Internal Revenue Service

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Department of the Treasury

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CC:DOM:CORP:1-PLR-127913-01
Date:
August 13, 2001

Acquiring =

Acquiring Sub =

Target =

Target Sub =

State X =

Business A =

Business B =

Date 1 =

Date 2 =

a =

We respond to your letter dated May 4, 2001, in which you requested rulings on the federal income tax consequences of a completed transaction and a proposed transaction under section 368(a)(1)(A). Pursuant to section 3.01(29) of Rev. Proc. 2001-3, 2001-1 I.R.B. 111,114, the Internal Revenue Service will not rule as to whether a proposed transaction is a statutory merger qualifying as a reorganization under section 368(a)(1)(A). However, the Service has discretion to rule on significant subissues that must be resolved to determine whether a transaction qualifies as a reorganization under section 368(a)(1)(A). The information submitted for our review is summarized as follows.

Acquiring, a State X corporation, is a publicly traded corporation engaged in Business A. Acquiring uses the accrual method of accounting and files its returns on a calendar year basis.

Target, a State X corporation wholly owns Target Subsidiary. Target uses the accrual method of accounting and files its returns on a calendar year basis. Target Subsidiary, a State X corporation, is engaged in Business B. Target Subsidiary uses the accrual method of accounting and files its returns on a calendar year basis.

Acquiring's Board of Directors believe that an acquisition of Target Subsidiary's business would create a strategic business combination that will be well positioned to increase the scale, scope, and international opportunities in the rapidly growing Business A market, resulting in increased future revenues. Accordingly, on Date 1, Acquiring formed Acquiring Sub for the sole purpose of acquiring Target. On Date 2, Acquiring Sub merged with and into and into Target (the "Acquisition Merger"). Target shareholders received $a worth of Acquiring common stock in the transaction.

Acquiring now proposes to merge Target with and into itself (the "Upstream Merger"). Acquiring has made the following additional representations in conjunction with the completed transaction and the proposed transaction:

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

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

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

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

Based solely on the information submitted and the representations made, and provided that (i) the Acquisition Merger and the Upstream Merger each qualify as a statutory merger under section 368(a)(1)(A), and (ii) the Acquisition Merger and Upstream Merger are treated as steps in an integrated plan pursuant to the step transaction doctrine, we hold as follows:

For federal income tax purposes, 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 in a "statutory merger" as that term is used in section 368(a)(1)(A). See Rev. Rul. 67-274, 1967-2 C.B. 141 and Rev. Rul. 72-405, 1972-2 C.B. 217.

We express no opinion regarding whether the Acquisition Merger and the Upstream Merger each qualify as a statutory merger under section 368(a)(1)(A) or whether the Acquisition Merger and the Upstream Merger are steps in an integrated plan. We also express no opinion regarding whether the deemed direct acquisition of the Target assets by Acquiring in a statutory merger would qualify as a reorganization under section 368(a)(1)(A). Finally, we express no opinion 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 is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Each affected taxpayer should attach a copy of this letter to its federal income tax return for the taxable year in which the transaction covered by this ruling letter is consummated.

Sincerely yours,
Associate Chief Counsel (Corporate)
By: Mark S. Jennings
Chief, CC:CORP:1