Internal Revenue Service

Number: **200941009**
Release Date: 10/9/2009

Index Number: 368.01-00, 368.01-02.

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable
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Refer Reply To:
CC:CORP:B05
PLR-123257-09
Date:
July 10, 2009

LEGEND:

Acquiring =

MergerSub =

Target =

StateA =

StateB =

Year1 =

BusinessA =

BusinessB =

a =

Exchange =

Dear :

This letter responds to your representative's letter of April 29, 2009, requesting rulings as to the Federal income tax consequences of proposed transactions. The material information submitted in that letter and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of the taxpayer and that were accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. However, verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding: a proposed redemption of certain preferred stock.

SUMMARY OF FACTS

Acquiring, a StateB corporation that uses the accrual method of accounting and a calendar year, is engaged in BusinessB. Acquiring has outstanding voting common stock ("Acquiring Stock") which stock is traded on Exchange.

MergerSub has been formed as a StateA corporation. MergerSub will have outstanding one class of stock all of which stock will be held by Acquiring.

Target, a StateA corporation that uses the accrual method of accounting and a calendar year, is engaged in BusinessA. Target has outstanding voting common stock ("Target Stock"). A small percentage, a percent, of the Target Stock was issued by Target in excess of the number of shares authorized by Target's Articles of Incorporation as then on file with the applicable state office ("Overissued Stock"). The state law status of the Overissued Stock is unknown. The shareholders of Target (the "Target Shareholders") hold the Target Stock including the Overissued Stock. Target also has outstanding shares of preferred stock ("Preferred Stock"); however, every share of Preferred Stock will be redeemed in the proposed transactions ("Proposed Transactions") described herein.

PROPOSED TRANSACTIONS

Step (I). The Preferred Stock Redemption. Prior to Steps (II) and (III) (described below) Target will redeem all of the Target Preferred Stock ("Preferred Stock Redemption").

Step (II). The Merger. MergerSub will merge with and into Target in accord with applicable state law with Target surviving and with Target acquiring the assets and liabilities (if any) of MergerSub.

Step (III). The Stock Transfers in the Merger. Pursuant to the Merger, by operation of state law, all of the Target Stock held by Target Shareholders will be cancelled, the Target Shareholders will receive Acquiring Stock, and the stock of MergerSub held by Acquiring will convert into all the outstanding stock in Target. In this transaction, some Target Shareholders may receive cash from Acquiring in lieu of receiving a fractional share of Acquiring Stock ("Fractional Shares").

REPRESENTATIONS

(a) In the Step (I) Preferred Stock Redemption, Target will acquire all of its outstanding Preferred Stock solely in exchange for Target cash. No Target Preferred Stock will remain outstanding at the time of Steps (II) and (III). The amount of cash received by each Preferred Stock holder will be approximately equal to the fair market value of such Preferred Stock. All payments made by Target to the Preferred Stock holders will be made solely out of Target's own funds and Target will not be reimbursed for these payments by Acquiring in any way, either directly or indirectly, or through any person acting for or related to Acquiring.

(b) At the time that Steps (II) and (III) are undertaken, Target will have outstanding solely Target Stock (including Overissued Stock). At such time, Target will have outstanding no debt or convertible securities, warrants or options, or any other type of right, where such interest in Target constitutes an equity interest in Target or where pursuant to such interest any person could acquire an equity interest in Target.

(c) Under StateA law, none of the holders of Target Stock will have dissenter's rights.

(d) Acquiring will acquire all the outstanding stock in Target (including Overissued Stock) solely in exchange for Acquiring voting stock. The Target Shareholders, including the holders of Overissued Stock, will receive solely Acquiring Stock (and cash in lieu of Fractional Shares).

(e) The Target Shareholders have received, and will receive, no special dividends or other payments from Target as part of, or in anticipation of, the Proposed Transactions.

(f) The fair market value of the Acquiring Stock (and cash in lieu of Fractional Shares) received by each Target Shareholder will be approximately equal to the fair market value of the Target Stock (including Overissued Stock) surrendered by such Target Shareholder in the Proposed Transactions.

(g) At least forty percent (40%) of the proprietary interest in Target will be exchanged in the reorganization for a proprietary interest in Acquiring that will be preserved (within the meaning of § 1.368-1(e) of the Income Tax Regulations).

(h) There is no plan or intention for Target to issue any stock in conjunction with or subsequent to the Proposed Transactions.

(i) At the time the Proposed Transactions are undertaken, there will be no plan or intent by either Target or Acquiring to liquidate Target, to merge Target into another company, to have Acquiring sell or otherwise dispose of Target Stock, to have Target cease to be a separate corporate entity for Federal income tax purposes, or to sell or otherwise dispose of Target's stock or Target's assets (other than: (i) with regard to the Preferred Stock Redemption, as described above; (ii) transactions with regard to Target's assets undertaken in the normal course of business, and (iii) transfers permitted in accord with § 368(a)(2)(C) of the Internal Revenue Code and the regulations thereunder).

(j) There is no plan or intention by Acquiring or Target, (or through any person related to Target or Acquiring within the meaning of § 1.368-1(e)(3)), to either directly or indirectly purchase any of the Acquiring Stock issued in the Proposed Transactions (other than Fractional Shares).

(k) Acquiring, MergerSub, Target, and the Target Shareholders will each pay his, her, or its own expenses incurred in connection with the Proposed Transactions.

(l) Acquiring will neither pay nor assume (either directly or indirectly) any Target liabilities or any liabilities of the Target Shareholders.

(m) At no time, throughout the 5-year period prior to the Proposed Transactions, will Acquiring have held either directly or indirectly any stock in Target.

(n) Following the Proposed Transactions, Target will continue to be engaged in BusinessA. There is no plan or intention for Target to cease being involved in BusinessA.

(o) Neither Target nor Acquiring is, or will be, an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

(p) None of the Acquiring Stock is being received by a Target Shareholder as a creditor, employee or in any capacity other than as a holder of Target Stock (including the Overissued Stock).

(q) The receipt of cash by a Target Shareholder in lieu of receiving a Fractional Share will be the result of the exchange ratio which was negotiated without seeking to maximize the issuance of Fractional Shares. Neither the use of Fractional Shares, or the amount of Fractional Shares, or the payment of cash for Fractional Shares was separately bargained for. The payment of cash for Fractional Shares is solely for the purpose of avoiding the expense and inconvenience of issuing Fractional Shares and having Fractional Shares outstanding. The total amount of cash that Acquiring will pay for Fractional Shares in the entire transaction is less than one percent (1%) of the total fair market value of all the shares of Acquiring Stock being issued in this transaction.

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

(s) The Proposed Transactions are being undertaken for business purposes of Acquiring and Target including improving their market and financial position.

(t) The issuance of the Overissued Stock in excess of the number of shares set forth in document(s) on file with the applicable state office was inadvertent. In Year1, document(s) increasing the number of shares authorized were filed with the applicable state office so that, currently, the number of shares of Target Stock outstanding is less than the number of shares authorized. At all times, Target has intended that the Overissued Stock be Target Stock. At all times, from the time the Overissued Stock was issued up until the time the Overissued Stock is exchanged for Acquiring Stock in the Proposed Transactions, Target will have provided the holders of the Overissued Stock the same dividend, vote, and other shareholder rights as those provided with regard to all the other Target Stock.

(u) Immediately prior to the Proposed Transactions, the fair market value of the assets of Target will exceed the sum of its liabilities plus the liabilities (if any) to which its assets are subject.

RULINGS

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

(1) For Federal income tax purposes, the formation of MergerSub, the transfer of Acquiring stock to MergerSub, and the Merger of MergerSub with and into Target will be disregarded. Instead, the transaction will be treated as the acquisition by Acquiring of all the Target Stock (all of Target's outstanding stock including the Overissued Stock) solely in exchange for Acquiring Stock (including Fractional Shares). The Acquiring Stock will be treated as going directly from Acquiring to the Target

Shareholders in exchange for the shareholders' transfer of their Target Stock directly to Acquiring. Rev. Rul. 67-448, 1967-2 C.B. 144.

(2) The acquisition by Acquiring of all the outstanding Target Stock (including all of the Overissued Stock) solely in exchange for Acquiring Stock (including Fractional Shares), as described above, is a reorganization within the meaning of § 368(a)(1)(B). Acquiring and Target will each be a "party to a reorganization" within the meaning of § 368(b).

(3) Acquiring will not recognize any gain or loss upon the receipt of Target Stock (including Overissued Stock) in exchange solely for Acquiring Stock (including Fractional Shares). Section 1032(a).

(4) Acquiring's basis in the Target Stock (including Overissued Stock) received will include the basis of the Target Shareholders in such stock, as provided by § 362(b), taking into account the provisions of § 362(e)(1).

(5) Acquiring's holding period in the Target Stock (including Overissued Stock) received will include the holding period of the Target Shareholders from whom it was received (§ 1223(2)).

(6) No gain or loss will be recognized by the Target Shareholders upon receipt of Acquiring Stock (including Fractional Shares) in exchange for their Target Stock (including Overissued Stock). Section 354(a)(1).

(7) For each of the Target Shareholders, the basis in the Acquiring Stock (including Fractional Shares) received will be equal to the basis of the Target Stock (including Overissued Stock) surrendered by such shareholder in exchange therefore (§ 358(a)(1)).

(8) For each of the Target Shareholders, the holding period for the Acquiring Stock (including Fractional Shares) received will include the period during which such shareholder held the Target Stock (including Overissued Stock) exchanged therefor, provided that such Target Stock is held as a capital asset in the hands of such shareholder on the date of the exchange (§ 1223(1)).

(9) A Target Shareholder who receives cash in lieu of receiving a Fractional Share of Acquiring Stock will be viewed as (i) receiving the Fractional Share and, then, (ii) transferring the Fractional Share back to Acquiring in exchange for the cash. Gain or loss will be recognized by the Target Shareholder on the difference between the shareholder's basis in such Fractional Share and the amount of cash received. Section 1001. With regard to the Fractional Share's basis, see ruling (7) above. If the Fractional Share qualifies as a capital asset in the hands of the shareholder, such gain or loss will be a capital gain or loss subject to the provisions of Subchapter P of Chapter

1 of the Code. With regard to the holding period for determining whether any such gain or loss will be long-term, see ruling (8) above.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. In particular, opinion is expressly reserved with regard to: the Preferred Stock Redemption.

Furthermore, no opinion is expressed about the tax treatment of the transactions (or of any other matter) under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions not specifically covered by the above rulings.

PROCEDURAL STATEMENTS

This private letter ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that this private letter ruling may not be used or cited as precedent.

A copy of this letter must be attached to the Federal income tax returns of each taxpayer involved for the taxable year(s) in which the transactions are consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-123257-09) of this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

_Debra L. Carlisle______
Debra L. Carlisle
Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: