

Internal Revenue Service

Department of the Treasury

Number: **200312023**
Release Date: 3/21/2003
Index Number: 368.04-00

Washington, DC 20224

Person to Contact:

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Refer Reply To:

CC:CORP:B06-PLR-148911-02

Date:

December 19, 2002

Legend

Acquiring =

Corp 1 =

Corp 2 =

Corp 3 =

Corp 4 =

A =

B =

a% =

b% =

c% =

d% =

e% =

f% =

g% =

Dear :

This letter responds to your letter dated August 29, 2002, requesting rulings under I.R.C. § 368(a)(1)(D) concerning the above named taxpayers. Additional information was received in letters dated October 28, November 25 and December 10, 2002. The information submitted in your letters is summarized below.

Acquiring is a trust that is treated as a corporation for Federal income tax purposes. It is owned as follows: Corp 1 (f%), Corp 2 (a%) and related individuals and trusts (b%). These related individuals and trusts include A and B, and individuals and trusts related to A and B through the application of the attribution rules of I.R.C. § 318 (collectively referred to as "A and B"). A and B are siblings.

Corp 1 is a trust that is treated as a corporation for Federal income tax purposes. Acquiring owns all of the common stock of Corp 1. Corp 1 also has outstanding two classes of voting preferred stock, Class A and Class B. All of this stock is owned by A and B.

Corp 2 is a trust that is treated as a corporation for Federal income tax purposes. Corp 1 owns all of the nonvoting preferred stock of Corp 2 and e% of the common stock. A and B own d% of the common stock of Corp 2.

Corp 3 is a trust that is treated as a corporation for Federal income tax purposes. Corp 1 owns all of the common stock of Corp 3.

Corp 4 is a corporation. Corp 2 owns g%, and A and B own c%, of the common stock.

In order to simplify the corporate structure described above, the following transaction is proposed (the "Proposed Transaction"):

- 1) A and B will transfer their Corp 4 stock to Corp 2 in exchange for Corp 2 stock and then Corp 4 will liquidate into Corp 2 (the "Corp 4 Transaction"). One or more minority shareholders (not A or B) of Corp 4 may redeem their Corp 4 stock.

- 2) A and B will transfer their Corp 2 stock to Corp 1 in exchange for Corp 1 stock and then Corp 2 will liquidate into Corp 1 (the "Corp 2 Transaction"). One or more minority shareholders (not A or B) of Corp 2 may redeem their Corp 2 stock.
- 3) Corp 3 will liquidate into Corp 1.
- 4) A and B will transfer their Class A and Class B voting preferred stock of Corp 1 to Acquiring in exchange for Acquiring common stock and then Corp 1 will liquidate into Acquiring (the "Corp 1 Transaction"). One or more minority shareholders (not A or B) of Corp 1 may redeem their Corp 1 stock.
- 5) Acquiring may change its name (possibly to Corp 2).

The following representations have been made in connection with the Corp 4 Transaction that is described in step (1):

- (Ai) The fair market value of the Corp 2 stock received by each Corp 4 shareholder will be approximately equal to the fair market value of the Corp 4 stock surrendered in the exchange.
- (Bi) The Corp 4 shareholders will receive no consideration other than Corp 2 stock. Neither Corp 2 nor persons related to Corp 2 (as defined in Treas. Reg. § 1.368-1(e)(3)) acquired stock of Corp 4 in connection with the Corp 4 Transaction for consideration other than Corp 2 stock. No Corp 4 shares will be exchanged for cash in lieu of fractional share interests and, except for the possible redemption of one or more minority shareholders of Corp 4, there will be no dissenters to the transaction. Corp 4 neither redeemed its stock nor made distributions to its shareholders in connection with the Corp 4 Transaction.
- (Ci) Corp 2 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 Corp 4 immediately prior to the Corp 4 Transaction. For purposes of this representation, amounts used by Corp 4 to pay its Corp 4 Transaction expenses, all redemptions, and any distributions (except for regular normal dividends) made by Corp 4 immediately preceding the transfer will be included as assets of Corp 4 held immediately prior to the Corp 4 Transaction.
- (Di) Corp 2 has no plan or intention to liquidate or to sell or otherwise dispose of any of the assets of Corp 4 acquired in the Corp 4 Transaction, except for dispositions made in the normal course of business and other

dispositions described as part of this Proposed Transaction.

- (Ei) At the time of the Corp 4 Transaction, Corp 2 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Corp 2 that, if exercised or converted, would affect the acquisition or retention of control of Corp 2 by A and B, as defined in § 304(c) of the Internal Revenue Code.
- (Fi) The liabilities of Corp 4 assumed by Corp 2 and the liabilities to which the transferred assets are subject (as determined under § 357(d)) were incurred by Corp 4 in the ordinary course of its business.
- (Gi) Following the Corp 4 Transaction, Corp 2 and its successors, Corp 1 and Acquiring, will continue the historic business of Corp 4 or use a significant portion of the historic business assets of Corp 4 in a business.
- (Hi) Corp 2, Corp 4, and A and B will pay their respective expenses, if any, incurred in connection with the Corp 4 Transaction.
- (Ii) There is no intercorporate indebtedness existing between Corp 4 and Corp 2 that was issued, acquired, or will be settled at a discount.
- (Ji) The fair market value of the assets of Corp 4 transferred to Corp 2 will equal or exceed the sum of the liabilities assumed by Corp 2, plus the amount of the liabilities, if any, to which the transferred assets are subject (as determined under § 357(d)).
- (Ki) The total adjusted basis of the assets of Corp 4 transferred to Corp 2 will equal or exceed the sum of the liabilities assumed by Corp 2, plus the amount of the liabilities, if any, to which the transferred assets are subject (as determined under § 357(d)).
- (Li) Corp 4 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).
- (Mi) None of the parties to the Corp 4 Transaction are a RIC or REIT within the meaning of the Internal Revenue Code.
- (Ni) The shareholders of Corp 4, existing prior to the Corp 4 Transaction, will, immediately after the Corp 4 Transaction, be in control, within the meaning of § 304(c), of the corporation (Corp 2) to which the assets are transferred (taking into consideration any stock redemptions).

The following representations have been made in connection with the Corp 2 Transaction that is described in step (2):

- (Aii) The fair market value of the Corp 1 stock received by each Corp 2 shareholder will be approximately equal to the fair market value of the Corp 2 stock surrendered in the exchange.
- (Bii) The Corp 2 shareholders will receive no consideration other than Corp 1 stock. Neither Corp 1 nor persons related to Corp 1 (as defined in Treas. Reg. § 1.368-1(e)(3)) acquired stock of Corp 2 in connection with the Corp 2 Transaction for consideration other than Corp 1 stock. No Corp 2 shares will be exchanged for cash in lieu of fractional share interests and, except for the possible redemption of one or more minority shareholders of Corp 2, there will be no dissenters to the transaction. Corp 2 neither redeemed its stock nor made distributions to its shareholders in connection with the Corp 2 Transaction.
- (Cii) Corp 1 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 Corp 2 immediately prior to the Corp 2 Transaction. For purposes of this representation, amounts used by Corp 2 to pay its Corp 2 Transaction expenses, all redemptions, and any distributions (except for regular normal dividends) made by Corp 2 immediately preceding the transfer will be included as assets of Corp 2 held immediately prior to the Corp 2 Transaction.
- (Dii) Corp 1 has no plan or intention to liquidate or to sell or otherwise dispose of any of the assets of Corp 2 acquired in the Corp 2 Transaction, except for dispositions made in the normal course of business and other dispositions described as part of this Proposed Transaction.
- (Eii) At the time of the Corp 2 Transaction, Corp 1 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Corp 1 that, if exercised or converted, would affect the acquisition or retention of control of Corp 1 by A and B, as defined in § 304(c).
- (Fii) The liabilities of Corp 2 assumed by Corp 1 and the liabilities to which the transferred assets are subject (as determined under § 357(d)) were incurred by Corp 2 in the ordinary course of its business.
- (Gii) Following the Corp 2 Transaction, Corp 1 and its successor, Acquiring, will continue the historic business of Corp 2 or use a significant portion of the historic business assets of Corp 2 in a business.

- (Hii) Corp 1, Corp 2, and A and B will pay their respective expenses, if any, incurred in connection with the Corp 2 Transaction.
- (Iii) There is no intercorporate indebtedness existing between Corp 2 and Corp 1 that was issued, acquired, or will be settled at a discount.
- (Jii) The fair market value of the assets of Corp 2 transferred to Corp 1 will equal or exceed the sum of the liabilities assumed by Corp 1, plus the amount of the liabilities, if any, to which the transferred assets are subject (as determined under § 357(d)).
- (Kii) The total adjusted basis of the assets of Corp 2 transferred to Corp 1 will equal or exceed the sum of the liabilities assumed by Corp 1, plus the amount of the liabilities, if any, to which the transferred assets are subject (as determined under § 357(d)).
- (Lii) Corp 2 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).
- (Mii) None of the parties to the Corp 2 Transaction are a RIC or REIT within the meaning of the Internal Revenue Code.
- (Nii) The shareholders of Corp 2, existing prior to the Corp 2 Transaction, will, immediately after the Corp 2 Transaction, be in control, within the meaning of § 304(c), of the corporation (Corp 1) to which the assets are transferred (taking into consideration any stock redemptions).

The following representations have been made in connection with the Corp 1 Transaction that is described in step (4):

- (Aiii) The fair market value of the Acquiring stock received by each Corp 1 shareholder will be approximately equal to the fair market value of the Corp 1 stock surrendered in the exchange.
- (Biii) The Corp 1 shareholders will receive no consideration other than Acquiring stock. Neither Acquiring nor persons related to Acquiring (as defined in Treas. Reg. § 1.368-1(e)(3)) acquired stock of Corp 1 in connection with the Corp 1 Transaction for consideration other than Acquiring stock. No Corp 1 shares will be exchanged for cash in lieu of fractional share interests and, except for the possible redemption of one or more minority shareholders of Corp 1, there will be no dissenters to the transaction. Corp 1 neither redeemed its stock nor made distributions to its shareholders in connection with the Corp 1 Transaction.

- (Ciii) 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 Corp 1 immediately prior to the Corp 1 Transaction. For purposes of this representation, amounts used by Corp 1 to pay its Corp 1 Transaction expenses, all redemptions, and any distributions (except for regular normal dividends) made by Corp 1 immediately preceding the transfer will be included as assets of Corp 1 held immediately prior to the Corp 1 Transaction.
- (Diii) Acquiring has no plan or intention to liquidate or to sell or otherwise dispose of any of the assets of Corp 1 acquired in the Corp 1 Transaction, except for dispositions made in the normal course of business and other dispositions described as part of this Proposed Transaction.
- (Eiii) At the time of the Corp 1 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 of Acquiring by A and B, as defined in § 304(c).
- (Fiii) The liabilities of Corp 1 assumed by Acquiring and the liabilities to which the transferred assets are subject (as determined under § 357(d)) were incurred by Corp 1 in the ordinary course of its business.
- (Giii) Following the Corp 1 Transaction, Acquiring will continue the historic business of Corp 1 or use a significant portion of the historic business assets of Corp 1 in a business.
- (Hiii) Acquiring, Corp 1, and A and B will pay their respective expenses, if any, incurred in connection with the Corp 1 Transaction.
- (Iiii) There is no intercorporate indebtedness existing between Corp 1 and Acquiring that was issued, acquired, or will be settled at a discount.
- (Jiii) The fair market value of the assets of Corp 1 transferred to Acquiring will 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 (as determined under § 357(d)).
- (Kiii) The total adjusted basis of the assets of Corp 1 transferred to Acquiring will 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 (as determined under § 357(d)).

- (Liii) Corp 1 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).
- (Miii) None of the parties to the Corp 1 Transaction are a RIC or REIT within the meaning of the Internal Revenue Code.
- (Niii) The shareholders of Corp 1, existing prior to the Corp 1 Transaction, will, immediately after the Corp 1 Transaction, be in control, within the meaning of § 304(c), of the corporation (Acquiring) to which the assets are transferred (taking into consideration any stock redemptions).

Based solely on the information submitted and the representations made in connection with the Corp 4 Transaction, we conclude that:

- (1) The transfer by A and B of their Corp 4 stock to Corp 2 in exchange for Corp 2 stock followed by the liquidation of Corp 4 into Corp 2 will be treated for federal income tax purposes as: (a) the acquisition by Corp 2 of substantially all of the assets of Corp 4 in exchange for Corp 2 stock, (b) the assumption by Corp 2 of Corp 4's liabilities, if any, and (c) the distribution by Corp 4 of Corp 2 stock to A and B, and will constitute a reorganization within the meaning of § 368(a)(1)(D). Rev. Rul. 67-274, 1967-2 C.B. 141. For purposes of this ruling, "substantially all" means 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 of Corp 4. Corp 2 and Corp 4 will each be "a party to a reorganization" within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Corp 4 on the transfer of substantially all of its assets to Corp 2, subject to liabilities, in exchange for Corp 2 stock. Sections 361(a) and 357(a).
- (3) No gain or loss will be recognized by Corp 2 upon the receipt of substantially all of the assets of Corp 4 in exchange for Corp 2 stock. Section 1032(a).
- (4) No gain or loss will be recognized by A and B by reason of the exchange of their shares of Corp 4 stock solely for shares of Corp 2 stock. Section 354(a)(1).
- (5) No gain or loss will be recognized by Corp 4 upon the distribution of Corp 2 stock to A and B. Section 361(c)(1).
- (6) The basis of the Corp 4 assets in the hands of Corp 2 will be the same as the basis of those assets in the hands of Corp 4 immediately prior to the

transfer. Section 362(b).

- (7) The holding period of the Corp 4 assets in the hands of Corp 2 will include the period during which such assets were held by Corp 4. Section 1223(2).
- (8) The basis of the shares of Corp 2 stock received by A and B will be the same, in each instance, as their basis in the Corp 4 stock surrendered in exchange therefor. Section 358(a)(1).
- (9) The holding period of the Corp 2 stock received by A and B will include the holding period of the Corp 4 stock surrendered in exchange therefor, provided that such Corp 4 stock is held as a capital asset on the date of the exchange. Section 1223(1).
- (10) The taxable year of Corp 4 will end on the date of the transfer of its assets to Corp 2. Sections 381(b) of the Code and 1.381(b)-1(a) of the Income Tax Regulations. Pursuant to sections 381(a) of the Code and 1.381(a)-1(a) of the Regulations, Corp 2 will succeed to and take into account, as of the date of the proposed transfer, as defined in section 1.381(b)-1(b) of the Regulations, the items of Corp 4 described in section 381(c) of the Code, subject to the conditions and limitations specified in sections 381, 382, 383, and 384 of the Code and the Regulations thereunder.
- (11) As provided by sections 381(c)(2) of the Code and 1.381(c)(2)-1 of the Regulations, Corp 2 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Corp 4 as of the date of transfer. Any deficit in the earnings or profits of either Corp 4 or Corp 2 will be used only to offset the earnings and profits accumulated after the date of transfer. Section 381(c)(2)(B).

Based solely on the information submitted and the representations made in connection with the Corp 2 Transaction, we conclude that:

- (12) The transfer by A and B of their Corp 2 stock to Corp 1 in exchange for Corp 1 stock followed by the liquidation of Corp 2 into Corp 1 will be treated for federal income tax purposes as: (a) the acquisition by Corp 1 of substantially all of the assets of Corp 2 in exchange for Corp 1 stock, (b) the assumption by Corp 1 of Corp 2's liabilities, if any, and (c) the distribution by Corp 2 of Corp 1 stock to A and B, and will constitute a reorganization within the meaning of § 368(a)(1)(D). Rev. Rul. 67-274, 1967-2 C.B. 141. For purposes of this ruling, "substantially all" means 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 of Corp 2. Corp 1 and

Corp 2 will each be "a party to a reorganization" within the meaning of § 368(b).

- (13) No gain or loss will be recognized by Corp 2 on the transfer of substantially all of its assets to Corp 1, subject to liabilities, in exchange for Corp 1 stock. Sections 361(a) and 357(a).
- (14) No gain or loss will be recognized by Corp 1 upon the receipt of substantially all of the assets of Corp 2 in exchange for Corp 1 stock. Section 1032(a).
- (15) No gain or loss will be recognized by A and B by reason of the exchange of their shares of Corp 2 stock solely for shares of Corp 1 stock. Section 354(a)(1).
- (16) No gain or loss will be recognized by Corp 2 upon the distribution of Corp 1 stock to A and B. Section 361(c)(1).
- (17) The basis of the Corp 2 assets in the hands of Corp 1 will be the same as the basis of those assets in the hands of Corp 2 immediately prior to the transfer. Section 362(b).
- (18) The holding period of the Corp 2 assets in the hands of Corp 1 will include the period during which such assets were held by Corp 2. Section 1223(2).
- (19) The basis of the shares of Corp 1 stock received by A and B will be the same, in each instance, as their basis in the Corp 2 stock surrendered in exchange therefor. Section 358(a)(1).
- (20) The holding period of the Corp 1 stock received by A and B will include the holding period of the Corp 2 stock surrendered in exchange therefor, provided that such Corp 2 stock is held as a capital asset on the date of the exchange. Section 1223(1).
- (21) The taxable year of Corp 2 will end on the date of the transfer of its assets to Corp 1. Sections 381(b) of the Code and 1.381(b)-1(a) of the Income Tax Regulations. Pursuant to sections 381(a) of the Code and 1.381(a)-1(a) of the Regulations, Corp 1 will succeed to and take into account, as of the date of the proposed transfer, as defined in section 1.381(b)-1(b) of the Regulations, the items of Corp 2 described in section 381(c) of the Code, subject to the conditions and limitations specified in sections 381, 382, 383, and 384 of the Code and the Regulations thereunder.

- (22) As provided by sections 381(c)(2) of the Code and 1.381(c)(2)-1 of the Regulations, Corp 1 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Corp 2 as of the date of transfer. Any deficit in the earnings or profits of either Corp 2 or Corp 1 will be used only to offset the earnings and profits accumulated after the date of transfer. Section 381(c)(2)(B).

Based solely on the information submitted and the representations made in connection with the Corp 1 Transaction, we conclude that:

- (23) The transfer by A and B of their Corp 1 stock to Acquiring in exchange for Acquiring stock followed by the liquidation of Corp 1 into Acquiring will be treated for federal income tax purposes as: (a) the acquisition by Acquiring of substantially all of the assets of Corp 1 in exchange for Acquiring stock, (b) the assumption by Acquiring of Corp 1's liabilities, if any, and (c) the distribution by Corp 1 of Acquiring stock to A and B, and will constitute a reorganization within the meaning of § 368(a)(1)(D) of the Code. Rev. Rul. 67-274, 1967-2 C.B. 141. For purposes of this ruling, "substantially all" means 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 of Corp 1. Corp 1 and Acquiring will each be "a party to a reorganization" within the meaning of § 368(b).
- (24) No gain or loss will be recognized by Corp 1 on the transfer of substantially all of its assets to Acquiring, subject to liabilities, in exchange for Acquiring stock. Sections 361(a) and 357(a).
- (25) No gain or loss will be recognized by Acquiring upon the receipt of substantially all of the assets of Corp 1 in exchange for Acquiring stock. Section 1032(a).
- (26) No gain or loss will be recognized by A and B by reason of the exchange of their shares of Corp 1 stock solely for shares of Acquiring stock. Section 354(a)(1).
- (27) No gain or loss will be recognized by Corp 1 upon the distribution of Acquiring stock to A and B. Section 361(c)(1).
- (28) The basis of the Corp 1 assets in the hands of Acquiring will be the same as the basis of those assets in the hands of Corp 1 immediately prior to the transfer. Section 362(b).
- (29) The holding period of the Corp 1 assets in the hands of Acquiring will include the period during which such assets were held by Corp 1. Section

1223(2).

- (30) The basis of the shares of Acquiring stock received by A and B will be the same, in each instance, as their basis in the Corp 1 stock surrendered in exchange therefor. Section 358(a)(1).
- (31) The holding period of the Acquiring stock received by A and B will include the holding period of the Corp 1 stock surrendered in exchange therefor, provided that such Corp 1 stock is held as a capital asset on the date of the exchange. Section 1223(1).
- (32) The taxable year of Corp 1 will end on the date of the transfer of its assets to Acquiring. Sections 381(b) of the Code and 1.381(b)-1(a) of the Income Tax Regulations. Pursuant to sections 381(a) of the Code and 1.381(a)-1(a) of the Regulations, Acquiring will succeed to and take into account, as of the date of the proposed transfer, as defined in section 1.381(b)-1(b) of the Regulations, the items of Corp 1 described in section 381(c) of the Code, subject to the conditions and limitations specified in sections 381, 382, 383, and 384 of the Code and the Regulations thereunder.
- (33) As provided by sections 381(c)(2) of the Code and 1.381(c)(2)-1 of the Regulations, Acquiring will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Corp 1 as of the date of transfer. Any deficit in the earnings or profits of either Corp 1 or Acquiring will be used only to offset the earnings and profits accumulated after the date of transfer. Section 381(c)(2)(B).

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. In particular, no opinion is expressed concerning the tax consequences of steps (3) and (5) of the transaction.

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 the taxpayer and another authorized representative.

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

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.

Sincerely,

Reginald Mombrun

Reginald Mombrun
Assistant Branch Chief, Branch 6
Office of Associate Chief Counsel
(Corporate)