

**Internal Revenue Service**

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
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PLR-121716-08

In Re:

Date:  
September 18, 2008

Target =

Acquiring =

a =

b =

c =

State A =

State B =

Business X =

Dear :

We respond to your request dated May 1, 2008, for rulings on the Federal income tax consequences of a proposed transaction. Additional information was submitted in a letter dated September 11, 2008. The information submitted for consideration is summarized below.

Target is a State A holding company that is taxed as a subchapter S corporation for Federal income tax purposes. Target is owned by a shareholders. Target owns

between b percent and c percent (an amount that is greater than 50 percent but less than 80 percent) of the outstanding common stock of Acquiring, Acquiring's only class of stock. Target's principal asset is the stock of Acquiring, which value constitutes the majority of Acquiring's value. Target has no business operations.

Acquiring is a State B corporation that is taxed as a subchapter C corporation for Federal income tax purposes and is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return. Acquiring is engaged in Business X.

For what have been represented as valid business purposes, Target proposes to merge, in a statutory merger pursuant to the laws of States A and B, with and into Acquiring. The following will occur as a result of the merger:

- (i) Target will transfer all of its assets to Acquiring solely in exchange for shares of Acquiring stock.
- (ii) The Target stock will be converted into shares of Acquiring stock and Target will cease to exist by operation of applicable state law.

The following representations have been made with respect to the proposed transaction:

- (a) The fair market value of Acquiring stock and other consideration received by each Target shareholder will approximately equal the fair market value of the Target stock surrendered in the exchange.
- (b) There is no plan or intention for Acquiring or any person related (as defined in §1.368-1(e)(3) of the Income Tax Regulations) to Acquiring, to acquire or redeem, during the five-year period beginning on the date of the proposed transaction, any of the Acquiring common stock issued in the transaction either directly or indirectly or through any transaction, agreement, or arrangement with any other person.
- (c) During the five-year period ending on the date of the proposed transaction: (i) neither Acquiring, nor any person related (as defined in §1.368-1(e)(3)) to Acquiring will have acquired Target stock with consideration other than Acquiring stock; (ii) neither Target, nor any person related (as defined in §1.368-1(e)(3) determined without regard to §1.368-1(e)(3)(i)(A)) to Target, will have acquired or redeemed Target stock with consideration other than Acquiring stock or Target stock; and (iii) no distributions will have been made with respect to Target stock, other than ordinary, normal, regular, dividend distributions made pursuant

to Target's historic dividend paying practice, either directly or through any transaction, agreement, or arrangement with any other person.

- (d) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in §368(a)(2)(C) of the Internal Revenue Code.
- (e) Acquiring, Target, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the transaction.
- (f) There is no intercorporate indebtedness existing between Target and Acquiring that was issued, acquired, or will be settled at a discount.
- (g) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv).
- (h) Target is not under the jurisdiction of a court in a title 11 or similar case within the meaning of §368(a)(3)(A).
- (i) Target has no liabilities that will be assumed (as determined under §357(d)) by Acquiring in the reorganization.
- (j) Target and Acquiring are both solvent and will be solvent as of the date of the merger.

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to the proposed transaction:

- (1) Provided that the transaction qualifies as a statutory merger under applicable state law, the acquisition by Acquiring of Target solely in exchange for Acquiring stock will qualify as a reorganization under §368(a)(1)(A). Acquiring and Target each will be a "party to the reorganization" within the meaning of §368(b).
- (2) Target will recognize no gain or loss on the transfer of its assets to Acquiring pursuant to the plan of merger and in exchange for Acquiring stock (§361(a)).
- (3) Target will recognize no gain or loss on the distribution of the Acquiring stock to its shareholders (§361(c)).

- (4) A Target shareholder will recognize no gain or loss on the receipt of Acquiring stock (including a fractional share interest) in exchange for Target stock pursuant to the plan of merger (§354(a)(1)).
- (5) A Target shareholder's total basis in the Acquiring stock (including a fractional share interest) received pursuant to the plan of merger will equal the basis of the Target stock held immediately before the merger (§358(a)(1)). A shareholder may specifically identify basis under §1.358-2.
- (6) A Target shareholder's holding period in the Acquiring stock received pursuant to the plan of merger will include the holding period of the Target stock on which the distribution is made, provided that the Target stock was held as a capital asset on the date of the exchange (§1223(1)). The holding period will reflect an identification of specific basis under §1.358-2.
- (7) The Acquiring Group will remain in existence after the merger, with Acquiring continuing as the common parent of the Acquiring Group (§1.1502-75(d)(1)).
- (8) Acquiring will recognize no gain or loss on the receipt of Target assets in exchange for Acquiring stock (§1032(a)).
- (9) Acquiring will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Target as of the close of the date of the transaction. Any deficit in the earnings and profits of Acquiring or Target will be used only to offset earnings and profits accumulated after the date of the transaction (§§381(c)(2)(A) and 1.381(c)(2)-1).
- (10) Acquiring will succeed to and take into account the items of Target described in §381(c) as of the close of the day of the transaction. The items will be taken into account by Acquiring subject to the conditions and limitations specified in §§381, 382, 383, and 384 and the regulations thereunder.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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

A copy of this letter should be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

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

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)