

Internal Revenue Service

Department of the Treasury

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Date:

April 28, 2000

In Re:

Acquiring =

Target =

Shareholder A =

Shareholder B =

Business A =

Business B =

Country A =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

a =

b =

c =

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d =

Dear

This is in reply to your letter dated March 16, 2000 requesting that we rule on certain federal income tax consequences of a transaction. The information submitted in that request and in subsequent correspondence is substantially as set forth below.

Target, a Country A corporation, was engaged in Business A. Target had issued and outstanding a single class of voting common stock. As of Date A, Acquiring, a Country A corporation engaged in Business B, owned approximately a percent of Target's outstanding shares. Shareholder A, a U.S. corporation, owned approximately b percent of Target's outstanding shares. Shareholder B, a U.S. corporation, owned approximately c percent of Target's outstanding shares. The employees of Target owned approximately d percent of Target's outstanding shares. Target's remaining shares were widely dispersed among hundreds of shareholders. Shareholder A and Shareholder B were both customers of Target.

For what is represented to be a valid business purpose, Target merged into Acquiring under the laws of Country A on Date B. In the merger, all of Target's shareholders were required to exchange their shares in Target solely in exchange for voting common stock in Acquiring. Following the exchange of shares, Target dissolved, and Acquiring succeeded to, and became the legal owner of, all of the assets of Target. Target's board of directors approved the merger on Date C and Target's shareholders approved the merger on Date D.

The following representations have been made in connection with the transaction:

- (a) The fair market value of the Acquiring voting stock received by each Target shareholder was approximately equal to the fair market value of the Target common stock surrendered in the exchange.
- (b) Acquiring received all of the assets of Target and, thus, acquired 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 are included as assets of Target held immediately prior to the transaction.

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- (c) During the 5-year period beginning on the date of the transaction, there is no plan or intention for Acquiring, or any person related (as defined in § 1.368-1(e)(3)) to Acquiring, to acquire, with consideration other than Acquiring voting stock, Acquiring voting stock furnished in exchange for a proprietary interest in Target in the transaction, either directly or through any transaction, agreement, or arrangement with any other person, except for cash in lieu of fractional shares paid in the transaction.
- (d) During the 5-year period ending on the date of the 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 voting stock (excluding exchanges by Acquiring of Target stock for a direct interest in the Target enterprise); (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 Target stock with consideration other than Acquiring voting 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 except for (i) certain acquisitions by Acquiring of Target stock in connection with capital calls, and (ii) certain open market acquisitions by Acquiring of Target stock between Date E and Date F.
- (e) Although the aggregate value of the acquisitions, redemptions, and distributions described in paragraphs (c) and (d) exceeds 50 percent of the value (without giving effect to the acquisitions, redemptions, and distributions) of the proprietary interests in Target on Date B, these transactions were not undertaken in connection with the merger of Target with and into Acquiring, and the merger was not planned at the time these transactions were completed.
- (f) Shareholder A, Shareholder B, Target, Acquiring, and to the best of the knowledge and belief of the taxpayer, any other shareholder that is a U.S. citizen or resident, will treat the acquisition of Target by Acquiring as a tax-free reorganization under § 368(a)(1)(C) of the Internal Revenue Code.
- (g) To the best of taxpayer's knowledge, it is unlikely that any shareholder of Target paid an amount for its stock in Target that exceeded the fair market value of the Acquiring voting stock that such shareholder received in the transaction.
- (h) 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

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made in the ordinary course of business.

- (i) Target did not distribute any property as part of or as a result of the transaction except in the ordinary course of business. Pursuant to the plan of reorganization, the assets of Target became the assets of Acquiring. In addition, under the plan of reorganization, Target did not receive any shares of Acquiring; rather each of Target's shareholders received its proportionate number of Acquiring voting shares under the applicable merger procedures.
- (j) The liabilities of Target assumed by Acquiring and the liabilities to which the transferred assets were subject were incurred by Target in the ordinary course of its business.
- (k) Following the transaction, Acquiring will continue the historic business of Target.
- (l) Acquiring, Target, and the shareholders of Target paid their respective expenses, if any, incurred in connection with the transaction.
- (m) There was no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or settled at a discount.
- (n) Neither Target nor Acquiring was an investment company as defined in § 368(a)(2)(F)(iii) and (iv)
- (o) The fair market value of the assets of Target transferred to Acquiring equaled or exceeded the sum of the liabilities assumed by Acquiring, plus the amount of liabilities, if any, to which the transferred assets were subject.
- (p) Target was not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (q) The payment of cash in lieu of fractional share interests of Acquiring voting stock was solely to avoid the expense and inconvenience to Acquiring of issuing fractional share interests, and did not represent separately bargained for consideration. The total cash consideration that was paid in the transaction to Target shareholders instead of issuing fractional shares of Acquiring voting stock did not exceed 1 percent of the total consideration that was issued in the transaction to Target shareholders in exchange for their shares of Target stock. The fractional share interests of each Target shareholder were aggregated, and no Target shareholder received cash in an amount equal to or greater than

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the value of one full share of Acquiring voting stock.

- (r) The sum of the cash paid in the open market purchases of Target stock from Date E to Date F and the liabilities of Target assumed in the transaction was not more than 20 percent of the total value of Target's assets on Date B.
- (s) Acquiring has not transferred and has no plan or intention of transferring any of the assets received from Target in the merger to any of its subsidiaries pursuant to § 368(a)(2)(C).
- (t) Target was not a controlled foreign corporation, within the meaning of § 957(a), at the time of Target's merger with and into Acquiring or at any time during the 5 year period immediately preceding the merger.
- (u) As part of the merger of Target with and into Acquiring, Target did not transfer to Acquiring any United States Real Property Interests as such term is defined in § 897(c).
- (v) Target never has been engaged in a U. S. trade or business within the meaning of § 882.

Based solely on the information submitted and on the representations set forth above, and on Notice 2000-1, 2000-2 I.R.B. 288 (Jan. 10, 2000), it is held as follows:

- (1) For federal income tax purposes, the transaction described above is treated as the transfer by Target of substantially all of its assets to Acquiring solely in exchange for Acquiring voting stock and the assumption of the liabilities of Target, followed by the distribution by Target of the Acquiring voting stock to its shareholders in complete liquidation.
- (2) The acquisition by Acquiring of substantially all of the assets of Target in exchange for Acquiring voting stock and the assumption by Acquiring of the liabilities of Target followed by Target's distribution of the Acquiring voting common stock in liquidation constitutes a "reorganization" within the meaning of § 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. Target and Acquiring are each a "party to a reorganization" within the meaning of § 368(b).
- (3) No gain or loss was recognized by Target on the transfer of substantially all of its assets to Acquiring solely in exchange for shares of Acquiring

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voting stock and the assumption by Acquiring of the liabilities of Target or on the deemed distribution of the Acquiring voting stock to Target's shareholders (§§ 357(a), 361(a), and 361(c)).

- (4) No gain or loss was recognized by Acquiring on the receipt of Target's assets solely in exchange for shares of Acquiring voting stock (§ 1032(a)).
- (5) The basis of the assets of Target in the hands of Acquiring is the same as the basis of those assets in the hands of Target immediately prior to the transaction (§ 362(b)).
- (6) The holding period for the assets of Target in the hands of Acquiring includes the period during which those assets were held by Target (§ 1223(2)).
- (7) No gain or loss was recognized by the shareholders of Target on the exchange of their stock in Target for shares of Acquiring voting stock (§ 354(a)(1)).
- (8) The basis of the Acquiring voting stock (including any fractional shares interests of stock deemed received) received by shareholders of Target is the same as the basis of the Target stock surrendered in exchange therefor (§ 358(a)(1)).
- (9) The holding period of the Acquiring voting stock (including any fractional share interests of stock deemed received) received by shareholders of Target includes the holding period of the Target stock surrendered in exchange therefor, provided the Target stock was held as a capital asset on the date of the exchange (§ 1223(1)).
- (10) The taxable year of Target ended on the effective date of the transaction (§ 1.381(b)-1(a) of the Income Tax Regulations), and as provided in § 381(a) and § 1.381(a)-(1), Acquiring succeeded to and took into account those attributes of Target described in § 381(c), subject to the provisions and limitations specified in §§ 381, 382, 383, and 384, if applicable, and the regulations thereunder.
- (11) Pursuant to § 381(c)(2) and § 1.381(c)(2)-1, Acquiring succeeded to and took into account the earnings and profits, or deficit in earnings and profits, of Target as of the date of transfer. Any deficit in earnings and profits of either Target or Acquiring will be used only to offset the earnings and profits accumulated after the date of the transfer.

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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. Specifically, no opinion is expressed whether any or all of the above-referenced foreign corporations are passive foreign investment companies (within the meaning of § 1297(a) of the Code and regulations to be promulgated thereunder). If it is determined that any or all of the above-referenced corporations are passive foreign investment companies, no opinion is expressed with respect to the application of §§ 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provision of the Code.

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.

Pursuant to the power of attorney on file in this office, copies of this letter have been sent to the taxpayer and the taxpayer's representative.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By: Charles Whedbee
Senior Technical Reviewer, Branch 5