Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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CC:CORP:03
PLR-106151-07

Date:
April 18, 2007

In Re:

Target =

Sub 1 =

Acquiring =

LLC =

Asset =

X =

State A =

b =

c =

d =

e =

f =

g =

h =

i =

M =

N =

O =

Family =

Business Y =

Business Z =

Date 1 =

Date 2 =

Date 3 =

Dear :

We respond to your request dated January 31, 2007, for rulings on the Federal income tax consequences of a proposed transaction. Additional information was provided on March 26 and April 17, 2007. The information submitted for consideration is summarized below.

Target is a State A holding company that is taxed as a subchapter S corporation for Federal income tax purposes. Target is owned by b shareholders, and Target's largest shareholders, M, N, and O, own, directly and indirectly, f, g, and h percents of Target stock respectively. M, N, and O are members of Family.

Target wholly owns Sub 1, a State A corporation engaged in Business Y. Target also owns c percent of the Class A common stock of Acquiring. The stock of Acquiring is Target's largest asset.

Target previously owned all of Asset. Target sold Asset to X, a holding company that is controlled by Family, on Date 2 in anticipation of the proposed transaction, as Acquiring refused to engage in the transaction unless Target first disposed of Asset. The sale proceeds were used by Target to repay a third-party debt.

Acquiring is a State A publicly held corporation that has two classes of common stock outstanding, Class A and Class B. Acquiring, which is engaged in Business Z, is the common parent of an affiliated group of corporations and other entities (the Acquiring Group), including wholly owned LLC, a limited liability company created under State A law. LLC, engaged in Business Y, is disregarded as an entity separate from its owner for Federal income tax purposes.

On Date 1, Acquiring's board of directors authorized the repurchase of e shares of Class A stock during the period ending on Date 3 (Stock Repurchase Program), an amount that constitutes approximately i percent of the total outstanding common stock of Acquiring. Pursuant to the Stock Repurchase Program, Acquiring may repurchase shares either through a broker on the open market or in privately negotiated transactions. To date, all repurchases have been through a broker who acquires the shares on the open market for the prevailing market price. The Stock Repurchase Program was implemented before the parties agreed to engage in the proposed transaction and will not be amended as a result of the proposed transaction.

For what have been represented as valid business purposes, Target proposes to merge, in a statutory merger pursuant to the laws of State A, with and into LLC. The following will occur as a result of the merger:

(i) Target will transfer all of its assets to LLC in exchange for Class A voting stock of Acquiring and LLC's assumption of Target's liabilities.

(ii) The stock of Target will be converted to the right to receive shares of Acquiring Class A voting common stock and cash in lieu of fractional shares, and Target will cease to exist.

The following representations have been made with respect to the proposed transaction:

(a) The merger will be undertaken for valid corporate business purposes.

(b) The fair market value of Acquiring stock and other consideration received by each Target shareholder will approximately equal the fair market value of the Target stock surrendered in the exchange.

(c) Acquiring will issue newly issued shares of its stock to the Target shareholders in the merger. Target will not distribute any of its existing shares of Acquiring stock in the transaction.

(d) There is no plan or intention for Acquiring, or for any party related to Acquiring (within the meaning of §1.368-1(e)(4) of the Income Tax Regulations) to redeem or acquire any of the outstanding Acquiring stock, except pursuant to the Acquiring Stock Repurchase Program. The Stock Repurchase Program was implemented before the parties agreed to implement the proposed transaction. The Stock Repurchase Program was not a matter negotiated by the parties in agreeing to the proposed transaction. Acquiring will typically only make purchases pursuant to the Stock Repurchase Program on the open market, in order to maintain the Securities and Exchange Commission's safe harbor, and in such instances will not have any knowledge whether the repurchased shares were attributable to a sale of such Acquiring shares by a former Target shareholder. The Stock Repurchase Program will not be amended as a result of the proposed transaction.

(e) Neither Acquiring nor LLC has any plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction, except for dispositions made in the ordinary course of business.

(f) The liabilities of Target assumed by LLC (Acquiring, for Federal income tax purposes) plus the liabilities, if any, to which the transferred assets are subject were incurred by Target in the ordinary course of its business and are associated with the assets transferred.

(g) Following the transaction, LLC (Acquiring, for Federal income tax purposes) will continue the historical business of Target or use a significant portion of Target's historical business assets in a business.

(h) LLC, Target, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the transaction.

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

(j) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv) of the Internal Revenue Code.

(k) The fair market value of the assets of Target transferred to LLC (Acquiring, for Federal income tax purposes) will equal or exceed the sum of the liabilities assumed by Acquiring, through LLC, plus the amount of liabilities, if any, to which the transferred assets are subject.

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

(m) The payment of cash in lieu of fractional shares of Acquiring stock is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. The total cash consideration that will be paid in the merger to the Target shareholders, instead of issuing fractional shares of Acquiring stock, will not exceed one percent of the total consideration that will be issued in the merger to the Target shareholders in exchange for their shares of Target stock. The fractional share interests of each shareholder will be aggregated, and no Target shareholder will receive cash in an amount equal to or greater than the value of one full share of Acquiring stock.

(n) All actions have been undertaken to assure that LLC will be treated as a disregarded entity for purposes of §301.7701-3.

(o) If for some reason the proposed transaction cannot be consummated, X and Target will not undo the sale of Asset to X.

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to the proposed transaction:

(1) Provided that the merger of Target into LLC qualifies as a statutory merger in accordance with applicable state law, the acquisition by LLC (Acquiring, for Federal tax law purposes) of all of the assets of Target in exchange for the common stock of Acquiring and the assumption of Target liabilities, followed by the distribution of the Acquiring stock to the Target shareholders in complete liquidation of Target, will constitute a reorganization pursuant to §368(a)(1)(A). Acquiring and Target each will be a “party to the reorganization” within the meaning of §368(b).

(2) Target will not recognize any gain or loss on the transfer of all of its assets to Acquiring in exchange for Acquiring stock and the assumption of liabilities (§§357(a) and 361(a)).

(3) Acquiring will not recognize any gain or loss on its receipt of all of the assets of Target in exchange for Acquiring stock and its assumption of Target liabilities (§1032(a)).

(4) Acquiring's basis in the assets received from Target will equal the basis of such assets in the hands of Target immediately before the merger (§362(b)).

(5) Acquiring's holding period in the assets received from Target will include the period during which Target held the assets (§1223(2)).

(6) Target will not recognize any gain or loss on its deemed distribution of the Acquiring stock (§361(c)).

(7) Target shareholders will not recognize any gain or loss (and will not include any amount in income except for the cash received in lieu of fractional shares) upon their exchange of Target shares for shares of Acquiring (§354(a)(1)).

(8) A Target shareholder's basis in the Acquiring stock received will equal the basis of the Target stock that such Target shareholder held immediately before the merger (§358(a)).

(9) A Target shareholder's holding period of the stock of Acquiring received will include the holding period of the stock of Target on which the distribution is made, provided that the Target shareholder held such Target stock as a capital asset on the date of the merger (§1223(1)).

(10) The Acquiring Group will remain in existence after the merger, with Acquiring continuing as the common parent of the Acquiring Group (§1.1502-75(d)(1)).

(11) Acquiring will succeed to and take into account the items of Target as described in §381(c). These items will be taken into account by Acquiring subject to the applicable conditions and limitations specified in §§381, 382, 383, and 384 and the regulations thereunder.

(12) Acquiring will succeed to and take into account the earnings and profits or deficit in earnings and profits of Target as of the date of the merger. Any deficit in earnings and profits will be used only to offset earnings and profits accumulated after the date of the merger (§§381(c)(2)(A), 1.381(c)(2)-1, and 1.312-11(a)).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This letter is directed only to the taxpayer requesting 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 any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

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

Sincerely,

Filiz Serbes
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)