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Department of the Treasury
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Refer Reply To:
CC:CORP:B04
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Date:
December 20, 2004

In Re:

Target =

Target Sub =

Acquiring =

Business A =

Business B =

a =

b =

Dear :

This responds to your October 12, 2004 request for rulings on certain federal income tax consequences of the Proposed Transactions (defined below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Target is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return (the "Group"). Target has voting and non-voting common and preferred stock outstanding. Target wholly owns Target Sub, which owns a (less than one) percent of the common stock of Acquiring, a publicly held corporation. The Acquiring stock is the Group's primary asset and is used to secure significant Target debt.

Proposed Transactions

For what are represented to be valid business reasons, Target and Acquiring will enter into an agreement and plan of reorganization that provides for the following transactions (the "Proposed Transactions"):

(i) To the extent practicable, the Group will sell its assets other than the Acquiring shares to third parties and possibly Target shareholders. The sales proceeds will be used to pay down Target debt.

(ii) Target Sub will convert into a wholly owned limited liability company ("New Target Sub") that will not elect to be treated as a corporation for federal income tax purposes (the "LLC Conversion"). New Target Sub will therefore be disregarded as an entity separate from Target for federal tax purposes under § 301.7701-3 of the Procedure and Administrative Regulations.

(iii) New Target Sub will transfer all of its Acquiring shares (the "Old Acquiring Shares") to Acquiring in exchange for a number of newly issued or treasury Acquiring common shares (the "New Acquiring Shares") equal to b percent of the number of Old Acquiring Shares (the "Exchange"). Acquiring will not assume any Target or New Target Sub liabilities in the Exchange.

(iv) Target will transfer to an escrow agent an agreed amount of New Acquiring Shares for the payment of its indemnification obligations to Acquiring (including the obligation to satisfy any Target liability asserted against Acquiring) (the "Escrow"). Target or New Target Sub may transfer some of the New Acquiring Shares directly to holders of Target or New Target Sub debt in partial or full payment of the debt.

(v) Within one year of step (iii) above, (a) New Target Sub will merge into Target, (b) Target will transfer to a liquidating trust (the "Liquidating Trust") its right to the assets in the Escrow (subject to the Escrow Agreement) and other assets needed to pay down Target's remaining liabilities and obligations (but not less than an agreed amount of assets), and (c) Target will distribute pro rata to its shareholders beneficial interests in the Liquidating Trust. It is represented that the Liquidating Trust will qualify as a liquidating trust under § 301.7701-4(d) of the Income Tax Regulations and as a grantor trust under §§ 671 through 679 of the Internal Revenue Code and that the Target shareholders will be treated as owners of the Liquidating Trust under §§ 671 through 679.

(vi) Also within one year of step (iii) above, Target will distribute its New Acquiring Shares that were not transferred to creditors or the Liquidating Trust to its shareholders pro rata, except that preferred shareholders will receive the liquidation value of their shares in some combination of New Acquiring Shares and cash. Target then will initiate the dissolution process. Steps (iii), (iv), (v), and (vi) are collectively referred to as the "Downstream Reorganization."

(vii) The Escrow will terminate within five years from the date of its creation, and title to its assets will be transferred to the Liquidating Trust. It is expected that the Liquidating Trust will also terminate within five years from the date of its creation, unless extended by the trustees to pay or provide for then known liabilities. On its termination, the Liquidating Trust assets will be distributed to its beneficiaries.

Representations

The following representations have been made regarding the proposed Downstream Reorganization:

(a) The fair market value of the New Acquiring Shares received by each Target shareholder will approximately equal the fair market value of the Target stock surrendered in the exchange.

(b) At least 50 percent of the proprietary interest in Target will be exchanged for Acquiring stock and will be preserved (within the meaning of §1.368-1(e)(1)(i)).

(c) Acquiring has no plan or intention to reacquire, directly or through a related person (within the meaning of § 1.368-1(e)(3)), any of its stock issued in the Downstream Reorganization.

(d) Acquiring will acquire 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 before the transaction. For this representation, amounts paid by Target to dissenters (if any), amounts used by Target to pay its reorganization expenses, amounts paid by Target to shareholders who receive cash or other property, amounts paid by Target to Acquiring for Acquiring's expenses incurred in the transaction, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately before the transfer will be included as assets of Target held immediately before the transaction.

(e) Acquiring has no plan or intention to reacquire any of its stock issued in the transaction.

(f) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction.

(g) Target will distribute the stock, securities, and other property it receives in the transaction, and its other properties, in pursuance of the plan of reorganization.

(h) There are no liabilities of Target that will be assumed (within the meaning of § 357(d)) by Acquiring.

(i) Following the transaction, Acquiring will continue the historic business of Target or use a significant portion of Target's historic business assets in a business.

(j) Target will reimburse Acquiring for all reasonable expenses incurred by Acquiring in connection with the transaction. Target and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the transaction.

(k) There is no intercorporate indebtedness existing between Acquiring and Target.

(l) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(m) Acquiring does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Target.

(n) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Proposed Transactions:

(1) The Downstream Reorganization will qualify as a reorganization under § 368(a)(1)(C). Acquiring and Target will each be a "party to a reorganization" under § 368(b).

(2) Target will recognize no gain or loss on the transfer of Old Acquiring Shares to Acquiring solely for New Acquiring Shares in the Exchange (§ 361(a)).

(3) Target will recognize no gain or loss on its distribution of the New Acquiring Shares to its shareholders or creditors (§ 361(c)(1) and (c)(3)). Target will recognize gain on the distribution of other appreciated property, if any, to its shareholders or creditors as if such property had been sold at its fair market value (§ 361(c)(2)).

(4) Acquiring will recognize no gain or loss on its receipt of the Old Acquiring Shares solely for New Acquiring Shares in the Exchange (§ 1032(a)).

(5) No Target shareholder will recognize gain or loss on the exchange of Target stock solely for New Acquiring Shares (§ 354(a)(1)).

(6) A Target shareholder's basis in the New Acquiring Shares will equal the basis of the Target stock surrendered in exchange therefor (§ 358(a)).

(7) A Target shareholder's holding period in the New Acquiring Shares received in the transaction will include the period during which the stock of Target surrendered in exchange therefor was held, provided that the Target stock is held as a capital asset by the Target shareholder on the date of the exchange (§ 1223(1)).

(8) Under § 381(a) and § 1.381(a)-1, the taxable year of Target will end on the effective date of the Downstream Reorganization, and Acquiring will succeed to and take into account the items of Target described in § 381(c), subject to the provisions and limitations of § 381, 382, 383, and 384, and the regulations thereunder.

Caveats

We express no opinion on the tax effect of the Proposed Transactions under any other provision of the Code or Regulations, or the tax effect of any condition existing at the time of, or effect resulting from, the Proposed Transactions that is not specifically covered by the rulings set forth above. In particular, we express no opinion regarding the tax treatment of the LLC Conversion.

Procedural Statements

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 letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the Proposed Transactions covered by this ruling letter are completed.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Associate Chief Counsel (Corporate)

By:____________________________
Wayne T. Murray
Special Counsel
(Corporate)