Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:
June 28, 2000

Acquiring =

Acquiring Sub =

Target =

State X =

State Y =

Business A =

Business B =

Date 1 =

a =

b =

Dear :

We respond to your letter dated May 12, 2000, 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(23) of Rev. Proc. 2000-3, 2000-1 I.R.B. 103,105, the Internal Revenue Service will not rule as to whether a proposed transaction qualifies 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 under section 368(a)(1)(A). The information submitted for our review is summarized as follows.

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

Target, a State Y corporation, is engaged in Business B. Target 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's business would enhance Acquiring's operations and opportunities for future growth and thereby increase revenues. Accordingly, on Date 1, Acquiring formed Acquiring Sub which immediately merged with and into Target (the "Acquisition Merger"). Acquiring Sub was organized by Acquiring solely for the purpose of acquiring Target. Target shareholders received $a worth of Acquiring stock and $b of cash 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 and 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, to the best of the taxpayer's knowledge and belief, the merger would have qualified as a reorganization under section 368(a)(1)(A).

(4) 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 section 1.1502-75(d)(3).

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

(6) 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, and transfers described in section 368(a)(2)(C) or the regulations thereunder.

Based solely on the information submitted and the representations made, and provided that (i) the Acquisition Merger and Upstream Merger are treated as steps in an integrated plan pursuant to the step transaction doctrine, and (ii) the Acquisition Merger and the Upstream Merger qualify as statutory mergers under applicable state law, 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 through 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 are steps in an integrated plan or whether the Acquisition Merger and Upstream Merger qualify as a reorganization under section 368(a)(1)(A). Additionally, 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,
Assistant Chief Counsel (Corporate)
By Mark S. Jennings
Acting Chief, CC:DOM:CORP:1