Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:2-PLR-112577-01
Date:
July 10, 2001

Legend:

Acquiring =

Acquiring Sub =

Target =

Business A =

Business B =

State W =

State X =

Date Y =

Date Z =

Month q =

This letter is in reply to a letter from your authorized representative, dated February 14, 2001, requesting rulings about the federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated May 9, and May 18, 2001. The pertinent information submitted is summarized below.

Acquiring is a State W corporation engaged in Business A. Acquiring is the parent of Target. Acquiring has common and preferred stock in Series A through H issued and outstanding. Acquiring files its federal income tax returns on the calendar year using the accrual method of accounting.

Acquiring Sub was a State X corporation organized by Acquiring solely for the purpose of acquiring Target. Acquiring Sub conducted no business or operations except those necessary to facilitate the transaction. After the Acquisition Merger, but before the proposed Upstream Merger, described below, Target was wholly owned by Acquiring. Prior to the Acquisition Merger, Target, a State X corporation, was engaged in Business B. Target had common stock and Series A and B Preferred Stock issued and outstanding. Target filed its federal income tax return on the fiscal year ending Month q using the accrual method of accounting.

On Date Y, the management of Acquiring and Target entered into an agreement to combine the businesses of the two companies. Both Acquiring and Target believed that a fast and efficient integration was necessary to maximize operating synergies on an on-going basis, and thereby maximize the benefits of the combination. To this end, management would have preferred to immediately merge Target directly into Acquiring, but an immediate combination by direct merger was not feasible because of certain contracts and agreements that Target had with its lessor, banker, primary customer, and business partners.

Therefore, on Date Z, Acquiring Sub merged with and into Target (the "Acquisition Merger"). Target survived the merger with Target shareholders receiving voting common stock and Series F and G Preferred Stock of Acquiring in exchange for their Target common stock and Series A and B Preferred Stock, respectively.

Because the necessary contract assignments either have been or will shortly be obtained, the following transaction is proposed to combine the businesses of Acquiring and Target into a single operating entity:

Target will liquidate with and into Acquiring by upstream merger (the "Upstream Merger").

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

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

(2) Following the Acquisition Merger Acquiring will continue the core historic business of Target or use a significant portion of Target's historic business assets in a business.

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

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

(4) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the proposed Upstream Merger have been fully disclosed.

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

(6) There is no intercorporate indebtedness existing between Target or Acquiring that was issued, acquired, or will be settled at a discount.

(7) Acquiring has no plan or intention to sell or otherwise dispose of any of Target's assets received in the proposed Upstream Merger, except for dispositions made in the ordinary course of business, or transfers described in § 368(a)(2)(C) or the regulations thereunder.

(8) The fair market value of the assets of Target to be transferred to Acquiring will equal or exceed the sum of the liabilities that will be assumed by Acquiring plus the amount of liabilities, if any, to which the transferred assets are subject.

Section 3.01(29) of Rev. Proc. 2001-3, 2001-1 I.R.B. 111, 114 provides that the Internal Revenue Service will not rule on the qualification of a transaction as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(E). Although Rev. Proc. 2001-3 provides a general no-rule policy concerning § 368(a)(1)(A), the Service will rule on significant collateral issues where the consequences of qualification are not adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice or other authority published in the Internal Revenue Bulletin.

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

The Acquisition Merger and the Upstream Merger will be treated as if Acquiring directly acquired the Target assets in exchange for Acquiring stock and the assumption of Target liabilities through a "statutory merger" as that term is used in § 368(a)(1)(A). See Rev. Rul. 67-274, 1967-2 C.B. 141 and Rev. Rul. 72-405,

1972-2 C.B. 217.

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 directly covered by the above rulings. Specifically, no opinion is expressed as to whether the Acquisition Merger satisfies the requirements under §§ 368(a)(1)(A) and 368(a)(2)(E); whether the Upstream Merger qualifies as a statutory merger; whether, viewed independently of the Acquisition merger, the Upstream Merger qualifies under § 332; or whether the step transaction doctrine applies to these transactions.

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

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

Sincerely,
Associate Chief Counsel (Corporate)
By: Edward S. Cohen
Chief, Branch 2