

Internal Revenue Service

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Legend

Target =

Acquiring =

Foreign =

Parent

Forco Sub 1 =

Forco Sub 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

A =

B =

C =

a =

b =

c =

Business =

d =

e =

f =

g =

h =

Year 1 =

Dear :

This letter responds to your July 6, 2004 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

Summary of Facts

Target is a domestic corporation and the common parent of a consolidated group. Foreign Parent, a Country A company owns all of Target's outstanding stock. Target has served as a holding company since its formation. Target's assets consist of approximately \$ a cash, and all of the issued stock of four domestic subsidiaries: Acquiring, Sub 1, Sub 2, and Sub 3. Target has no fixed liabilities, but may have contingent liabilities related to the operations of a former subsidiary. The contingent liabilities may be wholly or partly offset by insurance coverage as well as possible third-party indemnification.

Acquiring was formed by Target in Year 1 in a transaction intended to qualify under § 351 of the Internal Revenue Code. Acquiring's assets consist primarily of stock in Sub 4. Sub 4, directly and through its domestic and foreign subsidiaries, conducts Business.

Proposed Transaction

For what are represented to be valid business purposes, the following transaction is proposed (the "Proposed Transaction"):

1. Foreign Parent will contribute approximately b% of Target's stock to Forco Sub 1, a newly formed Country B limited company, and approximately c% of Target's stock to Forco Sub 2, a newly formed Country B limited company. Foreign Parent will directly own all beneficial interests in Forco Sub 1 and Forco Sub 2.
2. Target will transfer its assets to Acquiring in exchange for approximately d shares of Acquiring's Class A common stock and approximately e shares of Acquiring's Class B common stock.
3. Target will then dissolve under the laws of State C and will distribute approximately f shares of Acquiring's Class A common stock to Forco Sub 1 and approximately g shares of Acquiring's Class A common stock and h shares of Acquiring's Class B common stock to Forco Sub 2. By operation of law, the contingent liabilities will be assumed by Forco Sub 1 and Forco Sub 2.

Representations

In connection with the Proposed Transaction it has been represented that:

- a. The fair market value of the Acquiring stock and other consideration received by each Target stockholder will be approximately equal to the fair market value of the Target stock surrendered in the exchange.
- b. There is no plan or intention by the shareholders of Target to sell, exchange, or otherwise dispose of a number of shares of Acquiring stock received in the Proposed Transaction that would reduce the Target shareholders' ownership of Acquiring stock to a number of shares having a value, as of the date of the Proposed Transaction, of less than 50 percent of the value of all the formerly outstanding stock of Target as of the same date. For purposes of this representation, shares of Target stock exchanged for cash or other property, surrendered by dissenters or exchanged for cash in lieu of fractional shares of Acquiring stock will be treated as outstanding Target stock on the date of the Proposed Transaction. Moreover, shares of Target stock and shares of Acquiring stock held by Target shareholders and otherwise sold, redeemed, or

disposed of prior or subsequent to the Proposed Transaction will be considered in making this representation.

- c. Acquiring will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target immediately prior to the Proposed Transaction. For purposes of this representation, amounts used by Target to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately preceding the transfer will be included as assets of Target held immediately prior to the Proposed Transaction.
- d. Following the Proposed Transaction, the stockholders of Target will be in control of Acquiring within the meaning of § 368(a)(2)(H).
- e. Acquiring has no plan or intention to reacquire, directly or through a related person, any of its stock issued in the Proposed Transaction.
- f. Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the Proposed Transaction, except for dispositions made in the ordinary course of business.
- g. The total adjusted bases and the fair market value of the assets of Target transferred to Acquiring will each equal or exceed the sum of the liabilities assumed by Acquiring plus the amount of the liabilities, if any, to which the transferred assets are subject.
- h. The liabilities of Target assumed by Acquiring plus the liabilities, if any, to which the transferred assets are subject (as determined under § 357(d)) were incurred by Target in the ordinary course of its business and are associated with assets transferred.
- i. Following the Proposed Transaction, Acquiring will continue the historic business of Target or use a significant portion of Target's historic business assets in a business.
- j. At the time of the Proposed Transaction, Acquiring will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Acquiring that, if exercised or converted, would affect the acquisition or retention of control (as defined in § 368(a)(2)(H)(i)) of Acquiring by Forco Sub 1 and Forco Sub 2.

- k. Acquiring, Target, and the stockholders of Target will each pay their respective expenses, if any, incurred in connection with the Proposed Transaction.
- l. There is no intercorporate debt existing between Acquiring and Target that was issued, acquired, or will be settled at a discount.
- m. No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- n. Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- o. On the date of the exchange of Target stock for Acquiring stock, the stock of Target will not be a “United States real property holding interest” within the meaning of § 897(c)(2).

Rulings

Based solely on the information submitted and on the representations set forth above, we rule as follows:

- 1. The transfer by Target of substantially all of its assets in exchange for Acquiring stock, followed by the distribution of Acquiring stock to Forco Sub 1 and Forco Sub 2 in the dissolution of Target, will be a reorganization within the meaning of § 368(a)(1)(D). For purposes of this ruling, “substantially all” means at least 90% of the fair market value of the net assets and at least 70% of the fair market value of the gross assets of Target. Acquiring and Target will each be “a party to a reorganization” within the meaning of § 368(b).
- 2. No gain or loss will be recognized by Target upon the transfer of all its assets to Acquiring in exchange for Acquiring stock (§ 361(a) and § 357(c)).
- 3. No gain or loss will be recognized by Target on the distribution of the Acquiring stock to Forco Sub 1 and Forco Sub 2 (§ 361(c)(1)).
- 4. No gain or loss will be recognized by Acquiring upon receipt of the assets of Target in exchange for Acquiring stock (§ 1032(a)).
- 5. The basis of Target’s assets in the hands of Acquiring will be the same as the basis of such assets in the hands of Target immediately prior to the transfer (§ 362(b)).

6. The holding period of Target's assets in the hands of Acquiring will include the period during which such assets were held by Target (§ 1223(2)).
7. No gain or loss will be recognized by Forco Sub 1 and Forco Sub 2 upon receipt of the Acquiring stock in exchange for their Target stock (§ 354(a)(1)).
8. The basis of the shares of the Acquiring stock received by Forco Sub 1 and Forco Sub 2 will be the same, in each instance, as their basis in the Target stock surrendered in exchange therefor (§ 358(a)(1)).
9. The holding period of the Acquiring stock received by Forco Sub 1 and Forco Sub 2 will include the holding period of the Target stock surrendered in exchange therefor, provided that the Target stock is held as a capital asset on the date of the exchange (§ 1223(1)).
10. As provided in § 381(a), Acquiring will succeed to and take into account the items of Target described in § 381(c), subject to the provisions and limitations of §§ 381, 382, 383, and 384.

Caveats

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

No opinion is expressed or implied about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Sean P. Duffley
Assistant to the Chief, Branch 4
Office of Associate Chief Counsel (Corporate)