

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

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Date:
September 21, 1999

Acquiring =

Acquiring Sub =

Target =

Date a =

Dear :

This letter responds to your August 3, 1999 request that we rule on one federal income tax consequence of a proposed transaction.

Summary of Facts

Publicly traded Acquiring is the parent of an affiliated corporate group that files a consolidated federal income tax return. On Date a, Acquiring caused newly formed Acquiring Sub to merge with Target in a transaction intended to qualify as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(E) of the Internal Revenue Code (the "Acquisition Merger"). The parties would have preferred to merge Target directly into Acquiring but were unable to do so because Target had significant contracts with third parties that could not be renegotiated or assigned before the desired date of combination.

As the necessary contract alterations either have been or shortly will be completed, Acquiring now proposes to merge Target into Acquiring (the "Upstream

Merger”).

Representations

Acquiring has made the following representations concerning the proposed transaction:

(i) The Acquisition Merger, viewed independently of the Upstream Merger, qualified as a reorganization under § 368(a)(1)(A) and (a)(2)(E).

(ii) The Upstream Merger will qualify as a statutory merger under applicable state law and, viewed independently of the Acquisition Merger, would qualify under § 332.

(iii) If the Acquisition Merger had not occurred, and Target had merged directly into Acquiring, the merger would have qualified as a reorganization under § 368(a)(1)(A).

(iv) Acquiring and Target intend to treat the proposed transaction as a liquidation of Target for tax purposes, and comply with regulatory and filing requirements consistent with such a characterization.

(v) The Acquisition Merger and the Upstream Merger, whether viewed independently of each other or viewed as a single integrated transaction, did not and will not result in a reverse acquisition within the meaning of § 1.1502-75(d)(3) of the Income Tax Regulations.

Ruling

Under § 3.01(23) of Rev. Proc. 99-3, 1999-1 I.R.B. 103, 106, the Internal Revenue Service will not rule on whether a proposed transaction qualifies under § 368(a)(1)(A) by reason of § 368(a)(2)(E). However, the Service has discretion to rule on significant subissues that must be resolved to determine whether a transaction qualifies under these sections.

Accordingly, based on the information submitted and representations made, and provided that the Acquisition Merger and the Upstream Merger (i) are treated as steps in an integrated plan under the step transaction doctrine and (ii) qualify as statutory mergers under applicable state law, we rule as follows:

For federal income tax purposes, the Acquisition Merger and the Upstream Merger will be treated as if Acquiring had directly acquired the Target assets in exchange for Acquiring stock and the assumption by Acquiring of Target liabilities through a “statutory merger” as that term is used in § 368(a)(1)(A) (see Rev. Rul. 72-

405, 1972-2 C.B. 217).

We express no opinion about the tax treatment of the transaction under any other sections of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered in the above rulings. In particular, we express no opinion regarding (i) whether the Acquisition Merger and Upstream Merger are steps in an integrated plan, (ii) whether the Acquisition Merger or the Upstream Merger qualifies as a reorganization under § 368(a)(1)(A), or (iii) whether the Upstream Merger qualifies under § 332.

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

A copy of this ruling letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by the letter is completed.

Under the power of attorney on file in this office, a copy of this letter is being sent to each of your authorized representatives.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: _____
Wayne T. Murray
Senior Technician/Reviewer
Branch 4