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Person to Contact:

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Date:

November 5, 1999

Target =

State X =

A =

B =

C =

This letter responds to a request dated July 2, 1999, for rulings as to the federal income tax consequences of a proposed transaction. Additional information was submitted in a letter dated October 29, 1999. The information submitted is summarized below.

Target, a State X corporation, is engaged in the A, B, and C businesses. For what has been represented to be a valid business purpose, Target will enter into the following transaction:

- (i) Target will form, with nominal capital, a single member State X limited liability company ("Acquiring Parent"). This entity will elect to be treated as a corporation for federal income tax purposes.
- (ii) Acquiring Parent will form a second single member State X limited liability company ("P"). This entity will not elect to be treated as a corporation for federal income tax purposes and will default to being treated as a division of Acquiring Parent.
- (iii) Acquiring Parent and P will form a State X limited partnership ("Acquiring"). This entity will elect to be treated as a corporation for federal income tax purposes.

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- (iv) Acquiring will acquire all of the assets of Target in exchange for voting member interests in Acquiring Parent and the assumption of liabilities.
- (v) Target will liquidate and distribute the Acquiring Parent voting member interests received in the exchange to its shareholders.

Acquiring Parent will not elect to file a consolidated return.

The taxpayers have made the following representations in connection with the transactions:

- (a) The fair market value of the Acquiring Parent member interest received by each shareholder of Target will be approximately equal to the fair market value of the Target stock surrendered in the exchange.
- (b) 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 transaction. For purposes of this representation, amounts paid by Target to dissenters, amounts used by Target to pay its reorganization expenses, amounts paid by Target to shareholders who receive cash or other property, 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 transaction.
- (c) 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).
- (d) Target will distribute the member interests, securities, and other property it receives in the transaction, and its other properties, if any, in pursuance of the plan of reorganization.
- (e) The liabilities of Target assumed by Acquiring and the liabilities to which the transferred assets of Target are subject were incurred by Target in the ordinary course of its business.
- (f) Neither Acquiring Parent nor P will assume any Target liabilities in the transaction.
- (g) Following the transaction, Acquiring will continue the historic business of Target or use a significant portion of Target's historic business assets in a business.
- (h) Acquiring Parent, P, Acquiring, Target and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the transaction.
- (i) There is no intercorporate indebtedness existing between either Acquiring Parent, P,

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Acquiring and Target that was issued, acquired, or will be settled at a discount.

- (j) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (k) The sum of the fair market value of the assets of Target transferred to Acquiring will equal or exceed the sum of the liabilities assumed by Acquiring, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (l) Target is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).
- (m) The combination of Target with and into Acquiring is a transaction that does not qualify under § 368(a)(1)(A).
- (n) Acquiring Parent and Acquiring will both be treated as corporations for Federal income tax purposes under § 301.7701-3.
- (o) Neither Acquiring Parent nor P has a plan or intention to either liquidate or otherwise dispose of Acquiring stock or P interests.
- (p) P will be disregarded as an entity separate from its owner for Federal income tax purposes under § 301.7701-3.
- (q) There is no plan or intention for P, Acquiring or Acquiring Parent (*i.e.*, the issuing corporation as defined in § 1.368-1(b)) or any person related (as defined in § 1.368-1(e)(3)) to P, Acquiring or Acquiring Parent, to acquire, during the five year period beginning on the date of the proposed transaction, with consideration other than Acquiring Parent stock, the Acquiring Parent 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.
- (r) During the five year period ending on the date of the proposed transaction:
 - (1) none of the following will have acquired Target stock with consideration other than Acquiring Parent stock either directly or through any transaction, agreement, or arrangement with any other person: P, Acquiring, Acquiring Parent, or any person related (as defined in § 1.368-1(e)(3)) to P, Acquiring or Acquiring Parent;
 - (2) 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 Target stock with consideration other than Acquiring Parent stock or Target stock either directly or through any transaction, agreement, or arrangement with any other person; and

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(3) no distributions (except for ordinary, normal, regular dividend distributions made pursuant to Target's historic dividend paying practice) will have been made with respect to Target stock either directly or through any transaction, agreement, or arrangement with any other person.

The aggregate value of the acquisitions, redemptions, and distributions described in (1), (2) or (3), if any, will not exceed 50 percent of the value (without giving effect to the acquisition, redemption, and distribution) of the proprietary interests in Target on the effective date of the proposed transaction.

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

1. The acquisition by Acquiring of substantially all the assets of Target, solely in exchange for Acquiring Parent voting member interests and the assumption by Acquiring of liabilities of Target, followed by the distribution by Target of the Acquiring Parent voting member interests to its shareholders in complete liquidation, will be a reorganization under § 368(a)(1)(C). 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 Target. Acquiring Parent, Acquiring, and Target will each be a "party to a reorganization" pursuant to § 368(b).
2. No gain or loss will be recognized by Target on the transfer of substantially all of its assets to Acquiring solely in exchange for Acquiring Parent voting member interests and the assumption by Acquiring of Target liabilities (§ 357(a) and § 361(a)).
3. No gain or loss will be recognized by Acquiring on receiving the Target assets solely in exchange for Acquiring Parent voting member interests (§ 1.1032-2(b)).
4. Acquiring Parent's basis in its Acquiring member interests will be equal to the basis Target had in the Target assets prior to the transaction decreased, but not below zero, by the amount of liabilities assumed by Acquiring, plus the liabilities to which the transferred assets are subject (§ 1.358-6(c)(1)).
5. The basis of each Target asset in the hands of Acquiring will be the same as the basis of that asset in the hands of Target immediately before the exchange (§ 362(b)).
6. The holding period of each Target asset received by Acquiring will include the holding period during which the asset was held by Target (§ 1.1223-2).
7. No gain or loss will be recognized by the shareholders of Target on the receipt of Acquiring Parent voting member interests solely in exchange for Target stock (§ 354(a)(1)).

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8. The basis of the Acquiring Parent voting member interests received by each shareholder of Target will equal the basis of the Target stock surrendered by such shareholder in exchange therefor (§ 358(a)(1)).
9. The holding period of the Acquiring Parent voting member interests received by each shareholder of Target will include the holding period of the Target stock surrendered by such shareholder in exchange therefor, provided the Target stock was held as a capital asset on the date of the exchange (§ 1223(1)).
10. No gain or loss will be recognized by Target on the distribution of Acquiring Parent voting member interests to its shareholders in pursuance of the plan of reorganization (§ 361(c)(1)).
11. Pursuant to § 381(a) and § 1.381(a)-1, Acquiring will succeed to and take into account the items of Target described in § 381(c), subject to the provisions and limitations specified in §§ 381, 382, 383 and 384 and the regulations thereunder. Pursuant to § 1.381(b)-1, the taxable year of Target will end on the effective date of the reorganization.

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and regulations or about 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 letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By *Ken Cohen*

Ken Cohen
Senior Technician Reviewer, Branch 3