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From: [REDACTED]

Sent: Wednesday, June 13, 2018 11:00:25 AM

To: [REDACTED]

Cc: [REDACTED]

Bcc: [REDACTED]

Subject: Advice re Forms 872 (estoppel)

We were asked to opine on the validity of two statute extensions: (1) the Form 872 for tax year [REDACTED]; and (2) the Form 872 for tax years [REDACTED]. We believe that both Forms 872 are valid under equitable grounds. One of the field's concerns is that each Form 872 is incorrectly captioned "[REDACTED]" instead of "[REDACTED]". The statute extensions are not invalid as a result of the incorrect captions. A court could reform the captions to conform to the parties' intent of extending the statute of limitations by simply changing the caption from "[REDACTED]" to "[REDACTED]".

The field's other concern is that [REDACTED] may have lacked authority under state law to sign the second Form 872 for tax years [REDACTED] and [REDACTED]. [REDACTED] signed the Form 872 on [REDACTED] as president of the taxpayer. Although it appears that [REDACTED] was not an officer of the taxpayer at this time and did not have actual authority to act on behalf of the taxpayer, we believe the taxpayer should be equitably estopped from claiming that [REDACTED] lacked authority to sign the statute extension. The requirements for a taxpayer to be equitably estopped are (1) a material misrepresentation by the taxpayer or its agent, (2) an absence by the Internal Revenue Service of contrary knowledge in circumstances where the Internal Revenue Service may reasonably act in reliance, (3) actual reliance by the Internal Revenue Service, (4) detriment to the Internal Revenue Service, and (5) circumstances in which the absence of equitable estoppel would lead to an unconscionable result. See [Transpac Drilling Venture 1982-16](#), T.C. Memo. 1994-26.

The facts clearly show that the taxpayer materially misrepresented [REDACTED] as an individual with authority to act on behalf of and bind the taxpayer. The Form 872 provided by the taxpayer was signed on [REDACTED] by [REDACTED] as president of the taxpayer. The Service had no contrary knowledge that [REDACTED] was no longer

president of the taxpayer at the time he signed the Form 872. It was not until through an IDR response that the Service became aware that had transferred his ownership interest to on (and even then, the taxpayer's IDR response misrepresented that remained an officer of the taxpayer as vice-president and secretary). The Service thus reasonably relied on the taxpayer's representation and executed the Form 872 on .

Additionally, the taxpayer did not disavow the extension but rather continued to represent as an individual with authority to act on behalf of the taxpayer. For example, on , the taxpayer filed a return for tax year bearing signature as president of the taxpayer. It was not until very recently that the taxpayer's POA clarified that was not an officer of the taxpayer. Based on these facts, the taxpayer should be estopped from claiming the statute extension is invalid. Otherwise, there is clear detriment to the Service because any stat notice issued by the Service would be deemed untimely.



Please let me know if you have any further questions.

Yours,