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**Fr. Doc. E7-14197**

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9343]

RIN 1545-BF30

Agent for a Consolidated Group with Foreign Common Parent

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 1502 that provide the Internal Revenue Service with the authority to designate a domestic member of the consolidated group as a substitute agent to act as the sole agent for the group where a foreign entity is the group's common parent. The final regulations are necessary to clarify and explain the rules governing the designation of an agent for the members of a consolidated group. The regulations affect corporations that join in the filing of a consolidated Federal income tax return where the common parent of the consolidated group is a foreign entity that is treated as a domestic corporation pursuant to section 7874(b) of the Internal Revenue Code (Code) or as the result of a section 953(d) election.

DATES: Effective Date: These regulations are effective July 23, 2007.

Applicability Date: For dates of applicability, see §1.1502-77(h)(3).

FOR FURTHER INFORMATION CONTACT: Stephen R. Cleary, (202) 622-7750, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2006, the IRS and Treasury Department published temporary regulations (TD 9255) in the Federal Register (71 FR 13001) providing the IRS the authority to designate a domestic member of a consolidated group to be the sole agent for the group where the common parent of the group is a foreign entity. A notice of proposed rule making (REG-164247-05) cross-referencing the temporary regulations was published in the Federal Register for the same day (71 FR 13062). The temporary regulations provide procedures for the IRS's designation of a "domestic substitute agent" and define the term of that substitute agent's agency.

Explanation of Provisions and Summary of Comments

No comments were received responding to the notice of proposed rulemaking, and no public hearing was requested or held. The proposed regulations are adopted as amended by this Treasury decision and the corresponding temporary regulations are removed. The temporary regulations, as contained in the 26 CFR part 1 edition revised as of April 1, 2007, remain in effect for certain taxable years as provided by §1.1502-77(h)(3)(ii) of these final regulations.

These final regulations clarify the term of the domestic substitute agent's agency by specifying that once appointed for one or more taxable years of the group, unless the designation is expressly limited to such term, the domestic substitute agent will continue to be the agent for subsequent taxable years of the group until certain specified events occur. These final regulations also specify that, if the domestic substitute agent is the group's agent for a taxable year, it will generally continue to serve as the agent for that year until the domestic substitute agent's existence terminates. Finally, these final regulations clarify that if a group with a domestic substitute agent continues in existence with a new common parent that is a domestic corporation (without regard to section 7874 or a section 953(d) election) during a consolidated return year, the domestic substitute agent is the agent of the group for the year through the date of the transaction in which the new common parent becomes the common parent, and thereafter the new common parent becomes the agent of the group for the entire taxable year.

Additionally, these regulations indicate that §1.1502-77(e)(1) is also applicable for purposes of determining whether a domestic substitute agent's existence has terminated.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to 5 U.S.C. 553(d)(3) it has been determined that that a delayed effective date is unnecessary because this rule finalizes currently effective temporary rules regarding the designation of a domestic substitute agent without substantive change. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.1502-77T to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.1502-77 is amended by:

- 1. Revising paragraph (e)(1).
- 2. Adding paragraph (h)(3).
- 3. Revising paragraph (j).

The additions and revisions read as follows:

§1.1502-77 Agent for the group.

\* \* \* \* \*

(e) Termination of a corporation's existence- - (1) In general. For purposes of paragraphs (a)(1)(v), (a)(4)(i), (d), and (j) 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. \* \* \*

\* \* \* \* \*

(h) \* \* \*

(3) Designation of a domestic substitute agent--(i) In general. The provisions of paragraphs (e)(1) and (j) of this section apply to taxable years for which the consolidated Federal income tax return is due (without extensions) after July 23, 2007.

(ii) Prior law. For taxable years for which the consolidated Federal income tax return is due (without extensions) on or before July 23, 2007, see §1.1502-77(e)(1) as contained in the 26 CFR part 1 edition revised as of April 1, 2007. For taxable years for which the consolidated Federal income tax return is due (without extensions) after March 14, 2006, and on or before July 23, 2007, see §1.1502-77T as contained in the 26 CFR part 1 edition revised as of April 1, 2007.

\* \* \* \* \*

(j) Designation by Commissioner if common parent is treated as a domestic corporation under section 7874 or section 953(d)--(1) In general. If the common parent is an entity created or organized under the law of a foreign country and is treated as a domestic corporation by reason of section 7874 (or regulations under that section) or a section 953(d) election (a foreign common parent), the Commissioner may at any time, with or without a request from any member of the group, designate another member of the group to act as the agent for the group (a domestic substitute agent) for any taxable year for which the consolidated Federal income tax return is due (without extensions) after July 23, 2007, and the foreign common parent would otherwise be the agent for the group. For each such year, the domestic substitute agent will be the sole agent for the group even though the foreign common parent remains in existence. The foreign common parent ceases to be the agent for the group when the Commissioner's designation of a domestic substitute agent becomes effective. The Commissioner may designate a domestic substitute agent for the term of a single taxable year, multiple years, or on a continuing basis.

(2) Domestic substitute agent. The domestic substitute agent, by designation or by succession, shall be a domestic corporation described in paragraph (d)(1)(i)(A) of this section (determined without regard to section 7874, a section 953(d) election or section 1504(d)).

(3) Designation by the Commissioner. The Commissioner will notify the domestic substitute agent in writing by mail or faxed transmission of the designation. The domestic substitute agent's designation is effective on the earliest of the 14th day following the date of a mailing, the 4th day following a faxed transmission, or the date the Commissioner receives written confirmation of the designation by a duly authorized officer of the domestic substitute agent (within the meaning of section 6062). The domestic substitute agent must give notice of its designation to the foreign common parent and each corporation that was a member of the group during any part of any consolidated return year for which the domestic substitute agent will be the agent. A failure of the domestic substitute agent to notify the foreign common parent or any member of the group does not invalidate the designation. The Commissioner will send a copy of the notification to the foreign common parent, and if applicable, to any domestic substitute agent the designation replaces; a failure to send a copy of the notification does not invalidate the designation.

(4) Term of agency--(i) Taxable years for which domestic substitute agent is the agent. If the Commissioner designates a domestic substitute agent for one or more taxable years, unless the designation is expressly limited to such term, such domestic substitute agent will continue as the group's sole agent for subsequent taxable years until the domestic substitute agent ceases to be a member of the continuing group, is replaced by a new domestic common parent (as provided in paragraph (j)(4)(iv)(A) of this section), is replaced by the Commissioner, or is replaced by a default substitute agent (as provided in paragraph (j)(5)(ii) of this section). If during the course of a consolidated return year the domestic substitute agent ceases to be a member of the continuing group or is replaced, it shall no longer act as agent for such taxable year or subsequent taxable years in any matter.

(ii) Continuing agency for prior taxable years. Unless replaced by a default substitute agent (as provided in paragraph (j)(5)(ii) of this section) or by the Commissioner, the domestic substitute agent at the end of a taxable year of the group will remain the agent for such year until its existence terminates, even if the group subsequently ceases to exist or the domestic substitute agent subsequently ceases to be a member of the group.

(iii) Replacement of a §1.1502-77(d)(1) agent. If, pursuant to paragraph (d)(1) of this section, the common parent of the group designates a foreign common parent as the agent for the group for any taxable year, the Commissioner may, at any time, designate a domestic substitute agent to replace the foreign common parent, even if the Commissioner approved the terminating common parent's designation.

(iv) Group continues with a new common parent--(A) Year the new common parent becomes the common parent. If the group has a domestic substitute agent and the group continues in existence with a new common parent during a consolidated return year, and such new common parent is a domestic corporation (determined without regard to section 7874 or a section 953(d) election), the domestic substitute agent at the beginning of the year is the agent for the group through the date of the transaction in which the new common parent becomes the common parent, 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 domestic substitute agent will no longer be the agent for the group for that year.

(B) Years preceding the year the new common parent becomes the common parent. If after the Commissioner's designation of a domestic substitute agent the group remains in existence with a new common parent, and such new common parent is a domestic corporation (determined without regard to section 7874 or a section 953(d) election), the Commissioner may designate the new common parent as the sole agent for the group for any of the group's prior taxable years (for which the consolidated Federal income tax return is due (without extensions) after July 23, 2007) in which the new common parent was a member of the group. For this purpose, the new common parent is treated as having been a member of the group for any taxable year it is primarily liable for the group's income tax liability.

(v) Replacement of domestic substitute agent by the Commissioner. The Commissioner may at any time, with or without a request from any member of the group, designate a replacement for a domestic substitute agent (or a successor to such agent).

(5) Deemed §1.1502-77(d) designation--(i) In general. If the Commissioner designates a domestic substitute agent under this paragraph (j), it will be treated as a designation of a substitute agent under paragraph (d) of this section.

(ii) Default substitute agent. If the domestic substitute agent's existence terminates and it has a single successor that is a domestic corporation (without regard to section 269B) that is eligible to be a domestic substitute agent, such successor becomes the domestic substitute agent and is treated as a default substitute agent under paragraph (d)(2) of this section. See paragraph (d)(4) of this

section regarding the consequences of the successor's failure to notify the Commissioner of its status as a default substitute agent. The default substitute agent shall use procedures in section 9 of Rev. Proc. 2002-43 (2002-2 CB 99) or a corresponding provision of a successor revenue procedure for notification. (See §601.601(d)(2)(ii)(b) of this chapter.)

(6) Request that IRS designate a domestic substitute agent--(i) Original designation. If the common parent of the group is a foreign common parent, and the IRS has not designated a domestic substitute agent, one or more members of the group may request the IRS to make a designation for taxable years for which the consolidated Federal income tax return is due (without extensions) after July 23, 2007. Such request is deemed to be a request under paragraph (d)(3)(i) of this section. Members of the group shall use the procedures in section 10 of Rev. Proc. 2002-43 (2002-2 CB 99) or a corresponding provision of a successor revenue procedure for this purpose. (See §601.601(d)(2)(ii)(b) of this chapter.)

(ii) Request that IRS replace a previously designated substitute agent. If the IRS designates a domestic substitute agent pursuant to this paragraph (j), one or more members of the group may request that the IRS replace the designated domestic substitute agent with another member (or successor to another member). Such a request is deemed to be a request pursuant to paragraph (d)(3)(ii) of this section. Members of the group shall use the procedures in section 11 of Rev. Proc. 2002-43 (2002-2 CB 99) or a corresponding provision of a successor revenue procedure for this purpose. (See §601.601(d)(2)(ii)(b) of this chapter.)

§1.1502-77T [Removed]

Par.3. Section 1.1502-77T is removed.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 16, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

11

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