

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 1 and 602**

[TD 9715]

RIN 1545–BH31

**Regulations Revising Rules Regarding Agency for a Consolidated Group****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations regarding the agent for an affiliated group of corporations that files a consolidated return (consolidated group). The final regulations provide guidance concerning the identity and authority of the agent for a consolidated group. These final regulations affect all corporations in consolidated groups.

**DATES:**

*Effective Date:* These regulations are effective on April 1, 2015.

*Applicability Date:* For dates of applicability, see § 1.1502–77(j).

**FOR FURTHER INFORMATION CONTACT:**

Gerald B. Fleming at (202) 317–6975 or Richard M. Heinecke at (202) 317–6065 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1699. The collection of information in these final regulations is in paragraphs (c)(4), (c)(5)(iii), (c)(6)(i)(B), (c)(6)(ii), (c)(6)(iv), (c)(7)(i)(A), (c)(7)(i)(B), (c)(7)(ii), and (f)(3) of § 1.1502–77. The collection of information is necessary to make certain that the Commissioner of Internal Revenue (Commissioner), agent for the consolidated group, and members of the group are each informed of the proper identity of the agent for any given period, and are able to timely exercise their privileges and fulfill their responsibilities with respect to the filing of a consolidated return.

For more information, see Rev. Proc. 2015–26, IRB 2015–15, the revenue procedure published to accompany the final regulations that provides instructions with respect to all communications relating to the identification of an agent for a consolidated group.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

**Background and Explanation of Provisions***1. Introduction*

This Treasury Decision contains final regulations that amend 26 CFR part 1, under section 1502 of the Internal Revenue Code of 1986 (Code) (Final Regulations). Section 1502 authorizes the Secretary to prescribe regulations for corporations that join in filing consolidated returns and provides that such rules may be different from the provisions of chapter 1 of subtitle A of the Code that would apply if such corporations filed separate returns. These Final Regulations provide guidance under § 1.1502–77 with respect to the agent for a group of affiliated corporations that file a consolidated return (agent), including rules for identifying and communicating with the agent, and determining the scope of the agent's authority.

The Final Regulations apply to consolidated return years beginning on or after April 1, 2015. Regulations in effect before April 1, 2015 will continue to apply to consolidated tax years beginning before April 1, 2015.

Contemporaneously with the publication of the Final Regulations in the **Federal Register**, the IRS is issuing Rev. Proc. 2015–26, IRB 2015–15, providing instructions regarding the manner of making all communications that relate to the identification of an agent under the Final Regulations. Rev. Proc. 2015–26, IRB 2015–15, will obsolete Rev. Proc. 2002–43, 2002–2 CB 99 (see § 601.601(d)(2)(ii)(b) of this chapter) (Determination of Substitute Agent for a Consolidated Group When the Common Parent Ceases to Exist) with respect to consolidated return years for which these Final Regulations apply. Thus, Rev. Proc. 2002–43 will continue to apply for consolidated return years subject to prior regulations.

*2. Overview of Prior Guidance Regarding Agents*

On June 28, 2002, the IRS and the Treasury Department promulgated final regulations under § 1.1502–77 in TD 9002, 67 FR 43538, to provide rules

concerning the identity and authority of the agent and the designation of a new agent. These regulations were amended by TD 9255 (71 FR 13001) (March 14, 2006) and TD 9343 (72 FR 40066) (July 23, 2007). (The June 28, 2002 regulations and amendments are collectively referred to in this preamble as the 2002 Regulations.)

On June 29, 2002, the IRS released Rev. Proc. 2002–43 to prescribe instructions for all communications relating to the determination of a substitute agent and the designation of a substitute agent by a terminating common parent.

On May 30, 2012, the IRS and the Treasury Department proposed regulations that would replace the 2002 Regulations (2012 Proposed Regulations). The 2012 Proposed Regulations were published in the **Federal Register** (77 FR 31786). No request for a hearing was received. One comment was received with respect to the 2012 Proposed Regulations, but it made no specific recommendations. No other comments were received, including with respect to the specific request for comments regarding the expansion of the circumstances in which the Commissioner could designate agents, and the ability of an agent to resign.

*3. Summary of the 2002 Regulations*

Under the 2002 Regulations, the common parent of a group ceased to be the agent if its existence terminated under applicable law, if it became disregarded as an entity separate from its owner for federal tax purposes (a disregarded entity), or if it became an entity classified as a partnership for federal tax purposes. In such cases, the common parent could generally designate its successor, another member of the group, or a group member's successor as the substitute agent for the group (provided such designee was a domestic corporation for federal tax purposes). However, any such designation required affirmative approval by the Commissioner.

Although in general a common parent must be a domestic corporation, a common parent could be an entity created or organized under the laws of a foreign country and treated as a domestic corporation by reason of section 7874 (treating a foreign corporation as a domestic corporation as a result of certain outbound inversion transactions) or an election under section 953(d) to treat a foreign insurance company as a domestic corporation (foreign common parent). In recognition of the logistical problems this could create, the 2002 Regulations

permitted the Commissioner to designate a domestic member of the group to act as the agent (domestic substitute agent) in the case of a foreign common parent.

Finally, the 2002 Regulations provided certain rules relating to partnerships and partners subject to sections 6221 through 6234 of the Code, enacted by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324) (TEFRA), generally providing that the Commissioner would deal directly with a member that was the tax matters partner (TMP) regarding specified matters for the partners in a TEFRA partnership even if the TMP is not the agent.

#### 4. Overview of the 2012 Proposed Regulations

The 2012 Proposed Regulations retained the general rules, concepts, and examples of the 2002 Regulations. However, the 2012 Proposed Regulations renumbered, restructured, and revised the 2002 Regulations to minimize the circumstances under which the identity of the agent would not be clear. The 2012 Proposed Regulations also increased the number of situations in which the identity of the agent would be determined without action by taxpayers or the Commissioner. The proposed changes are described in the following paragraphs 4.A. through 4.G.

##### A. Default Successors

The 2002 Regulations generally permitted a terminating agent to designate the substitute agent. However, the IRS observed that terminating agents, to the extent they designated at all, tended to designate their successors rather than another member of their group. To simplify the procedures and align them with taxpayers' practices, the 2012 Proposed Regulations provided that if an agent had a sole successor (default successor), the default successor would automatically become the group's agent when the prior agent ceased to exist, such as in a merger. The terminating agent would not be permitted to designate an agent unless there was no default successor, in which case the agent could only designate an entity that was a member of the group for the consolidated return year (or a successor of such a member). The 2012 Proposed Regulations also prescribed limited circumstances under which the Commissioner could replace a default successor.

##### B. Entities Eligible To Be an Agent

The 2012 Proposed Regulations included disregarded entities and

partnerships among the entities permitted to be agents for prior years in which they or their predecessors were not treated as disregarded. Thus, if a common parent converted or merged into a disregarded entity or partnership, whether by reason of a state law merger, a state law conversion, or a federal tax election, the continuing or successor juridical entity (whether a disregarded entity or partnership) would continue as the agent for the prior periods.

##### C. TEFRA Partnerships

In general, the Code and regulations governing the treatment of TEFRA partnerships provide that the Commissioner will deal with the TMP regarding specified matters for the partners in a TEFRA partnership. See generally, sections 6221 through 6234. The 2002 Regulations provided two TEFRA specific rules relating to members that were partners in a TEFRA partnership. Under the first rule, a subsidiary that was the TMP of a TEFRA partnership would act in its own name regarding partnership matters, without requiring any action by the agent. Under the second rule, the Commissioner would deal with a subsidiary that was a partner in a TEFRA partnership in the performance of an examination of the TEFRA partnership. This second rule, however, appeared to create some confusion in the context of other provisions of the 2002 Regulations.

To provide more clarity with respect to the second rule, the 2012 Proposed Regulations provided that: (1) The agent will generally act as agent for a member that is a partner in a TEFRA partnership regarding all matters related to the partnership, including execution of a settlement agreement under section 6224(c) (as illustrated in *Example 12* in § 1.1502-77(g) of the 2012 Proposed Regulations) and extension of the statute of limitations with respect to items other than the items of the TEFRA partnership (as illustrated in *Example 11* in § 1.1502-77(g) of the 2012 Proposed Regulations); and (2) the Commissioner, without having to deal with each member separately by "breaking agency" pursuant to § 1.1502-77(f)(2)(i) of the 2012 Proposed Regulations, may communicate directly with a subsidiary or a disregarded entity owned by a subsidiary that is a partner in a TEFRA partnership whenever the Commissioner determines that such direct communication will facilitate the conduct of an examination, appeal, or settlement with respect to the partnership. However, like the 2002 Regulations, the 2012 Proposed Regulations provided that any member of the group designated as the TMP of

a TEFRA partnership will act in its own name and perform its responsibilities with respect to the partnership without requiring any action by the agent.

##### D. Commissioner's Approval of Substitute Agent

Although the 2002 Regulations required the Commissioner to approve any designation, in practice, designation approval requests were denied only rarely. To simplify procedures, and thereby conserve resources and enhance efficiency, the 2012 Proposed Regulations eliminated the requirement. However, to ensure that IRS records accurately reflect the identity of an agent, the 2012 Proposed Regulations provided that a default successor, or a terminating agent that has no default successor, must notify the IRS (in writing in the manner prescribed by the Commissioner) when the default successor or an entity designated by a terminating agent becomes the group's new agent.

##### E. Commissioner's Authority To Designate Agent

The 2012 Proposed Regulations provided several limited circumstances in which the Commissioner could designate or replace an agent, either on its own initiative or at the request of other members. Examples were included in the 2012 Proposed Regulations to illustrate the circumstances in which an agent may be designated.

The 2012 Proposed Regulations did not provide the Commissioner with the ability to replace a domestic default successor under circumstances in which it could not replace the common parent.

##### F. Foreign Entity as Agent

As previously noted, the 2002 Regulations did not preclude foreign entities from acting as agent, but provided that the Commissioner could designate a domestic substitute agent. The IRS and the Treasury Department recognize that such an entity may have the best access to information, but also that these situations present unique logistical issues. Accordingly, the 2012 Proposed Regulations did not preclude a foreign entity from being the agent and preserved the Commissioner's discretion to replace a foreign entity.

##### G. Post-Dissolution Winding Up Period

Questions arose under the 2002 Regulations with respect to the actions that could be performed by a terminating agent during the "winding up" period following its dissolution. Because winding up statutes vary widely among the states, the IRS and the

Treasury Department determined that no single rule for post-dissolution terminating agents would be appropriate in all cases. The 2012 Proposed Regulations resolved the issue by providing that an entity that has dissolved or otherwise ceased to exist under applicable law can no longer be the agent, irrespective of its powers under state or local law during its post-dissolution winding up period.

#### 5. Final Regulations

The rules adopted in these Final Regulations are consistent with those set forth in the 2012 Proposed Regulations. The Final Regulations, however, make several revisions to the 2012 Proposed Regulations. First, as further described in section 5.A. of this preamble, the Final Regulations expand the circumstances under which the Commissioner may replace an agent on the Commissioner's own accord. Second, the Final Regulations clarify that a terminating agent without a default successor may only designate an agent with respect to a completed year. See section 5.A.iii. of this preamble. Third, the Final Regulations organize the provisions that permit the Commissioner to designate an agent into two categories: (1) Those provisions that authorize the Commissioner to replace an agent on the Commissioner's own accord, with or without a written request from a member; and (2) a provision described in section 5.B. of this preamble permitting the Commissioner to replace an agent pursuant to a member's written request. Fourth, as described in section 5.C. of this preamble, the Final Regulations allow an agent to resign under certain circumstances. Fifth, the Final Regulations clarify that an agent other than the common parent generally serves as agent under the same terms and with the same rights as the common parent. A significant exception to this general rule discussed in section 5.A.iii. of this preamble applies in the case of an agent designated by the Commissioner, in that such an agent may not designate an agent upon its termination unless the Commissioner designated the agent solely because a prior agent terminated without a default successor and without designating an agent (other than in the case of a group structure change as defined in § 1.1502-33(f)(1)).

In addition, the Final Regulations contain clarifying and non-substantive changes to the text of the 2012 Proposed Regulations and redesignate the 2002 Regulations as § 1.1502-77B (§ 1.1502-77A continues to apply for consolidated

return years beginning before June 28, 2002).

#### A. Designation on Commissioner's Own Accord

The Final Regulations prescribe four circumstances in which the Commissioner may designate an agent on the Commissioner's own accord. Three of the circumstances are adopted from the 2012 Proposed Regulations: The Commissioner may designate an agent if (1) a terminating agent has no default successor and fails to designate an agent; (2) the Commissioner believes that the agent or its default successor exists but such entity fails to timely respond to notices properly sent by the Commissioner; or (3) the agent is or becomes a foreign entity (for example, through the agent's continuance into a foreign jurisdiction or certain transactions subject to the inversion rules of section 7874). The Final Regulations add an additional situation to the second circumstance so that the Commissioner may designate an agent where the agent either fails timely respond to notices or fails to perform its obligations as agent. Finally, the Final Regulations add a fourth circumstance: The Commissioner may designate a new agent for a current year if a previously designated agent ceases to be a member of the group.

#### i. Replacing Agent That Fails To Perform Its Obligations

The IRS and the Treasury Department recognize that there may be situations in which an agent is failing to perform its obligations as agent under the Code or regulations. Neither the 2002 Regulations nor the 2012 Proposed Regulations provided a remedy to designate an agent in such situations. As a result, members would not be able to accurately file a return, determine their federal tax liability, or obtain refunds, and the Commissioner might have to deal with each member separately by "breaking agency" pursuant to § 1.1502-77(f)(2)(i) of the 2012 Proposed Regulations. This could, in turn, result in significant uncertainty and undue burden for group members as well as the Commissioner. For example, assume the Commissioner breaks agency for a consolidated return year that has ended (completed year) and then one or more members files a claim for refund of income taxes paid for that year. Because of the uncertainty as to which member(s) would be entitled to all or a portion of the refund, the Government would likely be forced to interplead all potential member-claimants in an ensuing refund case.

The preamble to the 2012 Proposed Regulations requested comments with respect to this issue, but no comments were received. Nevertheless, the IRS and the Treasury Department have considered this issue and determined that the best interests of all concerned would be served by providing the Commissioner the authority to replace an agent that fails to perform its obligations as agent as prescribed by federal tax law. Accordingly, the Final Regulations provide that the Commissioner may, with or without a written request from a member, designate an agent to replace any agent that fails to perform its obligations as agent as prescribed by the Code or regulations promulgated thereunder.

#### ii. Replacing Agent That Ceases To Be a Member for Current Year

The 2012 Proposed Regulations did not provide guidance for situations in which an agent previously designated by the Commissioner ceases to be a member during a consolidated return year that is not a completed year (current year). Thus, under the 2012 Proposed Regulations, there could be situations in which a group would have a non-member agent or no agent at all. The Final Regulations address these issues by requiring that the agent for the current year be a member of the group. An agent designated by the Commissioner will generally continue as the agent in successive consolidated return years except in three circumstances: (1) If the Commissioner specifies a limited or specific period of agency in the designation; (2) if the agent ceases to be a member of the group; or (3) if the agent is replaced pursuant to the Final Regulations.

The Final Regulations also provide an additional circumstance in which the Commissioner may designate an agent on the Commissioner's own accord. Specifically, the Final Regulations permit the Commissioner, with or without a written request from a member, to designate an agent for the current year if an agent previously designated by the Commissioner ceases to be a member of the group without leaving a default successor in the group. In that situation, a member of the group should request that the Commissioner designate an agent.

#### iii. Effect of Certain Designations on the Commissioner's Own Accord

The Proposed Regulations permitted an agent that terminates without a default successor to designate an agent. If a terminating agent had no default successor and failed to designate an agent, the Commissioner could

designate an agent with or without the request of any member. The Final Regulations generally adopt these rules with one significant modification. If a terminating agent was itself designated by the Commissioner on the Commissioner's own accord and the terminating agent does not have a default successor, the Final Regulations provide that the terminating agent is not permitted to designate an agent if it was designated because the agent it replaced (1) ceased to be a member of the group in a current year; (2) failed to timely respond to notices or failed to fulfill its obligations under the Code or regulations; or (3) became a foreign entity. Because the Commissioner's ability to administer the tax law is impaired under these circumstances, the IRS and the Treasury Department determined that the interests of tax administration would be best served by monitoring of designated agents and groups in these limited cases. Accordingly, the IRS and the Treasury Department determined that the Commissioner, rather than the terminating agent, should designate the agent in these situations. In such cases, any member (including the terminating agent) of the group is permitted to request that the Commissioner designate a new agent. The Final Regulations permit other categories of agents previously designated by the Commissioner to designate an agent upon termination provided the terminating agent does not (1) have a default successor or (2) terminate in a group structure change. The Final Regulations clarify that a terminating agent that is permitted to designate an agent may only do so with respect to completed years.

Finally, to prevent groups from nullifying a designation made by the Commissioner, the Final Regulations provide that a designating agent may not designate as an agent any entity that the Commissioner previously replaced as agent. The designating agent may, however, submit a request that the Commissioner designate as agent the entity previously replaced as agent.

#### B. Designation Upon Written Request by a Member

The 2002 Regulations and the 2012 Proposed Regulations provided a mechanism whereby upon the written request from a member, the Commissioner could, but was not required to, replace an agent previously designated by the Commissioner. The Final Regulations retain this provision to permit a member to request that the Commissioner designate a new agent in circumstances other than the

specifically enumerated circumstances in which the Commissioner may designate an agent on the Commissioner's own accord.

#### C. Resignation of Agent

Under the 2002 Regulations, a common parent remained the agent for any year for which it was the common parent, with only a termination of the common parent terminating that agency. However, the IRS and the Treasury Department recognize that there could be circumstances in which an agent would want to resign and have another entity take its place as agent. For example, assume P, the common parent of the P consolidated group, becomes a subsidiary of the group in a transaction under § 1.1502-75(d) (resulting in a group structure change described in § 1.1502-33(f)(1)), and the group continues with N as the new common parent and agent. If unrelated X acquires the stock of P, P would leave the group but would still be the agent for the years during which it was the group's common parent. In that situation, it might be more efficient for all concerned if P were to resign as agent in favor of another member. Although the 2012 Proposed Regulations did not include a mechanism for an existing agent to resign, the preamble to the 2012 Proposed Regulations requested comments with respect to this issue. No comments were received. Nevertheless, the IRS and the Treasury Department have considered the issue and determined that it would be in the best interests of all concerned and sound tax administration for agents to have the ability to resign, at least in limited situations.

Accordingly, the Final Regulations provide a mechanism for agents to resign with respect to completed years. However, there are four conditions that must be met. First, the agent must provide written notice to the Commissioner that it no longer intends to be the agent for a completed year. Second, an entity that could have been designated by the resigning agent upon its termination must consent, in writing, to be the agent for that year. Third, immediately after its resignation takes effect, the resigning agent must not be the agent for the current year. Fourth, the Commissioner must not object to the agent's resignation. If these conditions are satisfied, the new agent must notify each member of the group that it has become the agent.

#### Effective/Applicability Date

The Final Regulations apply to consolidated return years beginning on or after April 1, 2015. The 2002

Regulations, redesignated as § 1.1502-77B, and Rev. Proc. 2002-43 continue to apply with respect to consolidated return years beginning on or after June 28, 2002, and before April 1, 2015. However, the new rules permitting the resignation of agents may be relied upon for completed years otherwise governed by the 2002 Regulations (or any predecessor regulations).

#### Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. 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 affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

#### Drafting Information

The principal author of these final regulations is Richard M. Heinecke, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 602

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 adding an entry in numerical order to read in part as follows:

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

\* \* \* \* \*

Section 1.1502-77B also issued under 26 U.S.C. 1502 and 6402(j).

\* \* \* \* \*

### § 1.338-1 [Amended]

■ **Par. 2.** Section 1.338-1 is amended by removing the language “§ 1.1502-77(e)(4)” in the last sentence of paragraph (b)(2)(viii) and adding the language “§ 1.1502-77(c)(8)” in its place.

■ **Par. 3.** Section 1.1502-77A is amended as follows:

■ 1. Paragraph (e)(2) is amended by removing every occurrence of the language “(a)(4)” and adding “(e)(4)” in its place.

■ 2. In paragraph (e)(2), the first sentence is amended by removing the language “§ 1.1502-77” and adding “§ 1.1502-77A” in its place.

■ 3. In paragraph (e)(2), the second sentence is amended by removing the language “§ 1.1502-77(d)” and adding “§ 1.1502-77A(d)” in its place.

■ 4. Paragraph (e)(3) is amended by removing the language “(a)(4)” and adding “(e)(4)” in its place.

■ 5. Paragraph (e)(4) is amended by removing the language “(a)(2)” and adding “(e)(2)” in its place.

■ 6. Paragraph (e)(4)(iii) is amended by removing the language “§ 1.1502-77(d)” and adding “§ 1.1502-77A(d)” in its place.

■ 7. The heading for paragraph (g) is revised.

The revision reads as follows:

### § 1.1502-77A Common parent agent for subsidiaries applicable for consolidated return years beginning before June 28, 2002.

\* \* \* \* \*

(g) *Effective/applicability dates.* \* \* \*

### § 1.1502-77 [Redesignated as § 1.1502-77B]

■ **Par. 4.** Add an undesignated center heading under § 1.1502.77A, redesignate § 1.1502-77 as § 1.1502-77B and, in newly redesignated § 1.1502-77B, revise the section heading and paragraph (h)(1)(i) to read as follows:

### Regulations Applicable to Taxable Years Beginning on or After June 28, 2002, and Before April 1, 2015

### § 1.1502-77B Agent for the group applicable for consolidated return years beginning on or after June 28, 2002, and before April 1, 2015.

\* \* \* \* \*

(h) *Effective/applicability date*—(1) *Application*—(i) *In general.* This section

applies to consolidated return years beginning on or after June 28, 2002, and before April 1, 2015. For instructions regarding communications relating to the determination of a substitute agent and other matters under this section, see Rev. Proc. 2002-43, 2002-2 CB 99 (see § 601.601(d)(2)(ii)(b) of this chapter). For rules governing the resignation of certain agents for the group subject to this section, see § 1.1502-77(c)(7) and (j)(2).

\* \* \* \* \*

■ **Par. 5.** Section 1.1502-77 is added to read as follows:

### § 1.1502-77 Agent for the group.

(a) *Agent for the group*—(1) *Sole agent.* Except as provided in paragraphs (e) and (f)(2) of this section, one entity (the agent) is the sole agent that is authorized to act in its own name regarding all matters relating to the federal income tax liability for the consolidated return year for each member of the group and any successor or transferee of a member (and any subsequent successors and transferees thereof). The identity of that agent is determined under the rules of paragraph (c) of this section.

(2) *Agent for each consolidated return year.* Agency for the group is established for each consolidated return year and is not affected by the status or membership of the group in later years. Thus, subject to the rules of paragraph (c) of this section, the agent will generally remain agent for that consolidated return year regardless of whether one or more subsidiaries later cease to be members of the group, whether the group files a consolidated return for any subsequent year, whether the agent ceases to be the agent 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.

(3) *Communications under this section.* Any designation, notification, objection, request, or other communication made to or by the Commissioner pursuant to paragraphs (c) and (f)(2) of this section must be made in accordance with procedures prescribed by the Commissioner in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter), forms, instructions, or other appropriate guidance.

(b) *Definitions.* The following definitions apply for purposes of this section only—

(1) *Successor.* A *successor* is an individual or entity (including a disregarded entity as defined in paragraph (b)(3) of this section) 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 corporation that was a member of the group but is no longer in existence under applicable law. The determination of tax liability 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 (b)(5)(iii) of this section.)

(2) *Entity.* The term *entity* includes any corporation, limited liability company, or partnership formed under any state, federal, or foreign jurisdiction. The term *entity* includes a disregarded entity (as defined in paragraph (b)(3) of this section). The term *entity* does not include an entity that has terminated even if it is in a winding up period under the law under which it is organized.

(3) *Disregarded entity.* The term *disregarded entity* includes any of the following types of entities that are disregarded as separate from their owners—

(i) Qualified real estate investment trust subsidiaries (within the meaning of section 856(i)(2));

(ii) Qualified subchapter S subsidiaries (within the meaning of section 1361(b)(3)(B)); and

(iii) Eligible entities with a single owner (within the meaning of § 301.7701-3 of this chapter).

(4) *Default successor.* A successor to the agent is the *default successor* if it is an entity (whether domestic or foreign) that is the sole successor to the agent. A partnership is treated as a sole successor with primary liability notwithstanding that one or more partners may also be primarily liable by virtue of being partners.

(5) *Member or subsidiary.* All references to a member or subsidiary for a consolidated return year include—

(i) 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);

(ii) 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; and

(iii) Except as indicated otherwise, a successor of any of the foregoing corporations.

(6) *Completed year.* A *completed year* is a consolidated return year that has

ended, or will end at the time of the referenced event.

(7) *Current year.* A *current year* is a consolidated return year that is not a completed year.

(c) *Identity of the agent*—(1) *In general.* Except as otherwise provided in this section, the agent for a current year is the common parent and the agent for a completed year is the common parent at the close of the completed year or its default successor, if any. Except as specifically provided otherwise in this paragraph (c), any entity that is an agent pursuant to paragraph (c)(3) of this section (agent following group structure change), paragraph (c)(5) of this section (agent designated by agent terminating without default successor), paragraph (c)(6) of this section (agent designated by Commissioner), or paragraph (c)(7) of this section (agent designated by resigning agent) of this section (and any entity that subsequently serves as agent) acts as an agent for and under the same terms and conditions that apply to a common parent. For example, such an agent would generally be able to designate an agent if it terminates without a default successor; however, an entity that became agent pursuant to a designation by the Commissioner under paragraphs (c)(6)(i)(A)(2), (3), or (4) of this section is not permitted to designate an agent if it terminates without a default successor. Other special rules described in this paragraph (c) apply.

(2) *Purported agent.* If any entity files a consolidated return, or takes any other action related to the tax liability for the consolidated return year, purporting to be the agent but is subsequently determined not to have been the agent with respect to the claimed group, that entity is treated, to the extent necessary to avoid prejudice to the Commissioner, as if it were the agent.

(3) *New common parent after a group structure change.* If the group continues in existence after a group structure change (as described in § 1.1502-33(f)(1)), the former common parent is the agent until the group structure change, and the new common parent becomes the agent after the group structure change. Following the group structure change, the new common parent is the agent with respect to the entire current year (including the period before the group structure change) and the former common parent is no longer the agent for that year. However, actions taken by the former common parent as the agent before the group structure change are not nullified when the new common parent becomes the agent with respect to the entire consolidated return year. Following the group structure

change, the new common parent continues as the agent for succeeding years subject to the rules of this section.

(4) *Notification by default successor*—(i) *In general.* Failure to provide notice to the Commissioner pursuant to this paragraph (c)(4)(i) does not invalidate an entity's status as the default successor. However, until the Commissioner receives notification in writing that an entity is the default successor—

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

(B) 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 (including the default successor) other than the predecessor agent.

(ii) *Conversions and continuances.* For purposes of the notice requirements under paragraph (c)(4)(i) of this section, any entity that results from the agent's conversion or continuance by operation of state law and that qualifies as a default successor under paragraph (b)(4) of this section is treated as a default successor for purposes of the notice provisions of paragraph (c)(4)(i) of this section, even if applicable state or local law may treat the converted or continued entity as not ceasing to exist.

(5) *Designation by terminating agent*—(i) *In general.* Prior to the termination of its existence without a default successor, an agent may designate an entity described in paragraph (c)(5)(ii) of this section to act as agent for any completed year. This designation is effective upon the termination of the designating agent's existence. However, this paragraph (c)(5) does not apply to, and no designation can be made by, an agent that was designated by the Commissioner under paragraphs (c)(6)(i)(A)(2), (3), or (4) of this section, or any successor of such an agent; in such a case, the terminating agent should request that the Commissioner designate an agent pursuant to paragraph (c)(6)(i)(B) of this section.

(ii) *Permissible agents*—(A) The terminating agent may designate as agent a member of the group during any part of the completed year, or an entity (whether domestic or foreign) that is a successor of such a member, including an entity that will become a successor at the time the agent's existence terminates.

(B) The terminating agent may not designate as agent any entity that was previously replaced as agent by the

Commissioner pursuant to paragraphs (c)(6)(i)(A)(2), (3), or (4) of this section, or any successor of such an agent. However, the terminating agent may submit a request pursuant to paragraph (c)(6)(i)(B) of this section that the Commissioner designate such an entity as agent.

(iii) *Notification of designation.* The terminating agent must notify the Commissioner in writing of its designation of an entity as agent pursuant to paragraph (c)(5)(i) of this section and provide a statement executed by the designated entity acknowledging that it will serve as the agent for each specified completed year for which it is designated as the agent. If the designated entity was not itself a member of the group during any specified year (because it is a successor of a member), the notification must include a statement acknowledging that the designated entity is or will be primarily liable for the tax liability for the specified completed year as a successor of a member.

(iv) *Failure to designate an agent.* If the agent terminates without a default successor, and no agent is designated pursuant to this paragraph (c)(5)—

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

(B) 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.

(6) *Designation by the Commissioner*—(i) *In general.* The Commissioner has the authority to designate an entity to act as the agent under the circumstances prescribed in this paragraph (c)(6)(i). The designated agent for a completed year must be an entity described in paragraph (c)(5)(ii)(A) of this section when the designation becomes effective. The designated agent for a current year must be a member of the group when the designation becomes effective. If, pursuant to this paragraph (c)(6), the Commissioner replaces the common parent or another entity as the agent, the common parent or other entity, or any successor thereof, may not later act as the agent unless so designated by the Commissioner.

(A) *On Commissioner's own accord.* With or without a request from any member of the group, the Commissioner may designate an entity to act as the agent if—

(1) The agent's existence terminates, other than in a group structure change, without there being a default successor

and without any designation made under paragraph (c)(5)(i) of this section;

(2) An agent previously designated by the Commissioner is no longer a member of the group in the current year and does not have a default successor that is a member of the group;

(3) The Commissioner believes that the agent or its default successor exists but such entity has either not timely responded to the Commissioner's notices (sent to the last known address on file for the entity or left at the usual place of business for such entity) or has failed to perform its obligations as agent as prescribed by the Internal Revenue Code (Code) or regulations promulgated thereunder; or

(4) The agent is or becomes a foreign entity as a result of any action or transaction (including, for example, a continuance into a foreign jurisdiction or certain inversion transactions subject to section 7874 in which a foreign parent is treated as a domestic corporation).

(B) *Written request from any member.* At the request of any member, in a circumstance not described in paragraph (c)(6)(i)(A) of this section, the Commissioner may, but is not required to, replace an agent previously designated under this paragraph (c)(6).

(ii) *Notification by Commissioner.* The Commissioner will notify the designated entity in writing of the Commissioner's designation of the entity as agent pursuant to paragraph (c)(6)(i) of this section, and the designation will be effective as prescribed by the Commissioner. The designated entity should give notice of the designation by the Commissioner pursuant to paragraph (c)(6)(i) of this section to each member of the group during any part of the consolidated return year. However, a failure by the designated entity to notify any such member of the group does not invalidate the designation by the Commissioner.

(iii) *Term and effect of designation.* Unless otherwise provided by the Commissioner in the designation, any agent designated by the Commissioner pursuant to paragraph (c)(6)(i) of this section (new agent) is the agent with respect to the entire consolidated return year for which it is designated and successive years, subject to the rules of this section. An agent immediately preceding a new agent (former agent) ceases to be the agent for a particular consolidated return year once the new agent has been designated for that year, but the designation of the new agent does not nullify actions taken on behalf of the group by the former agent while it was agent. If there is more than one new agent designated by the

Commissioner for a consolidated return year, the new agent that is designated last in time by the Commissioner is the agent with respect to the entire consolidated return year. A designation pursuant to this paragraph (c)(6) is effective as prescribed by the Commissioner in such designation or the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter), forms, instructions, or other appropriate guidance.

(iv) *Request by member of the group where agent previously designated by the Commissioner is no longer a member.* If an agent at any time after it is designated as agent by the Commissioner pursuant to paragraph (c)(6)(i) of this section is no longer a member of the group for any current year, and its default successor, if any, is not a member of the group at that time, a member of the group, including the agent that will cease to be a member, should request, in writing, that the Commissioner designate a member of the group to be the new agent pursuant to paragraph (c)(6)(i)(A)(2) of this section. Until such a request is made—

(A) Any notice of deficiency or other communication mailed to the agent, even if no longer a member, is considered as having been properly mailed to the agent; and

(B) 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.

(7) *Agent resigns—(i) In general.* The agent may resign for a completed year if—

(A) It provides written notice to the Commissioner that it no longer intends to be the agent for that completed year;

(B) An entity described in paragraph (c)(5)(ii)(A) of this section consents, in writing, to be the agent with respect to that completed year;

(C) Immediately after its resignation takes effect, the resigning agent will not be the agent for the current year; and

(D) The Commissioner does not object to the agent's resignation.

(ii) *Notification by agent that replaces agent that resigns.* If the Commissioner does not object to the agent's resignation, the agent that replaces the agent that resigns should give written notice that it is the new agent to each member of the group for any part of the completed year for which it is designated the agent.

(8) *Transactions under the Code.* 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.

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

(1) The agent 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;

(2) All correspondence concerning the income tax liability for the consolidated return year is carried on directly with the agent;

(3) The agent 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;

(4) The agent 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;

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

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

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

(8) Notices of deficiencies are mailed only to the agent (except as provided in paragraph (f)(3) of this section), and the mailing to the agent is considered as a mailing to each member;

(9) 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 agent, and, if so, the mailing to the agent is considered as a mailing to each member that is a partner entitled to receive such notice (for other rules regarding partnership proceedings, see paragraph (f)(2)(iii) of this section);

(10) The agent 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;

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

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

(e) *Matters reserved to subsidiaries.*

Except as provided in this paragraph (e) and paragraph (f)(2) of this section, no subsidiary (unless it is or becomes an agent pursuant to paragraph (c) of this section) 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—

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

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

(3) The making of an election to be treated as a Domestic International Sales Corporation under § 1.992-2.

(f) *Dealings with members—(1)*

*Identifying members in notice of a lien.* Notwithstanding any other provisions of this section, 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.

(2) *Direct dealing with a member—(i) Several liability.* The Commissioner may, upon issuing to the agent 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 agent has terminated without an agent being identified under this section, the Commissioner may, if the Commissioner deems it advisable, deal directly with any member with respect to that member's liability under § 1.1502-6 without issuing notice to any other entity.

(ii) *Information requests.* The Commissioner may, upon issuing to the agent written notice, 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 agent has terminated without an agent being identified under this section, the Commissioner may request such information from any member of the group without issuing notice to any other entity.

(iii) *Members as partners in partnerships subject to the provisions of the Code.* Except as otherwise provided in this paragraph (f)(2)(iii), the general rule of paragraph (a)(1) of this section applies so that the agent is the agent for any subsidiary member that for any part of the consolidated return year is a partner in a partnership subject to the provisions of sections 6221 through 6234 of the Code (as originally enacted by the Tax Equity and Fiscal Responsibility Act of 1982 and subsequently amended) and the accompanying regulations (TEFRA partnership). However—

(A) Any subsidiary or any disregarded entity owned by a subsidiary that is designated as tax matters partner of a TEFRA partnership will act in its own name and perform its responsibilities under sections 6221 through 6234 and the accompanying regulations without requiring any action by the agent (but see paragraph (d)(9) of this section regarding the mailing of a final partnership administrative adjustment to the agent); and

(B) The Commissioner may at any time communicate directly with a subsidiary or a disregarded entity owned by a subsidiary that is a partner in a TEFRA partnership, without having to deal with each member separately pursuant to paragraph (f)(2)(i) of this section, whenever the Commissioner determines that such direct communication will facilitate the conduct of an examination, appeal, or settlement with respect to the partnership.

(3) *Copy of notice of deficiency to entity that has ceased to be a member of the group.* A subsidiary 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 it 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 agent provided for in this section. Any failure by the Commissioner to comply with such request does not limit the subsidiary's tax liability under § 1.1502-6.

(g) *Examples.* Unless otherwise indicated, all entities are domestic and have a calendar year taxable year, and

each of P, S, S-1, S-2, S-3, T, V, W, W-1, Y, Z, and Z-1 is a corporation. For none of the consolidated return years at issue does the Commissioner exercise the authority under paragraph (f)(2) of this section to deal with any member separately. Any surviving entity in a merger is either a successor as described in paragraph (b)(1) of this section, or a default successor as described in paragraph (b)(4) of this section, as the case may be. Except as otherwise indicated, no agent will be replaced under paragraph (c)(6) of this section or will resign under paragraph (c)(7) of this section, and all communications to and from the Commissioner are made in accordance with procedures prescribed by the Commissioner.

*Example 1. Disposition of all group members where the agent remains the agent.*

(i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group, consisting of P and its two subsidiaries, S and S-1. P files consolidated returns for the P group in Years 1 and 2. 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.

(ii) *Analysis.* Although the consolidated group terminates after Year 2 under § 1.1502-75(d)(1) and P is no longer the common parent nor the agent for years after Year 2, P remains the agent for the P group for Years 1 and 2 under paragraph (a)(2) of this section. Accordingly, for as long as P remains in existence, P is the agent for the P group under paragraphs (a)(1) and (2) and (c)(1) of this section for Years 1 and 2.

*Example 2. Acquisition of the agent by another group where the agent remains the agent.* (i) *Facts.* 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, which is the common parent and agent of the Y consolidated group. P thereafter joins in the Y group's consolidated return as a member of the Y group.

(ii) *Analysis.* Although P is a member of the Y group in Year 3 and succeeding years, P remains the agent for the P group for Years 1 and 2 under paragraph (a)(2) of this section. Accordingly, for as long as P remains in existence, P is the agent for the P group under paragraphs (a)(1) and (2) and (c)(1) of this section for Years 1 and 2.

*Example 3. Reverse triangular merger of the agent where the agent remains the agent.*

(i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. P files consolidated returns for the P group in Years 1 and 2. On March 1 of Year 3, W-1, a subsidiary of W, merges into P in a reverse triangular merger qualifying as a reorganization under 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 percent of W's stock in exchange for all



of P's stock. The transaction is therefore a group structure change as described in paragraph (c)(3) of this section.

(ii) *Analysis.* Because the transaction constitutes a reverse acquisition that results in a group structure change, the P group is treated as remaining in existence with W as its common parent and agent. Under paragraphs (a)(1) and (2) and (c)(1) of this section, P remains the agent for the P group for Years 1 and 2 for as long as P remains in existence, even though the P group continues with W as its new common parent pursuant to § 1.1502-75(d)(3)(i). Until the merger of W-1 and P on March 1 of Year 3, P is the agent for the P group for Year 3. From the time of that merger, W, as common parent of the P group, becomes the agent for the P group with respect to all of Year 3 (including the period through March 1) and succeeding consolidated return years. The actions taken by P before the merger as agent for the P group for Year 3 are not nullified by the fact that W becomes the agent for all of Year 3.

*Example 4. Reverse triangular merger of the agent—subsequent distribution of agent where the agent remains the agent.* (i) *Facts.* The facts are the same as in *Example 3*, except that on April 1 of Year 4, in a transaction unrelated to the March 1, 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.

(ii) *Analysis.* Although P is no longer a member of the P group after the Year 4 distribution, P remains the agent for the P group under paragraphs (a)(1) and (2) and (c)(1) of this section for Years 1 and 2 for as long as P remains in existence.

*Example 5. Agent Resigns.* (i) *Facts.* The facts are the same as in *Example 4*, except that on August 1 of Year 4, P provides written notice to the Commissioner that it resigns as the agent for Years 1 and 2. Included with the written notice is a statement executed by either S or S-1 consenting to be the agent for the P group for Years 1 and 2.

(ii) *Analysis.* Pursuant to paragraph (c)(7) of this section, because P is not the agent in Year 4, the current year, it will not be the agent immediately after its resignation takes effect. Accordingly, if the Commissioner does not object to P's resignation, P may resign with respect to Years 1 and 2, both of which are completed years, and either S or S-1, each an entity described in paragraph (c)(5)(ii)(A) of this section, can be the agent for the P group for Years 1 and 2 if it consents in writing. W cannot be the agent for the P group for Years 1 and 2 because it is not an entity described in paragraph (c)(5)(ii)(A) of this section with respect to the P group for Years 1 and 2.

*Example 6. Qualified stock purchase and section 338 election where the agent remains the agent.* (i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. P files consolidated returns for the P group in Years 1 and 2. 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.

(ii) *Analysis.* 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 (c)(8) 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). Accordingly, new P is the agent for the P group for Year 1 and the period ending March 31 of Year 2 regardless of the election under section 338(g).

*Example 7. Change in the agent's federal income tax classification to a partnership and the resulting partnership continues as the agent.* (i) *Facts.* P, a State M limited liability partnership with two partners that is formed on January 1 of Year 1, elects pursuant to § 301.7701-3(c) of this chapter to be an association taxable as a corporation for federal income tax purposes effective on the date of formation. P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. P files consolidated returns for the P group in Years 1 through 6. On January 1 of Year 7, P elects pursuant to § 301.7701-3(c) of this chapter to be treated as a partnership. P remains in existence under applicable law.

(ii) *Analysis.* The P group terminates and P is no longer the common parent of a consolidated group after its election to be treated as a partnership for federal income tax purposes. Because P remains in existence under applicable law, P is the agent for the P group under paragraphs (a)(1) and (2) and (c)(1) of this section for Years 1 through 6. If P merged into a foreign partnership instead of converting to a partnership, the foreign partnership would be P's default successor and agent for the P group for Years 1 through 6. See paragraphs (b)(4) and (c)(1) of this section.

*Example 8. Forward triangular merger of agent—successor as default successor.* (i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. P files a consolidated return for the P group for Year 1. On January 1 of Year 3, P merges with and into Z-1, a subsidiary of Z, in a forward triangular merger qualifying as a reorganization under section 368(a)(1)(A) and (a)(2)(D). The transaction constitutes a reverse acquisition under § 1.1502-75(d)(3)(i) resulting in a group structure change as described in paragraph (c)(3) of this section because P's shareholders receive more than 50 percent of Z's stock in exchange for all of P's stock. Z-1, the corporation that survives the merger and the successor of P, is the default successor for the P group for Years 1 and 2.

(ii) *Analysis.* Although Z is the new common parent for the P group (which continues pursuant to § 1.1502-75(d)(3)(i)) for consolidated return years after the merger, and, as a consequence, Z is the new agent as a result of this group structure change, P may not designate an agent for Years 1 or 2 because Z-1 is P's default successor and the agent for the P group for Years 1 and 2. Z-1 must file the P group's consolidated return for Year 2. See paragraphs (b)(4) and (c)(1) of this section.

*Example 9. Merger of the agent into a disregarded entity in exchange for stock of owner in a transaction qualifying as a reorganization under the Code where successor is the default successor.* (i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. P files a consolidated return for the P group in Year 1. On January 1 of Year 2, the shareholders of P form Y, a State M corporation. On the same date, Y forms Y-1, a State M limited liability company that is a disregarded entity (as defined in paragraph (b)(3) of this section) for federal income tax purposes, and P merges into Y-1 under State M law. In the merger, the P shareholders receive all of the Y stock. Y (through Y-1) is treated as acquiring the assets of P in a transaction qualifying as a reorganization of P into Y under section 368(a)(1)(F), and the P group continues under § 1.1502-75(d)(2) with Y as the common parent and, as a consequence, the transaction is treated as a group structure change as described in paragraph (c)(3) with Y as the P group's agent for Year 2. In Year 4, the Commissioner seeks to extend the period of limitations on assessment with respect to Year 1 of the P group. In Year 5, the Commissioner seeks to extend the period of limitations on assessment with respect to Year 2 of the Y group (formerly the P group).

(ii) *Analysis.* (A) *Year 1 extension.* As a result of the January 1, Year 2 merger, Y-1 is the default successor of P, and the agent for the P group for Year 1. See paragraphs (b)(4) and (c)(1) of this section. Therefore, Y-1 is the only party that can sign the extension with respect to the P group for Year 1.

(B) *Year 2 extension.* Because the January 1, Year 2 merger qualified as a reorganization under section 368(a)(1)(F), the P group remains in existence with Y as the common parent. Therefore, Y, the common parent of the P group after the merger, is the P group's agent for all of Year 2 (see paragraph (c)(3) of this section) and is the only party that can sign the extension with respect to the P group for that year and in succeeding years. See paragraphs (a)(1) and (2) and (c)(1) of this section.

*Example 10. Designation of agent where there is no default successor.* (i) *Facts.* P is incorporated under the laws of State X. Fifty percent of its stock is owned at all times by A, an individual, and 50 percent by BCD, a partnership. On January 1 of Year 1, P forms two subsidiaries, S and T, and becomes the common parent of the P group. P files consolidated returns for the P group beginning in Year 1 and is the agent for the P consolidated group beginning on January 1 of Year 1. On November 30 of Year 3, P dissolves under X law. Under X law, A and BCD are primarily liable for the federal income tax liability of dissolved corporation P. State X law allows the officers of a dissolved corporation to perform certain actions incident to the winding up of its affairs after its dissolution, including the filing of tax returns.

(ii) *Analysis.* Upon P's dissolution, there is no default successor to P, pursuant to paragraph (b)(4) of this section, because there are two successors. Prior to its dissolution on

November 30 of Year 3, pursuant to paragraph (c)(5)(i) of this section, P may designate an agent for the P group for Years 1 and 2 and the short taxable year ending on November 30 of Year 3, to be effective upon P's dissolution. P may designate S or T, pursuant to paragraph (c)(5)(ii)(A) of this section (because they are members of the former group), or BCD (because it is an entity that is a successor to P pursuant to paragraph (b)(1) of this section). P cannot designate A pursuant to paragraph (c)(5)(ii) of this section, because A is not an entity. Under paragraph (b)(2) of this section, the officers of P cannot designate an agent for the P group after P dissolves on November 30 of Year 3, notwithstanding the winding up provisions of State X law. Accordingly, P should designate an agent prior to its dissolution to ensure that there is an agent authorized to file the short Year 3 consolidated return. If P does not designate an agent prior to dissolution under paragraph (c)(5)(i) of this section, the Commissioner may designate an agent under paragraph (c)(6)(i)(A)(1) of this section from among S, T, or BCD, upon their request or otherwise. If any of S, T, A, or BCD realizes that P has dissolved without designating an agent, it should request, in writing, a designation of an agent by the Commissioner as soon as possible.

**Example 11. Commissioner designates a new agent.** (i) *Agent fails to fulfill its obligations.* (A) *Facts.* P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S-1 and S-2, each a State Y corporation. P files a consolidated return for the P group in Year 1. In Year 2, S-3, also a State Y corporation, joins the P group. The P group continues as a consolidated group in Years 2, 3, and 4. As of Year 4, P has failed to file the P group consolidated returns for Years 2 and 3.

(B) *Analysis.* (1) *Scope of designation.* Because P failed to perform its obligations as agent as prescribed by federal tax law, the Commissioner may, under the authority of paragraph (c)(6)(i)(A)(3) of this section, on his own accord, with or without a written request from a member, designate another entity described in paragraph (c)(6)(i) of this section to act as the agent for not just Years 2 and 3, but any of Years 1 through 4.

(2) *Year 1 designation.* The Commissioner may designate either S-1 or S-2, both of which are entities described in paragraphs (c)(6)(i) and (c)(5)(ii)(A) of this section, to act as the agent for the P group for Year 1. Because S-3 was not a member of the group in Year 1, it is not an entity described in paragraphs (c)(6)(i) and (c)(5)(ii)(A) of this section for Year 1 and therefore cannot be the agent for Year 1. Unless otherwise provided in the designation, the designation of either S-1 or S-2 will also be effective for Years 2, 3, and 4 and all succeeding consolidated return years of the group.

(3) *Year 2 designation.* The Commissioner may designate either S-1, S-2, or S-3, all of which are entities described in paragraph (c)(5)(ii)(A) of this section, to act as the agent for the P group for Year 2. Unless otherwise provided in the designation, the designation of either S-1, S-2, or S-3 will also be effective for Years 3 and 4 and all succeeding consolidated return years of the group.

(4) *Year 3 designation.* The Commissioner may designate any of S-1, S-2, or S-3 as the agent for Year 3. Unless otherwise provided in the designation, the designation of either S-1, S-2, or S-3 will also be effective for Year 4 and all succeeding consolidated return years of the group.

(5) *Year 4 designation.* The Commissioner may designate any of S-1, S-2, or S-3 as the agent for Year 4. Unless otherwise provided in the designation, the designation of either S-1, S-2, or S-3 will also be effective for all succeeding consolidated return years of the group.

(ii) *Member requests replacement of designated agent.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 11*, except that in Year 4 the Commissioner designates S-1 as agent for Years 1 and succeeding years to replace P for P's failure to fulfill its obligations. After receiving notification that S-1 has been designated, S-3 submits a request in Year 4, pursuant to paragraph (c)(6)(i)(B) of this section, that the Commissioner designate S-2 as the agent because S-1 does not have ready access to the group's books and records, which are located in another state and are in the possession of S-2.

(B) *Analysis.* In light of S-3's request, the Commissioner may, under the authority of paragraph (c)(6)(i)(B) of this section, designate either S-2 (for all or any years) or S-3 (for any year or years other than Year 1) as agent in lieu of the previously designated agent, S-1. However, notwithstanding S-3's request, the Commissioner is not required to replace S-1 as agent for any of the consolidated return years for which S-1 was designated.

**Example 12. Designated agent ceases to be a member of the group.** (i) *Facts.* The facts are the same as in paragraph (ii)(A) of *Example 11*, except that in Year 4 no member requests that the Commissioner replace S-1, which accordingly continues to be the agent for the P group in Year 5 pursuant to paragraph (c)(6)(iii) of this section. On May 2 of Year 5, S-1 converts under State Y law into S-1 LLC, a limited liability company that is an entity that is treated as a disregarded entity (as defined in paragraph (b)(3) of this section) and, as a consequence, is no longer a member of the P group after the conversion.

(ii) *Analysis for completed years.* S-1 LLC, the disregarded entity resulting from the conversion, becomes S-1's default successor. As such, S-1 LLC is the agent for Years 1-4.

(iii) *Analysis for current and succeeding years.* S-1 is an agent designated by the Commissioner pursuant to paragraph (c)(6)(i)(A)(3) of this section. Because S-1 is no longer a member of the P group after May 2 of Year 5, S-1 is the agent for the P group for Year 5 only while it remains a member (see paragraphs (c)(6)(i) and (iii) of this section). According to paragraph (c)(6)(i) of this section, although S-1 LLC is S-1's default successor, it is not a member of the group for the current year and therefore cannot be its agent. Furthermore, S-1 cannot designate an agent for Year 5 under paragraph (c)(5)(i) of this section because that paragraph pertains only to designations for

completed years for which there is no default successor. In addition, S-1 cannot designate an agent for Year 5 under paragraph (c)(5)(i) of this section because S-1 was previously designated by the Commissioner under paragraph (c)(6)(i)(A)(3) of this section.

(iv) *Member's notice to Commissioner for Commissioner to designate a member of the group for a current year.* A member of the group in Year 5 should request that the Commissioner designate, pursuant to paragraphs (c)(6)(i)(A)(2) and (c)(6)(iv) of this section, another member of the P group to be the agent of the group for Year 5. The Commissioner may then, pursuant to paragraph (c)(6)(i)(A)(2) of this section, designate either S-2, S-3, or P to be the agent for the P group and, once so designated, that member will be, effective on May 3 of Year 5, the agent for all of Year 5 and for succeeding years (subject to the rules of this section) pursuant to paragraph (c)(6)(iii) of this section. No actions taken by S-1 on behalf of the P group through May 2, Year 5, are nullified by the Commissioner's designation of another agent even though the agent so designated will be the agent for all of Year 5.

**Example 13. Fraudulent conveyance of assets.** (i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. 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 P 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.

(ii) *Analysis.* Pursuant to paragraph (a)(1) 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.

*Example 14. Consent to extend the statute of limitations for a partnership where a member of the consolidated group is a partner of such partnership subject to the provisions of the Code and the tax matters partner is not a member of the group.* (i) *Facts.* P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. The P group has a November 30 fiscal year end and P files consolidated returns for the P group for the years ending November 30, Year 1 and November 30, Year 2. S-1 is a partner in the PRS partnership, which is subject to the provisions of sections 6221 through 6234. PRS has a calendar year end and A, an individual, is the tax matters partner of the PRS partnership. PRS files a partnership return for the year ending December 31, Year 1. On January 10, Year 5, A, as the tax matters partner for the PRS partnership, executes a consent to extend the period for assessment of partnership items of PRS for all partners, and the Commissioner co-executes the consent on the same day for the year ending December 31, Year 1.

(ii) *Analysis.* A's consent to extend the statute of limitations for the partnership items of PRS partnership for the year ending December 31, Year 1, extends the statute of limitations with respect to the partnership items for all members of the P group, including P, S, and S-1 for the consolidated return year ending November 30, Year 2. This is because S-1 is a partner in the PRS partnership for which A, the tax matters partner for the PRS partnership, consents, pursuant to section 6229(b)(1)(B), to extend the statute of limitations for the year ending December 31, Year 1. However, under paragraph (f)(2)(iii) of this section, such agreement with respect to the statute of limitations for the PRS partnership for the year ending December 31, Year 1 does not obviate the need to obtain a consent from P, the agent for the P consolidated group, to extend the statute of limitations for the P consolidated group for the P group's consolidated return years ending November 30, Year 1 and November 30, Year 2 regarding any items other than partnership items or affected items of the PRS partnership.

*Example 15. Contacting subsidiary member in order to facilitate the conduct of an*

*examination, appeal, or settlement where a member of the consolidated group is a partner of a partnership subject to the provisions of the Code.* (i) *Facts.* P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. The P group has a November 30 fiscal year end, and P files consolidated returns for the P group for the years ending November 30, Year 1 and November 30, Year 2. S-1 is a partner in the PRS partnership, which is subject to the provisions of sections 6221 through 6234. PRS has a calendar year end and A, an individual, is the tax matters partner of the PRS partnership. PRS files a partnership return for the year ending December 31, Year 1. The Commissioner, on January 10, Year 4, in the course of an examination of the PRS partnership for the year ending December 31, Year 1, seeks to obtain information in the course of that examination to resolve the audit.

(ii) *Analysis.* Because the direct contact with a subsidiary member of a consolidated group that is a partner in a partnership subject to the provisions under sections 6221 through 6234 may facilitate the conduct of an examination, appeal, or settlement, the Commissioner, under paragraph (f)(2)(iii) of this section, may communicate directly with either S-1, P, or A regarding the PRS partnership without breaking agency pursuant to paragraph (f)(2)(i) of this section. However, if the Commissioner were instead seeking to execute a settlement agreement with respect to S-1 as a partner with respect to its liability as a partner in PRS partnership, P would need to execute such settlement agreement for all members of the group including the partner subsidiary.

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

(i) [Reserved]

(j) *Effective/applicability date—(1) In general.* The rules of this section apply to consolidated return years beginning on or after April 1, 2015. For prior years beginning before June 28, 2002, see § 1.1502-77A. For prior years beginning on or after June 28, 2002, and before April 1, 2015, see § 1.1502-77B.

(2) *Application of this section to prior years.* Notwithstanding paragraph (j)(1) of this section, an agent may apply the rules of paragraph (c)(7) of this section to resign as agent for a completed year that began before April 1, 2015.

**§ 1.1502-78 [Amended]**

■ **Par. 6.** Section 1.1502-78 is amended as follows:

■ 1. Paragraph (a) is amended by removing every occurrence of the language “(or substitute agent designated under § 1.1502-77(d) for the carryback year)” and adding “(or the agent determined under § 1.1502-77(c) or § 1.1502-77B(d) for the carryback year)” in its place.

■ 2. Paragraph (b)(1) is amended by removing the language “(or substitute agent designated under § 1.1502-77(d) for the carryback year)” and adding “(or the agent determined under § 1.1502-77(c) or § 1.1502-77B(d) for the carryback year)” in its place.

■ 3. Paragraph (c) is amended by removing each occurrence of the language “1966” and adding “2003” in its place; removing the language “1967” and adding “2004” in its place; removing each occurrence of the language “1968” and adding “2005” in its place; and removing each occurrence of the language “1969” and adding “2006” in its place.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 7.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 8.** In § 602.101, revise paragraph (b) by adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*  
(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.1502-77B .....	1545-1699
* * * * *	* * * * *

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 23, 2015.

**Mark D. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2015-07182 Filed 3-31-15; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2015-0082]

**RIN 1625-AA09**

**Drawbridge Operation Regulation; Ontonagon River, Ontonagon, MI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.