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Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:2- PLR-1194199

Date:

September 28, 2000

Acquiring =

Target =

ESOP 1 =

ESOP 2 =

Target Sub =

Date 1 =

Date 2 =

x =

y =

z =

w =

v =

u =

r =

t	=
s	=
q	=
state 1	=
state 2	=
shareholder	=

Dear:

This responds to your letter requesting rulings as to certain income tax consequences of a proposed transaction. The information submitted and considered in your request is summarized below.

ESOP 1 is a state 1 employee stock ownership plan and trust qualified under sections 401(a) and 501 (a) of the code. It owns all of the issued and outstanding stock of Acquiring. Acquiring, the common parent of a consolidated group, is a state 1 corporation and is a calendar year, accrual basis taxpayer.

Before Date 1, Shareholder owned x% and ESOP 2 owned the remaining r% of Target Sub. On Date 1, shareholder and ESOP 2 formed Target as a state 2 corporation. Shareholder contributed z% interest in Target Sub in exchange for a y% interest and ESOP 2 contributed its entire r% interest in Target Sub in exchange for w% of the common stock of Target. As a result of the transaction, Shareholder owned y% of Target and u% of Target Sub and ESOP 2 owned w% of Target and v% of Target Sub.

On Date 2, unrelated lenders loaned a total of \$t to Target Sub which in turn loaned \$ s of that amount to ESOP 2. Also on that date, shareholder sold his y% interest in Target to ESOP 2 for \$s in a sale intended to qualify for nonrecognition under section 1042 of the Code. To the extent shareholder elects under section 1042, shareholder will not receive allocations of stock under either ESOP 2 or the ESOP 1. As a result of the stock sale, ESOP 2 owned 100% of Target.

Also on Date 2, ESOP 2 merged with and into ESOP 1 (the ESOP merger). After the merger, ESOP 1 owned 100% of Acquiring and 100% of Target.

For valid business reasons the following transaction is proposed: Acquiring will acquire

all of the stock of Target from ESOP 1 solely in exchange for voting common stock of Acquiring. No consideration other than Acquiring voting common stock will be given to ESOP 1. No cash in lieu of fractional shares will be issued in the exchange.

The parties to the proposed transaction make the following representations:

1. The fair market value of the Acquiring stock to be received by Target's shareholder, ESOP 1, will be equal to the fair market value of the Target stock surrendered in the exchange.
2. There is no plan or intention by ESOP 1 to sell, exchange, or otherwise dispose of a number of shares of Acquiring stock received in the proposed transaction that would reduce ESOP 1's 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 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.
3. Target has no plan or intention to issue additional shares of its stock that would result in Acquiring losing control of Target within the meaning of Section 368(c) of the Internal Revenue Code.
4. Acquiring has no plan or intention to liquidate Target or to merge Target into another corporation; to cause Target to sell or otherwise dispose of any of its assets, except for dispositions made in the ordinary course of business, or to sell or otherwise dispose of any of the Target stock acquired in the proposed transaction, except for transfers described in Section 368(a)(2)(C) of the Internal Revenue Code.
5. Acquiring has no plan or intention to reacquire any of its stock issued in the proposed transaction.
6. Acquiring, Target, and the ESOP 1 will pay their respective expenses, if any, incurred in connection with the proposed transaction.
7. Acquiring will acquire Target stock solely in exchange for Acquiring voting stock. For purposes of this representation, Target stock redeemed for cash or other property furnished by Acquiring will be considered as acquired by Acquiring. Further, no liabilities of Target or the ESOP 1 will be assumed by Acquiring, nor will any of the Target stock be subject to any liabilities.
8. At the time of the proposed transaction, Target will not have outstanding any warrants,

options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Target that, if exercised or converted, would affect Acquiring's acquisition or retention of control of Target, as defined in Section 368(c) of the Code.

9. Acquiring does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Target.
10. Following the proposed transaction, Target will continue its historic business or use a significant portion of its historic business assets in a business.
11. No two parties to the proposed transaction are investment companies as defined in Section 368(a)(2)(F)(iii) and (iv) of the Code.
12. There will be no dissenters to the proposed transaction.
13. On the date of the proposed transaction, the fair market value of the assets of Target will exceed the sum of its liabilities plus the liabilities, if any, to which its assets are subject.
14. Prior to the ESOP Merger, there was no relationship, either from a business perspective or from a stock ownership perspective, between (i) Acquiring and Target or (ii) Acquiring and Target Sub. In addition, Acquiring did not own any stock of either Target or Target Sub, and neither Target nor Target Sub owned any stock of Acquiring. Finally, no shareholder of Acquiring owned any stock of Target or Target Sub, nor did any shareholder of Target or Target Sub own any stock of Acquiring.
15. Prior to the ESOP Merger, ESOP 2 covered only employees of Target Sub and ESOP 1 covered only employees of the controlled group of corporations (as such term is used in section 1563 of the Code) that included Acquiring (as the common parent corporation) and subsidiaries owned by Acquiring, (the "Acquiring Controlled Group"). After the ESOP Merger, ESOP 1 covered employees of Target Sub, Target, and the Acquiring Controlled Group. In addition, subsequent to the ESOP Merger, Target Sub, Target, Acquiring, and the Acquiring Controlled Group became members of a brother-sister controlled group of corporations (within the meaning of section 1563 of the Code) by virtue of ESOP 1 owning more than 80% of the stock of both Target and Acquiring.
16. The ESOP Merger complied with section 414(1) of the Code and the regulations thereunder.
17. Subsequent to the ESOP Merger, neither Target Sub nor Target has owned any stock of Acquiring, nor has Acquiring owned any stock of Target except for \$q of convertible preferred stock of Target Sub.
18. The ESOP Merger was approved by the trustees of both ESOP 2 and ESOP 1. The

trustee of ESOP 2 approved the ESOP Merger because it believed that the diversification of the assets of the ESOP to include both the assets of Target and the assets of the Acquiring Group were in the best interests of the participants of ESOP 2. In addition, the effect of the ESOP Merger, when combined with the sale by shareholder of his Target stock to ESOP 2, was to increase the direct ESOP ownership of Target to 100% and the indirect ESOP ownership of Target Sub (through Target's ownership of Target Sub) to approximately v%. The trustee of ESOP 2 believed that the increase in ESOP ownership of Target and Target Sub was in the best interests of the participants in ESOP 2. Furthermore, the trustee of ESOP 2 was represented by independent counsel in the transaction and received an opinion stating that the terms of the ESOP Merger were fair to ESOP 2 from a financial point of view.

19. The trustee of ESOP 1 approved the merger because he believed that the acquisition of Target and Target Sub by ESOP 1, and the addition of Target and Target Sub to the brother-sister controlled group of which ESOP 1 is the common shareholder, was in the best interests of the participants in ESOP 1. Such an acquisition increased the value of the stock owned by the ESOP and increased the diversification of investments of the ESOP. Furthermore, the trustee of ESOP 1 was represented by independent counsel in the transaction and received an opinion stating that the terms of the ESOP Merger were fair and reasonable from a financial point of view.
20. Shareholder is not now, and has never been, an officer, director, or shareholder of Acquiring or any company that is owned directly or indirectly by Acquiring.
21. The shares of Acquiring common stock that are proposed to be issued to ESOP 1 in exchange for the Target stock owned by ESOP 1 are identical in all respects to the shares of Acquiring common stock that are currently owned by ESOP 1. Subsequent to the transaction that is the subject of this ruling, ESOP 1 will own only common stock of Acquiring.
22. Any participant in ESOP 1 who is entitled to receive a distribution due to retirement or other termination of employment from Target Sub or Target prior to the proposed transaction will receive both (i) his or her former ESOP 1 account balance (comprised of Target shares that were allocated to such account as of the date of the ESOP Merger) and (ii) any new (i.e., post-ESOP Merger) allocations of Target shares and Acquiring shares that has occurred since the date of the ESOP Merger.
23. The participants in both the ESOP 1 and ESOP 2 would have achieved the same results (and ultimately ended up with essentially equivalent values in their accounts) had the transaction been structured in such a way that the proposed transaction (the acquisition of Target by Acquiring) had preceded the ESOP Merger.
24. The third-party lenders who advanced funds to Target Sub (which funds were then re-lent

to ESOP 2) would also have advanced funds to Target Sub on the same terms if Target Sub had been acquired by Acquiring prior to the ESOP merger.

25. There has been no reduction in the account balance of any ESOP 2 participant or ESOP 1 participant by reason of the ESOP Merger, and the transfer of assets and account balances pursuant to the ESOP Merger was conducted in accordance with section 414(1) of the Code and the regulations thereunder. There was not, and there will not be, any cutback in violation of section 411(d)(6) of the Code of any right or benefit accorded participants of ESOP 2 and ESOP 1 by reason of the ESOP Merger. The Target stock allocated to participants in ESOP 2 prior to the ESOP Merger was not and will not be encumbered or pledged as collateral for any loan of ESOP 2 or ESOP 1 or for any other reason.
26. The voting requirements set forth in section 409(e) of the Code were inapplicable to the ESOP Merger and, therefore, the participants of ESOP 2 and ESOP 1 did not vote on the ESOP Merger.
27. During the five-year period ending on the date of the proposed transaction,
 - (i) Neither Acquiring nor any person related (as defined in Treasury Regulation section 1.368-1(e)(3)) to Acquiring will have acquired stock of Target with consideration other than Acquiring stock;
 - (ii) Neither Target nor any person related (as defined in Treasury Regulation section 1.368-1(e)(3)) to Target will have acquired Target stock with consideration other than Target stock or Acquiring stock; and
 - (iii) No distributions will have been made with respect to Target stock other than ordinary, normal, and regular dividend distributions made pursuant to Target's historic dividend-paying practice.
28. There is no plan or intention for Acquiring or any person related (as defined in Treasury Regulation section 1.368-1(e)(3)) to Acquiring to acquire (during the five-year period beginning on the date of the proposed transaction), with consideration other than Acquiring stock, Acquiring stock furnished in exchange for a proprietary interest in Target in the proposed transaction, either directly or through any transaction, agreement, or arrangement with any other person.
29. The aggregate value of the acquisitions, redemptions, and distributions described in paragraphs 27 and 28 hereof will not exceed 50 percent of the value (without giving effect to the acquisitions, redemptions, and distributions) of the proprietary interest in Target on the effective date of the proposed transaction.

Section 4978(a) of the Internal Revenue Code provides, in part, that, if during the 3-year period after the date on which an employee stock ownership plan acquired any qualified securities in a sale to which section 1042 applied or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664(g) applied, such plan disposes of the securities, and (1) the total number of shares held by the plan after the disposition is less than the total number of securities held immediately after such sale, or (2) the value of qualified securities held by the plan after the disposition is less than 30 percent of the total value of all employer securities as of such disposition, the employer sponsor of the plan is subject to tax on the disposition equal to the amount determined under subsection (b).

Section 4978(d)(2) of the Code provides that in the case of any exchange of qualified securities in any reorganization described in section 368(a)(1) for stock of another corporation, such exchange shall not be treated as a disposition for the purposes of this section.

Based solely on the information submitted and the representations made we rule as follows:

1. The acquisition by Acquiring of all of the outstanding stock of Target in exchange solely for Acquiring voting common stock, as described above, will constitute a reorganization within the meaning of section 368(a)(1)(B). Acquiring and Target will each be “a party to a reorganization.” Section 368(b).
2. No gain or loss will be recognized to Acquiring on the receipt of Target stock solely in exchange for Acquiring voting common stock. Section 1032(a).
3. The basis of the Target stock to be received by Acquiring will be the same as the basis of that stock in the hands of the ESOP 1 immediately prior to the exchange. Section 362(b).
4. The holding period of the Target stock to be received by Acquiring will include the period during which the Target stock was held by the ESOP 1. Section 1223(2).
5. No gain or loss will be recognized by the ESOP 1 upon the receipt of Acquiring voting common stock in exchange for its Target stock. Section 354(a)(1).
6. The basis of the Acquiring stock received by the ESOP 1 will be the same as the basis of the Target stock surrendered in exchange therefor. Section 358(a)(1).
7. The holding period of the Acquiring stock received by the ESOP 1 will include the period during which the Target stock surrendered in exchange therefor was held, provided that the Target stock is held as a capital asset in the hands of the ESOP 1 on the date of the exchange. Section 1223(1).

8. No excise tax will be incurred by ESOP 1's sponsor, Acquiring, under Section 4978 of the Code. Section 4978(d)(2).

We express no opinion regarding the tax treatment of the proposed transaction under other provisions of the Code and 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.

The rulings in this letter are based on the facts and representations submitted under perjury in support of the request. Verification of that information may be required as part of the audit process.

This ruling is directed only to the taxpayers who requested it. Section 6110(j) provides that it may not be used or cited as precedent.

Each taxpayer involved in this transaction should attach a copy of this letter to the Federal income tax return of the taxpayer for the taxable year in which the transaction is completed.

Pursuant to the power of attorney on file in this office, a copy of this letter has been sent to the taxpayer.

Sincerely,

Associate Chief Counsel (Corporate)

By: _____
Lewis K Brickates
Assistant to Branch Chief