

Internal Revenue Service, Treasury

§ 1.1502-77

taxable year beginning April 1, 1967, and ending September 30, 1967, should be filed no later than March 15, 1968.

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§ 1.1502-77 Agent for the group.

(a) *Scope of agency*—(1) *In general*—(i) *Common parent*. Except as provided in paragraphs (a)(3) and (6) of this section, the common parent (or a substitute agent described in paragraph (a)(1)(ii) of this section) for a consolidated return year is the sole agent (agent for the group) that is authorized to act in its own name with respect to all matters relating to the tax liability for that consolidated return year, for—

(A) Each member in the group; and

(B) Any successor (see paragraph (a)(1)(iii) of this section) of a member.

(ii) *Substitute agents*. For purposes of this section, any corporation designated as a substitute agent pursuant to paragraph (d) of this section to replace the common parent or a previously designated substitute agent acts as agent for the group to the same extent and subject to the same limitations as are applicable to the common parent, and any reference in this section to the common parent includes any such substitute agent.

(iii) *Successor*. For purposes of this section only, the term *successor* means an individual or entity (including a disregarded entity) that is primarily liable, pursuant to applicable law (including, for example, by operation of a state or Federal merger statute), for the tax liability of a member of the group. Such determination is made without regard to § 1.1502-1(f)(4) or 1.1502-6(a). (For inclusion of a successor in references to a subsidiary or member, see paragraph (c)(2) of this section.)

(iv) *Disregarded entity*. If a subsidiary of a group becomes, or its successor is or becomes, a disregarded entity for Federal tax purposes, the common parent continues to serve as the agent with respect to that subsidiary's tax liability under § 1.1502-6 for consolidated return years during which it was in-

cluded in the group, even though the entity generally is not treated as a person separate from its owner for Federal tax purposes.

(v) *Transferee liability*. For purposes of assessing, paying and collecting transferee liability, any exercise of or reliance on the common parent's agency authority pursuant to this section is binding on a transferee (or subsequent transferees) of a member, regardless of whether the member's existence terminates prior to such exercise or reliance.

(vi) *Purported common parent*. If any corporation files a consolidated return purporting to be the common parent of a consolidated group but is subsequently determined not to have been the common parent of the claimed group, that corporation is treated, to the extent necessary to avoid prejudice to the Commissioner, as if it were the common parent.

(2) *Examples of matters subject to agency*. With respect to any consolidated return year for which it is the common parent—

(i) The common parent makes any election (or similar choice of a permissible option) that is available to a subsidiary in the computation of its separate taxable income, and any change in an election (or similar choice of a permissible option) previously made by or for a subsidiary, including, for example, a request to change a subsidiary's method or period of accounting;

(ii) All correspondence concerning the income tax liability for the consolidated return year is carried on directly with the common parent;

(iii) The common parent files for all extensions of time, including extensions of time for payment of tax under section 6164, and any extension so filed is considered as having been filed by each member;

(iv) The common parent gives waivers, gives bonds, and executes 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, is considered as having also been given or executed by each member;

(v) The common parent files claims for refund, and any refund is made directly to and in the name of the common parent and discharges any liability of the Government to any member with respect to such refund;

(vi) The common parent takes any action on behalf of a member of the group with respect to a foreign corporation, for example, elections by, and changes to the method of accounting of, a controlled foreign corporation in accordance with § 1.964-1(c)(3);

(vii) Notices of claim disallowance are mailed only to the common parent, and the mailing to the common parent is considered as a mailing to each member;

(viii) Notices of deficiencies are mailed only to the common parent (except as provided in paragraph (b) of this section), and the mailing to the common parent is considered as a mailing to each member;

(ix) Notices of final partnership administrative adjustment under section 6223 with respect to any partnership in which a member of the group is a partner may be mailed to the common parent, and, if so, the mailing to the common parent is considered as a mailing to each member that is a partner entitled to receive such notice (for other rules regarding partnership proceedings, see paragraphs (a)(3)(v) and (a)(6)(iii) of this section);

(x) The common parent files petitions and conducts proceedings before the United States Tax Court, and any such petition is considered as also having been filed by each member;

(xi) Any assessment of tax may be made in the name of the common parent, and an assessment naming the common parent is considered as an assessment with respect to each member; and

(xii) Notice and demand for payment of taxes is given only to the common parent, and such notice and demand is considered as a notice and demand to each member.

(3) *Matters reserved to subsidiaries.* Except as provided in this paragraph (a)(3) and paragraph (a)(6) of this section, no subsidiary has authority to act for or to represent itself in any matter related to the tax liability for the consolidated return year. The following

matters, however, are reserved exclusively to each subsidiary—

(i) The making of the consent required by § 1.1502-75(a)(1);

(ii) Any action with respect to the subsidiary's liability for a federal tax other than the income tax imposed by chapter 1 of the Internal Revenue Code (including, for example, employment taxes under chapters 21 through 25 of the Internal Revenue Code, and miscellaneous excise taxes under chapters 31 through 47 of the Internal Revenue Code);

(iii) The making of an election under section 936(e);

(iv) The making of an election to be treated as a DISC under § 1.992-2; and

(v) Any actions by a subsidiary acting as tax matters partner under sections 6221 through 6234 and the accompanying regulations (but see paragraph (a)(2)(ix) of this section regarding the mailing of a final partnership administrative adjustment to the common parent).

(4) *Term of agency—(i) In general.* Except as provided in paragraph (a)(4)(iii) of this section, the common parent for the consolidated return year remains the agent for the group with respect to that year until the common parent's existence terminates, regardless of whether one or more subsidiaries in that year cease to be members of the group, whether the group files a consolidated return for any subsequent year, whether the common parent ceases to be the common parent or a member of the group in any subsequent year, or whether the group continues pursuant to § 1.1502-75(d) with a new common parent in any subsequent year.

(ii) *Replacement of substitute agent designated by Commissioner.* If the Commissioner replaces a previously designated substitute agent pursuant to paragraph (d)(3)(ii) of this section, the replaced substitute agent ceases to be the agent after the Commissioner designates another substitute agent.

(iii) *New common parent after a group structure change.* If the group continues in existence with a new common parent pursuant to § 1.1502-75(d) during a consolidated return year, the common parent at the beginning of the year is the agent for the group through the date of

the §1.1502-75(d) transaction, and the new common parent becomes the agent for the group beginning the day after the transaction, at which time it becomes the agent for the group with respect to the entire consolidated return year (including the period through the date of the transaction) and the former common parent is no longer the agent for that year.

(5) *Identifying members in notice of a lien.* Notwithstanding any other provisions of this paragraph (a), any notice of a lien, any levy or any other proceeding to collect the amount of any assessment, after the assessment has been made, must name the entity from which such collection is to be made.

(6) *Direct dealing with a member—(i) Several liability.* The Commissioner may, upon issuing to the common parent written notice that expressly invokes the authority of this provision, deal directly with any member of the group with respect to its liability under §1.1502-6 for the consolidated tax of the group, in which event such member has sole authority to act for itself with respect to that liability. However, if the Commissioner believes or has reason to believe that the existence of the common parent has terminated, he may, if he deems it advisable, deal directly with any member with respect to that member's liability under §1.1502-6 without giving the notice required by this provision.

(ii) *Information requests.* The Commissioner may, upon informing the common parent, request information relevant to the consolidated tax liability from any member of the group. However, if the Commissioner believes or has reason to believe that the existence of the common parent has terminated, he may request such information from any member of the group without informing the common parent.

(iii) *Members as partners in partnerships.* The Commissioner generally will deal directly with any member in its capacity as a partner of a partnership that is subject to the provisions of sections 6221 through 6234 and the accompanying regulations (but see paragraph (a)(2)(ix) of this section regarding the mailing of a final partnership administrative adjustment to the common parent). However, if requested to do so in

accordance with the provisions of §301.6223(c)-1(b) of this chapter, the Commissioner may deal with the common parent as agent for such member on any matter related to the partnership, except in regards to a settlement under section 6224(c) and except to the extent the member acts as tax matters partner of the partnership.

(b) *Copy of notice of deficiency to entity that has ceased to be a member of the group.* An entity that ceases to be a member of the group during or after a consolidated return year may file a written notice of that fact with the Commissioner and request a copy of any notice of deficiency with respect to the tax for a consolidated return year during which the entity was a member, or a copy of any notice and demand for payment of such deficiency, or both. Such filing does not limit the scope of the agency of the common parent provided for in paragraph (a) of this section. Any failure by the Commissioner to comply with such request does not limit an entity's tax liability under §1.1502-6. For purposes of this paragraph (b), references to an entity include a successor of such entity.

(c) *References to member or subsidiary.* For purposes of this section, all references to a member or subsidiary for a consolidated return year include—

(1) Each corporation that was a member of the group during any part of such year (except that any reference to a subsidiary does not include the common parent);

(2) Except as indicated otherwise, a successor (as defined in paragraph (a)(1)(iii) of this section) of any corporation described in paragraph (c)(1) of this section; and

(3) Each corporation whose income was included in the consolidated return for such year, notwithstanding that the tax liability of such corporation should have been computed on the basis of a separate return, or as a member of another consolidated group, under the provisions of §1.1502-75.

(d) *Termination of common parent—(1) Designation of substitute agent by common parent.* (i) If the common parent's existence terminates, it may designate a substitute agent for the group and notify the Commissioner, as provided in this paragraph (d)(1).

(A) Subject to the Commissioner's approval under paragraph (d)(1)(ii) of this section, before the common parent's existence terminates, the common parent may designate, for each consolidated return year for which it is the common parent and for which the period of limitations either for assessment, for collection after assessment, or for claiming a credit or refund has not expired, one of the following to act as substitute agent in its place—

(1) Any corporation that was a member of the group during any part of the consolidated return year and, except as provided in paragraph (e)(3)(ii) of this section, has not subsequently been disregarded as an entity separate from its owner or reclassified as a partnership for Federal tax purposes; or

(2) Any successor (as defined in paragraph (a)(1)(iii) of this section) of such a corporation or of the common parent that is a domestic corporation (and, except as provided in paragraph (e)(3)(ii) of this section, is not disregarded as an entity separate from its owner or classified as a partnership for Federal tax purposes), including a corporation that will become a successor at the time that the common parent's existence terminates.

(B) The common parent must notify the Commissioner in writing (under procedures prescribed by the Commissioner) of the designation and provide the following—

(1) An agreement executed by the designated corporation agreeing to serve as the group's substitute agent; and

(2) If the designated corporation was not itself a member of the group during the consolidated return year (because the designated corporation is a successor of a member of the group for the consolidated return year), a statement by the designated corporation acknowledging that it is or will be primarily liable for the consolidated tax as a successor of a member.

(ii) A designation under paragraph (d)(1)(i)(A) of this section does not apply unless and until it is approved by the Commissioner. The Commissioner's approval of such a designation is not effective before the existence of the common parent terminates.

(2) *Default substitute agent.* If the common parent fails to designate a substitute agent for the group before its existence terminates and if the common parent has a single successor that is a domestic corporation, such successor becomes the substitute agent for the group upon termination of the common parent's existence. However, see paragraph (d)(4) of this section regarding the consequences of the successor's failure to notify the Commissioner of its status as default substitute agent in accordance with procedures established by the Commissioner.

(3) *Designation by the Commissioner.* (i) In the event the common parent's existence terminates and no designation is made and approved under paragraph (d)(1) of this section and the Commissioner believes or has reason to believe that there is no successor of the common parent that satisfies the requirements of paragraph (d)(2) of this section (or the Commissioner believes or has reason to believe there is such a successor but has no last known address on file for such successor), the Commissioner may, at any time, with or without a request from any member of the group, designate a corporation described in paragraph (d)(1)(i)(A) of this section to act as the substitute agent. The Commissioner will notify the designated substitute agent in writing of its designation, and the designation is effective upon receipt by the designated substitute agent of such notice. The designated substitute agent must give notice of the designation to each corporation that was a member of the group during any part of the consolidated return year, but a failure by the designated substitute agent to notify any such member of the group does not invalidate the designation.

(ii) At the request of any member, the Commissioner may, but is not required to, replace a substitute agent previously designated under paragraph (d)(3)(i) of this section with another corporation described in paragraph (d)(1)(i)(A) of this section.

(4) *Absence of designation or notification of default substitute agent.* Until a designation of a substitute agent for the group under paragraph (d)(1) of this section has become effective, the Commissioner has received notification in

accordance with procedures established by the Commissioner that a successor qualifying under paragraph (d)(2) of this section has become the substitute agent by default, or the Commissioner has designated a substitute agent under paragraph (d)(3) of this section—

(i) Any notice of deficiency or other communication mailed to the common parent, even if no longer in existence, is considered as having been properly mailed to the agent for the group; and

(ii) The Commissioner is not required to act on any communication (including, for example, a claim for refund) submitted on behalf of the group by any person other than the common parent (including a successor of the common parent qualifying as a default substitute agent under paragraph (d)(2) of this section).

(e) *Termination of a corporation's existence*—(1) *In general.* For purposes of paragraphs (a)(1)(v), (a)(4)(i), and (d) of this section, the existence of a corporation is deemed to terminate if—

(i) Its existence terminates under applicable law; or

(ii) Except as provided in paragraph (e)(3) of this section, it becomes, for Federal tax purposes, either—

(A) An entity that is disregarded as an entity separate from its owner; or

(B) An entity that is reclassified as a partnership.

(2) *Purported agency.* If the existence of the agent for the group terminates under circumstances described in paragraph (e)(1)(ii) of this section, until the Commissioner has approved the designation of a substitute agent for the group pursuant to paragraph (d)(1) of this section or the Commissioner designates a substitute agent and notifies the designated substitute agent pursuant to paragraph (d)(3) of this section, any post-termination action by that purported agent on behalf of the group has the same effect, to the extent necessary to avoid prejudice to the Commissioner, as if the agent's corporate existence had not terminated.

(3) *Exceptions where no eligible corporation exists.* (i) For purposes of the common parent's term as agent under paragraph (a)(4)(i) of this section and the term as agent of the substitute agent designated under paragraph (d) of this section, if a corporation either

becomes disregarded as an entity separate from its owner or is reclassified as a partnership for Federal tax purposes, its existence is not deemed to terminate if the effect of such termination would be that no corporation remains eligible to serve as the substitute agent for the group's consolidated return year.

(ii) Similarly, for purposes of paragraph (d) of this section, an entity that is either disregarded as an entity separate from its owner or reclassified as a partnership for Federal tax purposes is not precluded from designation as a substitute agent merely because of such classification if the effect of the inability to make such designation would be that no corporation remains eligible to serve as the substitute agent for the group's consolidated return year.

(iii) Any entity described in paragraphs (e)(3)(i) or (ii) of this section that remains or becomes the agent for the group is treated as a corporation for purposes of this section.

(4) *Exception for section 338 transactions.* Notwithstanding section 338(a)(2), a target corporation for which an election is made under section 338 is not deemed to terminate for purposes of this section.

(f) *Examples.* The following examples illustrate the principles of this section. Unless otherwise indicated, each example addresses the question of which corporation is the proper party to execute a consent to waive the statute of limitations for Years 1 and 2 or the more general question of which corporation may be designated as a substitute agent for the group for Years 1 and 2. In each example, as of January 1 of Year 1, the P group consists of P and its two subsidiaries, S and S-1. P, as the common parent of the P group, files consolidated returns for the P group in Years 1 and 2. On January 1 of Year 1, domestic corporations S-2, U, V, W, W-1, X, Y, Z and Z-1 are not related to P or the members of the P group. All corporations are calendar year taxpayers. For none of the tax years at issue does the Commissioner exercise the authority under paragraph (a)(6) of this section to deal with any member separately. Any surviving corporation in a merger is a successor as

described in paragraph (a)(1)(iii) of this section. Any notification to the Commissioner of the designation of the P group's substitute agent also contains a statement signed on behalf of the designated agent that it agrees to act as the group's substitute agent and, in the case of a successor, that it is primarily liable as a successor of a member. The examples are as follows:

Example 1. Disposition of all group members. On December 31 of Year 1, P sells all the stock of S-1 to X. On December 31 of Year 2, P distributes all the stock of S to P's shareholders. P files a separate return for Year 3. Although P is no longer a common parent after Year 2, P remains the agent for the P group for Years 1 and 2. For as long as P remains in existence, only P may execute a waiver of the period of limitations on assessment on behalf of the group for Years 1 and 2.

Example 2. Acquisition of common parent by another group. The facts are the same as in *Example 1*, except on January 1 of Year 3, all of the outstanding stock of P is acquired by Y. P thereafter joins in the Y group consolidated return as a member of Y group. Although P is a member of Y group in Year 3, P remains the agent for the P group for Years 1 and 2. For as long as P remains in existence, only P may execute a waiver of the period of limitations on assessment on behalf of the P group for Years 1 and 2.

Example 3. Merger of common parent—designation of remaining member as substitute agent. On December 31 of Year 1, P sells all the stock of S-1 to X. On July 1 of Year 2, P acquires all the stock of S-2. On November 30 of Year 2, P distributes all the stock of S to P's shareholders. On January 1 of Year 3, P merges into Y corporation. Just before the merger, P notifies the Commissioner in writing of the planned merger and of its designation of S as the substitute agent for the P group for Years 1 and 2. S is the only member that P can designate as the substitute agent for both Years 1 and 2 because it is the only subsidiary that was a member of the P group during part of both years. Although S-2 is the only remaining subsidiary of the P group when P merges into Y, S-2 was a member of the P group only in Year 2. For that reason, S-2 cannot be the substitute agent for the P group for Year 1. Alternatively, P could designate a different substitute agent for each year, selecting S or S-1 as the substitute agent for Year 1, and S or S-2 as the substitute agent for Year 2. P could also designate its successor Y as the substitute agent for both Years 1 and 2.

Example 4. Forward triangular merger of common parent. On January 1 of Year 3, P merges with and into Z-1, a subsidiary of Z, in a forward triangular merger described in section

368(a)(1)(A) and (a)(2)(D). The transaction constitutes a reverse acquisition under §1.1502-75(d)(3)(i) because P's shareholders receive more than 50% of Z's stock in exchange for all of P's stock. Just before the merger, P notifies the Commissioner in writing of the planned merger and its designation of Z-1, the corporation that will survive the planned merger, as the substitute agent of the P group for Years 1 and 2. Because Z-1 will be P's successor (within the meaning of paragraph (a)(1) of this section) after the planned merger, P may designate Z-1 as the substitute agent for the P group for Years 1 and 2, pursuant to paragraph (d)(1) of this section. Alternatively, P could have designated S or S-1 as the substitute agent for the P group for Years 1 and 2. Although Z is the new common parent of the P group, which continues pursuant to §1.1502-75(d)(3)(i), P may not designate Z as the substitute agent for Years 1 and 2 because Z was not a member of the group during any part of Years 1 or 2 and is not a successor of P or any other member of P group.

Example 5. Reverse triangular merger of common parent. On March 1 of Year 3, W-1, a subsidiary of W, merges into P, in a reverse triangular merger described in section 368(a)(1)(A) and (a)(2)(E). P survives the merger with W-1. The transaction constitutes a reverse acquisition under §1.1502-75(d)(3)(i) because P's shareholders receive more than 50% of W's stock in exchange for all of P's stock. Under paragraph (a) of this section, P remains the agent for the P group for Years 1 and 2, even though the P group continues with W as its new common parent pursuant to §1.1502-75(d)(3)(i). Because the transaction constitutes a reverse acquisition, the P group is treated as remaining in existence with W as its common parent. Before March 2 of Year 3, P is the agent for the P group for Year 3. Beginning on March 2 of Year 3, W becomes the agent for the P group with respect to all of Year 3 (including the period through March 1) and subsequent consolidated return years. For as long as P remains in existence, P remains the agent of the P group under paragraph (a) of this section for Years 1 and 2, and therefore only P may execute a waiver of the period of limitations on assessment on behalf of the P group for Years 1 and 2.

Example 6. Reverse triangular merger of common parent—subsequent spinoff of common parent. The facts are the same as in *Example 5*, except that on April 1 of Year 4, in a transaction unrelated to the Year 3 reverse acquisition, P distributes the stock of its subsidiaries S and S-1 to W, and W then distributes the stock of P to the W shareholders. Beginning on March 2 of Year 3, W becomes the agent for the P group with respect to Year 3 (including the period through March 1) and subsequent consolidated return years. Although P is no longer a member of the P

group after the Year 4 spinoff, P remains the agent for the P group under paragraph (a) of this section for Years 1 and 2. Thus, for as long as P remains in existence, only P may execute a waiver of the period of limitations on assessment on behalf of the P group for Years 1 and 2.

Example 7. Qualified stock purchase and section 338 election. On March 31 of Year 2, V purchases the stock of P in a qualified stock purchase (within the meaning of section 338(d)(3)), and V makes a timely election pursuant to section 338(g) with respect to P. Although section 338(a)(2) provides that P is treated as a new corporation as of the beginning of the day after the acquisition date for purposes of subtitle A, paragraph (e)(4) of this section provides that P's existence is not deemed to terminate for purposes of this section notwithstanding the general rule of section 338(a)(2). Therefore, the election under section 338(g) does not result in a termination of P under paragraph (e) of this section, and new P remains the agent of the P group for Year 1 and the period ending March 31 of Year 2 (short Year 2). For as long as new P remains in existence, only new P may execute a waiver of the period of limitations on assessment on behalf of the P group for Year 1 and short Year 2.

Example 8. Fraudulent conveyance of assets. On March 15 of Year 2, P files a consolidated return that includes the income of S and S-1 for Year 1. On December 1 of Year 2, S-1 transfers assets having a fair market value of \$100x to U in exchange for \$10x. This transfer of assets for less than fair market value constitutes a fraudulent conveyance under applicable state law. On March 1 of Year 5, P executes a waiver extending to December 31 of Year 6 the period of limitations on assessment with respect to the group's Year 1 consolidated return. On February 1 of Year 6, the Commissioner issues a notice of deficiency to P asserting a deficiency of \$30x for the P group's Year 1 consolidated tax liability. P does not file a petition for redetermination in the Tax Court, and the Commissioner makes a timely assessment against the P group. P, S and S-1 are all insolvent and are unable to pay the deficiency. On February 1 of Year 8, the Commissioner sends a notice of transferee liability to U, which does not file a petition in the Tax Court. On August 1 of Year 8, the Commissioner assesses the amount of the P group's deficiency against U. Under section 6901(c), the Commissioner may assess U's transferee liability within one year after the expiration of the period of limitations against the transferor S-1. By operation of section 6213(a) and 6503(a), the issuance of the notice of deficiency to P and the expiration of the 90-day period for filing a petition in the Tax Court have the effect of further extending by 150

days the P group's limitations period on assessment from the previously extended date of December 31 of Year 6 to May 30 of Year 7. Pursuant to paragraph (a)(1)(v) of this section, the waiver executed by P on March 1 of Year 5 to extend the period of limitations on assessment to December 31 of Year 6 and the further extension of the P group's limitations period to May 30 of Year 7 (by operation of sections 6213(a) and 6503(a)) have the derivative effect of extending the period of limitations on assessment of U's transferee liability to May 30 of Year 8. By operation of section 6901(f), the issuance of the notice of transferee liability to U and the expiration of the 90-day period for filing a petition in the Tax Court have the effect of further extending the limitations period on assessment of U's liability as a transferee by 150 days, from May 30 of Year 8 to October 27 of Year 8. Accordingly, the Commissioner may send a notice of transferee liability to U at any time on or before May 30 of Year 8 and assess the unpaid liability against U at any time on or before October 27 of Year 8. The result would be the same even if S-1 ceased to exist before March 1 of Year 5, the date P executed the waiver.

(g) *Cross-reference.* For further rules applicable to groups that include insolvent financial institutions, see §301.6402-7 of this chapter.

(h) *Effective date—(1) Application—(i) In general.* This section applies with respect to taxable years beginning on or after June 28, 2002.

(ii) *Election to apply for prior taxable years.* Notwithstanding paragraphs (h)(1)(i) and (h)(2) of this section, the common parent may elect to apply paragraph (d)(1) of this section in lieu of §1.1502-77A(d) in designating a substitute agent for taxable years beginning before June 28, 2002. The common parent makes such an election by expressly referring to the election under this paragraph (h)(1)(ii) in notifying the Commissioner of the designation of the substitute agent. Once made, such election applies to any subsequent designation of a substitute agent for the consolidated return year(s) subject to the election.

(2) *Prior law.* For taxable years beginning before June 28, 2002, see §1.1502-77A.

[T.D. 9002, 67 FR 43540, June 28, 2002]