

Regulations will generally disallow the deduction claimed by the Taxpayer upon the termination of the loss leg of the straddle. *See* § 1.701-2(d) (Ex. 8) (disallowing duplication of a built-in loss deduction attributable to the absence of a § 754 election). Second, the Service may challenge the allowance of the loss deduction based on other statutory provisions, including § 988, and judicial doctrines, including the step transaction doctrine and the doctrines of economic substance, business purpose, and substance over form. Third, the Service may assert that, where a loss is disallowed on the sale of a partnership interest under § 267(a)(1) or § 707(b)(1), § 267(d) must be applied under an aggregate approach rather than an entity approach. *See* § 1.701-2(e) (requiring aggregate treatment of partnerships for certain purposes). Because the gain realized by Taxpayer on the sale of its interest in LTP does not correspond to any increase in the value of the assets within LTP, the disallowed loss realized on the sale of LTP by UTP cannot be used to offset the gain under an aggregate approach.

Transactions that are the same as, or substantially similar to, the transaction described in this notice are identified as “listed transactions” for purposes of § 1.6011-4T(b)(2) of the temporary Income Tax Regulations and § 301.6111-2T(b)(2) of the temporary Procedure and Administration Regulations. *See also* § 301.6112-1T, A-4. For purposes of § 1.6011-4T(b)(2) and § 301.6111-2T(b)(2), a transaction will be considered the same as, or substantially similar to, the transaction described in this notice even if, at the time relevant for making such determination, the taxpayer in such transaction has not engaged in a step having the effect of Step 8.

Persons who are required to satisfy the registration requirement of § 6111 with respect to the transaction described in this notice and who fail to do so may be subject to the penalty under § 6707(a). Persons who are required to satisfy the list-keeping requirement of § 6112 with respect to the transaction and who fail to do so may be subject to the penalty under § 6708(a). In addition, the Service may impose penalties on participants in this transaction or substantially similar transactions or, as applicable, on persons who

participate in the promotion or reporting of this transaction or substantially similar transactions, including the accuracy-related penalty under § 6662, the return preparer penalty under § 6694, the promoter penalty under § 6700, and the aiding and abetting penalty under § 6701.

The principal author of this notice is Heather Faught of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Faught at (202) 622-3060 (not a toll-free call).

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*26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.  
(Also Part I, §§ 1502; 1.1502-77, 1.1502-77A.)*

## Rev. Proc. 2002-43

### Determination of Substitute Agent for a Consolidated Group When the Common Parent Ceases to Exist

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#### SECTION 1. PURPOSE

This revenue procedure provides instructions for all communications relating to the determination of a substitute agent to act on behalf of a consolidated group pursuant to § 1.1502-77(d) or § 1.1502-77A(d) of the Income Tax Regulations. This revenue procedure is the exclusive procedure under §§ 1.1502-77(d) and 1.1502-77A(d) for submitting the communications identified in section 3 of this revenue procedure. This revenue procedure also provides for the automatic approval of requests by a terminating common parent to designate its qualifying successor as substitute agent.

#### SECTION 2. GENERAL BACKGROUND

In general, the corporation that is the common parent of a consolidated group for a taxable year is the sole agent for the group with regard to the group's income tax liability for that taxable year. The original common parent generally remains the agent for the group for that taxable year, even if another corporation is the common parent of the group in a later year or the group later terminates. However, the original common parent cannot act as sole agent if its own existence terminates. In that case, the group may require a substitute agent to function with respect to prior open taxable years for which the original common parent was the group's agent. Sections 1.1502-77(d) and 1.1502-77A(d) provide rules regarding a substitute agent to replace a terminating or terminated common parent. This revenue procedure sets forth the procedures under those rules. These procedures also apply when a substitute

agent's existence terminates. In this revenue procedure, references to a terminating or terminated common parent include a substitute agent going out of existence.

### SECTION 3. SPECIFIC BACKGROUND INFORMATION REGARDING DIFFERENT MEANS OF DETERMINING A SUBSTITUTE AGENT

.01 Sections 1.1502-77(d)(1) and 1.1502-77A(d) provide for several different means of determining a substitute agent to act on behalf of a consolidated group. Each method is described below. Some can apply only to consolidated return years beginning on or after June 28, 2002, some can apply only to years beginning before June 28, 2002, and some can apply to any or all open years. If the terminating common parent is agent for any open years beginning before June 28, 2002, the Internal Revenue Service (IRS) recommends that the terminating common parent designate a substitute agent, because that is the only single procedure applicable to all open years. Designation by the terminating common parent affords the group the greatest choice as to the selection of its substitute agent and ensures the least interruption of communication with the IRS.

.02 A terminating common parent may designate a substitute agent. See §§ 1.1502-77(d)(1) and 1.1502-77A(d). Designation by a terminating common parent is available for any and all taxable years for which the terminating common parent is agent for the group. This revenue procedure provides different procedures depending on whether the terminating common parent designates its qualifying successor (see section 6 of this revenue procedure) or another corporation (see section 7 of this revenue procedure).

(1) If the terminating common parent designates its qualifying successor in accordance with the procedures of this revenue procedure, that designation is automatically approved without further communication from the IRS, and will be effective on the later of the termination of the common parent or the filing of the designation with the IRS. See section 6.02 of this revenue procedure for the definition of a qualifying successor. Designation by the terminating common par-

ent of its qualifying successor as substitute agent is generally available for any consolidated return year.

(2) The terminating common parent may also designate certain corporations other than its qualifying successor as substitute agent (see section 7 of this revenue procedure). Such a designation is subject to approval by the IRS. Designation of a corporation other than the terminating common parent's qualifying successor as substitute agent is generally available for any consolidated return year.

.03 If the terminating common parent does not designate a substitute agent, the remaining members may designate a substitute agent, but only for consolidated return years beginning before June 28, 2002. See § 1.1502-77A(d). The designation must be filed in the manner specified in section 8 of this revenue procedure, and is not effective until the IRS approves the designation.

.04 If the terminating common parent does not designate a substitute agent, its qualifying successor, if any, may notify the IRS that it is the substitute agent by default, but only for consolidated return years beginning on or after June 28, 2002. See § 1.1502-77(d)(2). IRS approval is not required, but the IRS is not required to send communications to, or act on communications from, the successor until it provides notification to the IRS of its status as a default substitute agent under section 9 of this revenue procedure.

.05 If the terminating common parent does not designate a substitute agent and has no qualifying successor, one or more members of the group may request the IRS to designate a substitute agent, but only for consolidated return years beginning on or after June 28, 2002. See § 1.1502-77(d)(3)(i). The request is made pursuant to section 10 of this revenue procedure. If the group does not request designation of a substitute agent in this situation, the IRS may nevertheless (if it has reason to believe there is no default substitute agent) designate any group member or successor of a member as the substitute agent for the group.

.06 If the IRS designated a substitute agent for consolidated return years beginning on or after June 28, 2002, one or more members of the group may request that the IRS replace the previously designated substitute with another member (or

successor of a member), in accordance with the procedures of section 11 of this revenue procedure.

### SECTION 4. SCOPE

.01 *In general.* This revenue procedure applies to any designation of a substitute agent under §§ 1.1502-77(d)(1) or 1.1502-77A(d), notification of the existence of a default substitute agent under § 1.1502-77(d)(2), request under § 1.1502-77(d)(3)(i) for the designation of a substitute agent, and request under § 1.1502-77(d)(3)(ii) for replacement of a previously designated substitute agent.

.02 *References to IRS.* References in this revenue procedure to the IRS include any official to whom the Commissioner's authority under §§ 1.1502-77(d) or 1.1502-77A(d) has been duly delegated.

### SECTION 5. WHERE TO FILE

Except as provided in section 11 of this revenue procedure, all documents described in this revenue procedure are filed at the following address:

Ogden Submission Processing  
Center  
P.O. Box 9941  
Mail Stop 4912  
Ogden, UT 84409

### SECTION 6. DESIGNATION BY A TERMINATING COMMON PARENT OF ITS QUALIFYING SUCCESSOR AS SUBSTITUTE AGENT

.01 *In general.* A terminating common parent may designate a substitute agent. See §§ 1.1502-77(d)(1), 1.1502-77(h)(1)(ii), and 1.1502-77A(d). Designation by a terminating common parent is available for any and all taxable years for which the terminating common parent is agent for the group. If the terminating common parent designates its qualifying successor in accordance with the procedures of this section 6, that designation is automatically approved without further communication from the IRS, and no written approval will be provided. Such designation will be effective on the later of the termination of the common parent or the filing of the designation with the IRS. Designation by a terminating common parent of its qualifying successor as

substitute agent with respect to consolidated return years beginning before June 28, 2002, requires the terminating common parent to elect to apply § 1.1502-77(d)(1) pursuant to § 1.1502-77(h)(1)(ii) in accordance with subsection .04(5) of this section 6. A designation by a common parent, before its existence terminates, of its qualifying successor as substitute agent for the group must be filed in accordance with the requirements set forth in this section 6.

.02 *Qualifying Successor.* For purposes of this revenue procedure, a “qualifying successor” must be (i) the sole entity that is primarily liable under applicable law (without regard to §§ 1.1502-1(f)(4) or 1.1502-6(a)) for the common parent’s Federal income tax liability and (ii) a domestic corporation for Federal income tax purposes. Qualifying successors usually result from the merger of a terminating common parent into another domestic corporation.

.03 *When to file.* (1) *In general.* A terminating common parent’s designation of its qualifying successor as substitute agent must be executed by the common parent before its existence terminates and, except as provided in paragraph (2) of this subsection .03, filed promptly.

(2) *Special rule.* If the qualifying successor does not come into existence before the common parent’s existence terminates, the common parent must still execute the designation before its existence terminates, and the qualifying successor must promptly complete the designation after it comes into existence by executing the statement required in subsection .04(9) of this section 6 and filing the designation.

.04 *Contents.* The terminating common parent’s designation of its qualifying successor as substitute agent must be in writing and contain the following information:

(1) The heading “REV. PROC. 2002-43: COMMON PARENT’S DESIGNATION OF ITS QUALIFYING SUCCESSOR AS SUBSTITUTE AGENT” must be typed or legibly printed at the top of the designation;

(2) Name, address, and employer identification number of the common parent making the designation;

(3) Name, address, and employer identification number of the common parent’s

qualifying successor and the consolidated return year(s) for which the designation applies (or a statement that it applies to all consolidated return years ending on or before the date of termination of the common parent);

(4) The name and employer identification number of the common parent under which the return(s) for which the designation applies was (were) filed, if different from the common parent named in paragraph (2) of this subsection .04;

(5) If the designation applies to any consolidated return year(s) beginning before June 28, 2002, a statement that the common parent elects pursuant to § 1.1502-77(h)(1)(ii) to apply § 1.1502-77(d)(1) with respect to such year(s);

(6) The Internal Revenue Service Center where the consolidated return(s) was (were) or will be filed, as the case may be, for the year(s) for which the designation applies;

(7) The expected date of termination of the common parent;

(8) The name, address, and phone number of any Examination Team Manager, Appeals Officer or Counsel Attorney who currently has jurisdiction of consolidated return year(s) for which the designation applies; and

(9) A statement on behalf of the qualifying successor in which it:

(a) Agrees to serve as the group’s substitute agent pursuant to the common parent’s designation; and

(b) If it was not a member of the group during the consolidated return year(s) for which it is designated, acknowledges that it is or will be primarily liable as a successor of the common parent of the group for the consolidated tax liability for such consolidated return year(s).

.05 *Signature requirements.* (1) The terminating common parent’s designation of its qualifying successor as substitute agent must contain the following declaration, signed by a duly authorized officer of the common parent: **Under penalties of perjury, I declare that I am authorized to make this designation on behalf of the common parent and that, to the best of my knowledge, the information provided is true, correct, and complete.**

(2) The statement required under subsection .04(9) of this section 6 must contain the following declaration, signed by a

duly authorized officer of the terminating common parent’s qualifying successor: **Under penalties of perjury, I declare that I am authorized to sign this statement on behalf of the qualifying successor and that, to the best of my knowledge, the information provided is true, correct, and complete.**

#### SECTION 7. DESIGNATION BY A TERMINATING COMMON PARENT OF A CORPORATION OTHER THAN ITS QUALIFYING SUCCESSOR AS SUBSTITUTE AGENT

.01 *In general.* A terminating common parent may designate a substitute agent. See §§ 1.1502-77(d)(1), 1.1502-77(h)(1)(ii), and 1.1502-77A(d). Designation by a terminating common parent is available for any and all taxable years for which the terminating common parent is agent for the group. If the terminating common parent designates a corporation other than its qualifying successor as substitute agent, that designation is subject to approval by the IRS and is not effective unless and until it is approved. The designation must be made in accordance with the procedures of this section 7. The terminating common parent may designate:

(1) Any corporation that was a member of the group during any part of the consolidated return year for which the designation applies and has not subsequently been disregarded as an entity separate from its owner or reclassified as a partnership for Federal tax purposes; or

(2) Any successor of such a corporation, if such successor is a domestic corporation and is not disregarded as an entity separate from its owner or classified as a partnership for Federal tax purposes, including a corporation that will become a successor at the time that the common parent’s existence terminates. The designation of a successor of a member as substitute agent is available for consolidated return years beginning before June 28, 2002, only if the terminating common parent elects to apply § 1.1502-77(d)(1) pursuant to § 1.1502-77(h)(1)(ii) in accordance with subsection .03(5) of this section 7. (See section 6 of this revenue procedure regarding the terminating common parent’s designation of its qualifying successor as substitute agent.)

.02 *When to file.* (1) *In general.* A terminating common parent's designation of a corporation other than its qualifying successor as substitute agent under §§ 1.1502-77(d)(1) or 1.1502-77A(d) must be executed by the common parent before its existence terminates and, except as provided in paragraph (2) of this subsection .02, filed promptly.

(2) *Special rule.* If the substitute agent designated by the terminating common parent under this section 7 does not come into existence before the common parent's existence terminates, the common parent must still execute the designation before its existence terminates, and the designated substitute agent must promptly complete the designation after it comes into existence by executing the statement required in subsection .03(10) of this section 7 and filing the designation.

.03 *Contents.* The terminating common parent's designation of a corporation other than its qualifying successor as substitute agent must be in writing and contain the following information:

(1) The heading "REV. PROC. 2002-43: DESIGNATION OF SUBSTITUTE AGENT BY COMMON PARENT" must be typed or legibly printed at the top of the designation;

(2) Name, address, and employer identification number of the common parent making the designation;

(3) Name, address, and employer identification number of the designated substitute agent and the consolidated return year(s) for which the designation applies (or a statement that it applies to all consolidated return years ending on or before the date of termination of the common parent);

(4) The name and employer identification number of the common parent under which the return(s) for which the designation applies was (were) filed, if different from the common parent named in paragraph (2) of this subsection .03;

(5) If the common parent elects pursuant to § 1.1502-77(h)(1)(ii) to apply § 1.1502-77(d)(1) with respect to consolidated return years beginning before June 28, 2002, a statement making an election;

(6) The Internal Revenue Service Center where the consolidated return(s) was

(were) or will be filed, as the case may be, for the year(s) for which the designation applies;

(7) The expected date of termination of the common parent;

(8) The name and address of the corporation(s) (or other person(s)) that have (or will have) custody of the books and records with respect to the consolidated return year(s) for which the designation applies, if different from the designated substitute agent named in paragraph (3) of this subsection .03, and if so, a description of the arrangements available to the designated substitute agent for access to the books and records;

(9) The name, address, and phone number of the Examination Team Manager, Appeals Officer or Counsel Attorney, if any, who currently has jurisdiction of the consolidated return year(s) for which the designation applies; and

(10) A statement on behalf of the substitute agent in which it:

(a) Agrees to serve as the group's substitute agent pursuant to the common parent's designation; and

(b) If it was not a member of the group during the consolidated return year(s) for which it is designated, acknowledges that it is or will be primarily liable as a successor of a member of the group for the consolidated tax liability for such consolidated return year(s).

.04 *Signature requirements.* (1) The terminating common parent's designation of a corporation other than its qualifying successor as substitute agent must contain the following declaration, signed by a duly authorized officer of the common parent: **Under penalties of perjury, I declare that I am authorized to make this designation on behalf of the common parent and that, to the best of my knowledge, the information provided is true, correct, and complete.**

(2) The statement required under subsection .03(10) of this section 7 must contain the following declaration, signed by a duly authorized officer of the substitute agent: **Under penalties of perjury, I declare that I am authorized to sign this statement on behalf of the designated substitute agent and that, to the best of my knowledge, the information provided is true, correct, and complete.**

.05 *Designations solely for consolidated return years subject to § 1.1502-77A(d).* If the designation applies only to one or more consolidated return years beginning before June 28, 2002, and the designated substitute agent was a member (but not a successor of a member) of the group for the year(s) for which the designation applies, the election in paragraph (5) of subsection .03 and the statement signed on behalf of the designated substitute agent in paragraph (10) of subsection .03 are not applicable and are therefore not required.

.06 *Approval.* (1) The IRS may approve or disapprove for any reason a designation of a substitute agent under this section 7. Approval of such designation is in the sole discretion of the IRS.

(2) No designation by a terminating common parent under this section 7 applies unless and until it is approved by the IRS. Approval of a terminating common parent's designation under this section 7 will not be effective before the existence of the common parent making the designation terminates.

(3) The IRS will approve or disapprove any designation under this section 7 in writing to the terminating common parent and the substitute agent. Unless written approval is received from the IRS, taxpayers may not assume that the substitute agent has the authority to act on behalf of the group.

## SECTION 8. DESIGNATION BY REMAINING MEMBERS OF THE GROUP UNDER § 1.1502-77A(d).

.01. *In general.* If a terminating common parent does not designate a substitute agent for any consolidated return year(s) beginning before June 28, 2002, the remaining members of the group may designate a substitute agent pursuant to § 1.1502-77A(d) for such year(s). The remaining members may designate as substitute agent any corporation that was a member of the group for any part of a consolidated return year for which the designation applies. The designation must be filed in accordance with the requirements set forth in this section 8.

.02 *When to file.* The designation of a substitute agent by the remaining members of the group under § 1.1502-

77A(d)(1) may be filed at any time after the common parent's existence terminates.

.03 *Contents.* The remaining members' designation of a substitute agent must be in writing and contain the following information:

(1) The heading "REV. PROC. 2002-43: DESIGNATION BY GROUP MEMBERS UNDER § 1.1502-77A(d)" must be typed or legibly printed at the top of the designation;

(2) Name, address, and employer identification number of the terminated common parent for which a substitute agent is being designated;

(3) Name, address, and employer identification number of the designated substitute agent and the consolidated return year(s) for which the designation applies (or a statement that it applies to all consolidated return years ending on or before the date of termination of the common parent);

(4) The name and employer identification number of the common parent under which the return(s) for which the designation applies was (were) filed, if different from the common parent named in paragraph (2) of this subsection .03;

(5) The Internal Revenue Service Center where the consolidated return(s) was (were) or will be filed, as the case may be, for the year(s) for which the designation applies;

(6) The date of termination of the common parent;

(7) The name and address of the corporation(s) (or other person(s)) that have (or will have) custody of the books and records with respect to the consolidated return year(s) for which the designation applies, if different from the designated substitute agent named in paragraph (3) of this subsection .03, and if so, a description of the arrangements available to the designated substitute agent for access to the books and records;

(8) A representation that the corporations signing the designation constitute all of the remaining members of the group; and

(9) The name, address, and phone number of the Examination Team Manager, Appeals Officer or Counsel Attorney, if any, who currently has jurisdiction of the consolidated return year(s) for which the designation applies.

.04 *Signature requirements.* The designation must contain the following declaration, signed by a duly authorized officer of each remaining member of the group for the consolidated return year(s) for which the designation applies: **Under penalties of perjury, I declare that I am authorized to make this designation on behalf of the named member of the group and that, to the best of my knowledge, the information provided is true, correct, and complete.** For purposes of this subsection .04, the designation may be submitted as a single document containing all required signatures or as multiple documents each signed by a duly authorized officer of a remaining member of the group.

.05 *Approval.* (1) The IRS may approve or disapprove for any reason a designation of a substitute agent under this section 8. Approval of such designation is in the sole discretion of the IRS.

(2) No designation under this section 8 applies unless and until it is approved by the IRS.

(3) The IRS will approve or disapprove any designation under this section 8 in writing to the member designated as substitute agent in subsection .03(3) of this section 8. Unless written approval is received from the IRS, taxpayers may not assume that the substitute agent has the authority to act on behalf of the group.

#### SECTION 9. NOTIFICATION BY DEFAULT SUBSTITUTE AGENT UNDER § 1.1502-77(d)(2)

.01 *In general.* If a terminating common parent that does not designate a substitute agent pursuant to § 1.1502-77(d)(1) has a qualifying successor (as defined in section 6.02 of this revenue procedure), such qualifying successor is the default substitute agent under § 1.1502-77(d)(2) for consolidated return years beginning on or after June 28, 2002. Such default substitute agent must provide notification to the IRS pursuant to the filing requirements set forth in this section 9 to insure that it will receive communications from the IRS to the group and to insure that the IRS will act on its communications to the IRS on behalf of the group.

.02 *When to file.* Notification by the default substitute agent should be filed

promptly after the existence of the common parent terminates.

.03 *Contents.* The notification by the default substitute agent under § 1.1502-77(d)(2) must be in writing and contain the following information:

(1) The heading "REV. PROC. 2002-43: NOTIFICATION BY DEFAULT SUBSTITUTE AGENT UNDER § 1.1502-77(d)(2)" must be typed or legibly printed at the top of the notification;

(2) Name, address, and employer identification number of the terminated common parent;

(3) Name, address, and employer identification number of the default substitute agent and the consolidated return year(s) for which it is the substitute agent;

(4) The name and employer identification number of the common parent under which the return(s) for which the default substitute agent is the substitute agent was (were) filed, if different from the common parent named in paragraph (2) of this subsection .03;

(5) The Internal Revenue Service Center where the consolidated return(s) was (were) or will be filed, as the case may be, for the consolidated return year(s) for which the default substitute agent is the substitute agent;

(6) The date of termination of the common parent;

(7) The name, address, and phone number of the Examination Team Manager, Appeals Officer or Counsel Attorney, if any, who currently has jurisdiction of the consolidated return year(s) for which the default substitute agent is the substitute agent; and

(8) A statement in which the default substitute agent:

(a) Agrees to serve as the group's substitute agent; and

(b) If it was not a member of the group during the consolidated return year(s) for which it is the default substitute agent, acknowledges that it is primarily liable as a successor of the former common parent of the group for the consolidated tax liability for such consolidated return year(s).

.04 *Signature requirements.* The notification by a default substitute agent must contain the following declaration, signed by a duly authorized officer of the default substitute agent: **Under penalties of perjury, I declare that I am authorized to**

**submit this notification on behalf of the default substitute agent and that, to the best of my knowledge, the information provided is true, correct, and complete.**

.05 *No approval required.* IRS approval is not required for a default substitute agent, but the IRS is not required to send communications to, or act on communications from, a default substitute agent until it provides notification under this section 9.

#### SECTION 10. MEMBER'S REQUEST FOR THE IRS TO DESIGNATE A SUBSTITUTE AGENT UNDER § 1.1502-77(d)(3)(i)

.01 *In general.* If a terminating common parent does not designate a substitute agent and there is no default substitute agent under § 1.1502-77(d)(2), one or more members of the group may request that the IRS designate a substitute agent pursuant to § 1.1502-77(d)(3)(i) for consolidated return years beginning on or after June 28, 2002. Such request may (but is not required to) propose a member (or a successor of a member) for the IRS to designate as substitute agent.

.02 *When to file.* A request by a member of the group that the IRS designate a substitute agent may be filed at any time after the common parent's existence terminates and before the IRS designates a substitute agent.

.03 *Contents.* A request for designation of a substitute agent must be in writing and contain the following information:

(1) The heading "REV. PROC. 2002-43: REQUEST FOR DESIGNATION OF SUBSTITUTE AGENT UNDER § 1.1502-77(d)(3)" must be typed or legibly printed at the top of the designation;

(2) Name, address, and employer identification number of the terminated common parent;

(3) Name, address, and employer identification number of the proposed substitute agent, if any, and the consolidated return year(s) for which the designation is requested;

(4) The name and employer identification number of the common parent under which the return(s) for which the designation is requested was (were) filed, if different from the common parent named in paragraph (2) of this subsection .03;

(5) The Internal Revenue Service Center where the consolidated return(s) was

(were) or will be filed, as the case may be, for the year(s) for which the designation is requested;

(6) The date the common parent's existence terminated and the circumstances under which it terminated (*e.g.*, dissolution under state law or merger into a limited liability company);

(7) The name and address of the corporation(s) (or other person(s)) that have custody of the books and records with respect to the consolidated return year(s) for which the designation is requested, if different from any proposed substitute agent named in paragraph (3) of this subsection .03, and if so, a description of the arrangements available to the proposed substitute agent for access to the books and records; and

(8) The name, address, and phone number of the Examination Team Manager, Appeals Officer or Counsel Attorney, if any, who currently has jurisdiction of the consolidated return year(s) for which the designation is requested.

.04 *Signature requirement.* A request under this section 10 must contain the following declaration, signed by a duly authorized officer of at least one of the requesting members which was a member of the group for the consolidated return year(s) for which the designation is requested: **Under penalties of perjury, I declare that I am authorized to make this request on behalf of the named member of the group and that, to the best of my knowledge, the information provided is true, correct, and complete.**

.05 *Designation by the IRS.* (1) In response to a request under this section 10, the IRS may, in its sole discretion, designate as the substitute agent the member (or successor of the member) proposed by the request, if any, or another member (or successor of another member).

(2) The IRS will notify in writing the designated substitute agent.

#### SECTION 11. REQUEST THAT IRS REPLACE A PREVIOUSLY DESIGNATED SUBSTITUTE AGENT

.01 *In general.* If the IRS designates a substitute agent pursuant to § 1.1502-77(d)(3)(i), one or more members of the group may request pursuant to § 1.1502-77(d)(3)(ii) that the IRS replace the previously designated substitute agent with

another member (or successor of another member). Such request may (but is not required to) propose a substitute agent to replace the previously designated substitute agent.

.02 *When to file.* A request by a member of the group that the IRS replace a previously designated substitute agent may be filed at any time after the IRS designates the substitute agent that the request seeks to have replaced.

.03 *Contents.* A request that the IRS replace a previously designated substitute agent must be in writing and contain the following information:

(1) The heading "REV. PROC. 2002-43: REQUEST FOR IRS TO REPLACE PREVIOUSLY DESIGNATED SUBSTITUTE AGENT UNDER § 1.1502-77(d)(3)" must be typed or legibly printed at the top of the designation;

(2) Name, address, and employer identification number of the previously designated substitute agent;

(3) Name, address, and employer identification number of the proposed substitute agent, if any, to replace the previously designated substitute agent and the consolidated return year(s) for which the replacement designation is requested;

(4) The name and employer identification number of the common parent under which the return(s) for which the replacement designation is requested was (were) filed;

(5) The Internal Revenue Service Center where the consolidated return(s) was (were) or will be filed, as the case may be, for the year(s) for which the replacement designation is requested;

(6) The date the common parent's existence terminated and the circumstances under which it terminated (*e.g.*, dissolution under state law or merger into a limited liability company);

(7) The name and address of the corporation(s) (or other person(s)) that have custody of the books and records with respect to the consolidated return years for which the replacement designation is requested, if different from the proposed replacement substitute agent named in paragraph (3) of this subsection .03, and if so, a description of the arrangements available to the proposed replacement substitute agent for access to the books and records;

(8) The name, address, and phone number of the Examination Team Manager, Appeals Officer or Counsel Attorney, if any, who currently has jurisdiction of the consolidated return years for which the replacement designation is requested; and

(9) The reason(s) for the request to replace the previously designated substitute agent.

.04 *Signature requirement.* A request under this section 11 must contain the following declaration, signed by a duly authorized officer of at least one of the requesting members which was a member of the group for the consolidated return year(s) for which the replacement designation is requested: **Under penalties of perjury, I declare that I am authorized to make this request on behalf of the named member of the group and that, to the best of my knowledge, the information provided is true, correct, and complete.**

.05 *Where to file.* Notwithstanding the instructions in section 4 of this revenue procedure, a request under this section 11 must be filed with the office that made the designation of the substitute agent that the request seeks to replace.

.06 *Designation by the IRS.* (1) In response to a request under this section 11, the IRS may, in its sole discretion, replace the previously designated substitute agent with the member (or successor of the member) proposed by the request or another member (or successor of another member).

(2) If the IRS replaces the previously designated substitute agent, it will notify in writing the previously designated substitute agent and the replacement substitute agent of the change in the substitute agent.

## SECTION 12. EFFECTIVE DATE

This revenue procedure applies to designations of substitute agents and notifications of the existence of default substitute agents, and to requests for designation of a substitute agent or for replacement of a previously designated substitute agent made after June 28, 2002.

## SECTION 13. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1545-1699 and 1545-1793.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 6 through 11. These collections of information are required (i) for the common parent to notify the IRS of the designation of a substitute agent for the consolidated group when the common parent's existence is about to terminate and for the designated corporation to confirm that it agrees to serve as the group's substitute agent and qualifies to be the group's substitute agent, (ii) for the common parent's successor to notify the IRS that it qualifies as a default substitute agent, or (iii) for a member of a consolidated group to request that the IRS designate a substitute agent or replace a previously designated substitute agent. This information will be used (i) to determine whether to approve the designation of the substitute agent, (ii) to update IRS records with the name of the substitute agent, or (iii) to designate or replace a substitute agent. The collections of information are required to obtain a benefit in the case of a designation by the common parent or notification by a default substitute agent, and voluntary in the case of requests by members to designate or replace a substitute agent. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 400 hours.

The estimated annual burden per respondent varies from one hour to 3 hours, depending on individual circumstances, with an estimated average of two hours. The estimated number of respondents is 200.

The estimated annual frequency of responses is on occasion.

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 tax return information are confidential, as required by 26 U.S.C. 6103.

## SECTION 14. INQUIRIES

Inquiries regarding this revenue procedure may be addressed to the Commissioner of Internal Revenue, ATTN: CC:CORP:BO2, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

## DRAFTING INFORMATION

The principal authors of this revenue procedure are George R. Johnson and Gerald B. Fleming of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, contact Mr. Johnson at (202) 622-7930 or Mr. Fleming at (202) 622-7770 (not toll-free numbers).

*26 CFR 601.204: Changes in accounting periods and methods of accounting.*

*(Also Part I, § 832; 1.832-4; 1.832-5.)*

## Rev. Proc. 2002-46

### SECTION 1. PURPOSE

This revenue procedure provides certain insurance companies subject to tax under § 831 of the Internal Revenue Code with a safe harbor method of accounting for premium acquisition expenses. This revenue procedure also provides a procedure for insurance companies to obtain automatic consent of the Commissioner to change to this safe harbor method.

### SECTION 2. BACKGROUND

.01 Section 832(b)(1) provides that the gross income of an insurance company subject to tax under § 831 includes the company's "underwriting income."

.02 Section 832(b)(3) defines "underwriting income" as "premiums earned on insurance contracts during the taxable year, less losses incurred and expenses incurred."

.03 Section 832(b)(4) provides that to compute premiums earned, an insurance company reduces the amount of gross premiums written on insurance contracts