a Form 872 or SS-10.

ISSUE 5:

A Form 872 should be obtained from Corporation E. The following language should be used:

Corporation E (EIN xx-xxxxxxx), formerly Corporation D, formerly Corporation C, formerly Corporation F, for the taxable period ending Date 11.

FACTS

As we understand the facts from your memoranda, Corporation A was the common parent of an affiliated group of corporations that filed a consolidated federal income tax return with a taxable year ending Date X. On Date 1, Corporation A formed a wholly owned subsidiary, Corporation B, for purposes of

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merging with Corporation G. On Date 2, the shareholders of Corporation A exchanged their Corporation A stock on a share for share basis for Corporation B common stock (the Restructuring).

On Date 5, Corporation B and Corporation G formed Corporation F. On Date 6, Corporation F changed its name to Corporation C. On Date 7, Corporation B and Corporation G merged into Corporation C. Corporation A merged into a transitory subsidiary of Corporation F and survived the merger. Also on Date 7, Corporation C, the surviving entity, changed its name to Corporation D. Corporation D uses a tax year ending Date Y. On Date 7, Corporation B filed its final consolidated tax return. Each member of the former Corporation B consolidated group filed separate Forms 1120 for the remainder of their tax year, from the period Date 8 through Date 9 and then from the period Date 10 through Date 11. On Date 12, Corporation D changed its name to Corporation E.

LAW AND ANALYSIS

ISSUE 1: We recommend obtaining a Form 872 from both Corporation A and the successor to Corporation B because an open question of law exists concerning whether the Restructuring resulted in the termination of the old Corporation A consolidated group and formation of a new Corporation B group or the continuation of the old Corporation A group under §1.1502-75(d) pursuant to a group structure change with a new common parent.

For the first Form 872 from Corporation A, we suggest using the following language:

Corporation A (EIN xx-xxxxxxx) as alternative agent under Temp. Reg. § 1.1502-77T for the members of the Corporation B and Subsidiaries consolidated group.*

Put an asterisk after “group.” At the bottom of the Form 872, write:

*This is with respect to the Corporation B and Subsidiaries consolidated group for the taxable year ending Date 3.

For the second Form 872 from the successor of Corporation B, we suggest the following language:

Corporation E (EIN xx-xxxxxxx), formerly Corporation D (EIN xx-xxxxxxx), formerly Corporation C (EIN xx-xxxxxxx), as successor in interest to Corporation B and Subsidiaries (EIN xx-xxxxxxx) and as alternative agent under Temp. Reg. § 1.1502-77T for the members of the Corporation B and Subsidiaries consolidated group.*

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Put an asterisk after “group.” At the bottom of the Form 872, write:

*This is with respect to the Corporation B and Subsidiaries consolidated group for the taxable year ending Date 3.

ISSUE 2: Corporation A's tax year must be broken into three periods. From Date 4 through Date 7, the proper party to execute a Form 872 is:

Corporation E (EIN xx-xxxxxxx), formerly Corporation D (EIN xx-xxxxxxx), formerly Corporation C (EIN xx-xxxxxxx), as successor in interest to Corporation B and Subsidiaries (EIN xx-xxxxxxx) and as alternative agent under Temp. Reg. § 1.1502-77T for the members of the Corporation B and Subsidiaries consolidated group.*

Put an asterisk after “group.” At the bottom of the Form 872, write:

* This is with respect to the Corporation B and Subsidiaries consolidated group for the taxable period ending on Date 7.

From Date 8 through Date 9 and then Date 10 through Date 11, Corporation A filed separate returns. Therefore, the proper party to execute a Form 872 for these time frames is an authorized party from Corporation A.

ISSUE 3: Under ISSUE 1 we recommend that the successor to Corporation B execute a Form 872 for the period ending Date 3. That same party is the proper party to execute a Form 872 for the period ending Date 7:

Corporation E (EIN xx-xxxxxxx), formerly Corporation D (EIN xx-xxxxxxx), formerly Corporation C (EIN xx-xxxxxxx), as successor in interest to Corporation B and Subsidiaries (EIN xx-xxxxxxx) and as alternative agent under Temp. Reg. § 1.1502-77T for the members of the Corporation B and Subsidiaries consolidated group.*

Put an asterisk after “group.” At the bottom of the Form 872, write:

*This is with respect to the Corporation B and Subsidiaries consolidated group for the taxable year ending Date 3, and the final consolidated return for the taxable period ending on Date 7.

ISSUE 4: Each member of the former Corporation B consolidated group that filed separate returns and is still in existence is the proper party to execute a Form 872 for that period (see ISSUE 2). For example, a duly authorized agent from Corporation A is the proper party to execute a Form 872 for the periods from Date 7 through Date 11. If a member of the group filed a separate return but is not

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currently in existence, then that member's successor is the proper party to execute a Form 872. Alternatively, Rev. Proc. 72-38 can be followed to execute a Form 872 or SS-10.

ISSUE 5: According to facts in your memoranda, Corporation D changed its name to Corporation E on Date 12. Whatever Corporation E's legal name was on its Date 11 tax return is the party to whom the Form 872 should apply. According to a conversation with the examining field agent on Date 13, a separate (non-consolidated) tax return was filed for the taxable period from Date 5 to Date 11 for the party currently known as Corporation E. Therefore, a duly authorized officer from Corporation E is the proper party to executed the Form 872. The language we suggest using is:

Corporation E (EIN xx-xxxxxxx), formerly Corporation D, formerly Corporation C, formerly Corporation F, for the taxable period ending Date 11.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

All legal names of the corporations involved herein, EIN numbers, and dates on the relevant tax returns should be confirmed.

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 (202) 622-7790 if you have any further questions.

Associate Chief Counsel (Corporate)

By: _____
Chief, Branch 3