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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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Date:

September 30, 2009

LEGEND:

Acquiring =

Target =

Merger Sub =

Sub 1 =

Entity =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Trust 1 =

Trust 2 =

Industry =

Business =

The Section =

Region 1 =

Region 2 =

State =

Country 1 =

Country 2 =

Country 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Month 1 =

a =
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Dear _____ :

This letter responds to your December 11, 2008 request for rulings on certain Federal income tax consequences of the series of proposed transactions described below (the "Proposed Transactions"). The information provided in that request and in later correspondence is summarized below.

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.

Summary of Facts

Closely held Acquiring, a State corporation, is the common parent of an affiliated group of corporations that files a consolidated U.S. Federal income tax return on the basis of a fiscal year ending Date 1. Acquiring has only common stock outstanding and this is beneficially owned as follows: (i) a shares (b percent) by Shareholder 1 through Trust 1; (ii) a shares (b percent) by Shareholder 2 through Trust 2; and (iii) c shares (d percent) by Shareholder 3 (together with Shareholder 1 and Shareholder 2, the "Shareholders").

Shareholder 1 and Shareholder 2 held Acquiring stock directly until Date 2 when they transferred the stock to Trust 1 and Trust 2, respectively. Because Trust 1 and Trust 2 are grantor trusts under section 671 of the Internal Revenue Code (the "grantor trusts" and the "Code"), Shareholder 1 and Shareholder 2 are treated, for U.S. Federal income tax purposes, as continuing to own directly the Acquiring stock they owned before Date 2.

On Date 3, the Shareholders formed Sub 1, a Country 1 entity treated as a corporation for U.S. Federal tax purposes. Sub 1 owns operating assets and the stock of wholly owned operating subsidiaries formed in various jurisdictions. Until Month 1, the Shareholders directly owned all of the stock of Sub 1 in proportions identical to their ownership of Acquiring. With respect to Sub 1, the Shareholders are all "U.S. persons" within the meaning of section 957(c); however, only Shareholder 1 and Shareholder 2 are "U.S. shareholders" (within the meaning of section 951(b)) and "section 1248 shareholders" (within the meaning of Treas. Reg. § 1.367(b)-2(b)).

In Month 1, Shareholder 1 transferred his Sub 1 stock to Trust 1, and Shareholder 2 transferred his Sub 1 stock to Trust 2. Because Trust 1 and Trust 2 are grantor trusts, Shareholder 1 and Shareholder 2 are treated, for U.S. Federal income tax purposes, as continuing to own directly the Sub 1 stock they owned before Month 1.

On Date 4, the Shareholders transferred all of their Sub 1 stock to newly formed Target in exchange for all of the stock of Target (the "Sub 1 Transfer"). Target is a Country 2 entity required under Treas. Reg. § 301.7701-2(b)(8) to be treated as a corporation for U.S. Federal tax purposes. An election to treat Sub 1 as a disregarded entity for U.S. Federal tax purposes under Treas. Reg. § 301.7701-3(c) was subsequently made (the "Sub 1 Election"). The Sub 1 Transfer and Sub 1 Election together were intended to result in a reorganization of Sub 1 under section 368(a)(1)(D) or section 368(a)(1)(F).

Since its formation, the Shareholders have beneficially held the shares of Target as follows: (i) a shares (b percent) by Shareholder 1 through Trust 1; (ii) a shares (b percent) by Shareholder 2 through Trust 2; and (iii) c shares (d percent) directly by Shareholder 3. With respect to Target, the Shareholders are all "U.S. persons" within the meaning of section 957(c); however, only Shareholder 1 and Shareholder 2 are "U.S. shareholders" (within the meaning of section 951(b)) and "section 1248 shareholders" (within the meaning of Treas. Reg. § 1.367(b)-2(b)).

Acquiring, Target, and their subsidiaries are members of a multinational group of companies (the "Group") serving Industry clients in diverse domestic and international markets. The Group is in the Business. Acquiring and its subsidiaries operate the Business in Region 1, and Target and its subsidiaries operate the Business in Region 2.

To align the interests of the Group with those of its workers regardless of the entity for which they work or the particular markets they serve, the Shareholders wish to combine Target with Acquiring and transfer the ownership of Acquiring to an employee stock ownership plan ("ESOP"). Eligible employees of Acquiring and eligible employees of Entity, a newly formed Country 3 entity (which will be treated for U.S. federal tax purposes either as a partnership or disregarded as an entity separate from its owner) will participate in the ESOP. A select group of non-employee sales representatives who are not U.S. taxpayers and reside outside of the U.S. and Country 3 (the "Select Sales Representatives") will participate in a nonqualified deferred compensation plan that will provide similar benefits.

The combination of Acquiring and Target will enable the ESOP participants to share in the global growth of the entire Group, most of which is expected to occur outside the United States. In addition, the Group expects to realize significant operational savings, particularly from the elimination of certain duplicative functions currently conducted by the Target headquarters in Country 2. Streamlining office functions should also simplify marketing and contracting as the Group expands internationally. Finally, the parent-subsidary structure that results from the Proposed Transactions is expected to reduce Country 2 withholding taxes on distributions received by Acquiring from Target.

Proposed Transactions

To achieve the business purposes described above, the Shareholders and the Group propose to effect the following series of transactions:

- (i) Acquiring will amend its Certificate of Incorporation by filing a Certificate of Amendment (the "Amendment"). Pursuant to the Amendment, the total authorized shares of Acquiring will be increased from e shares to f shares. In addition, upon the effective time of the Amendment, each of the g outstanding shares of Acquiring stock will be split up and converted into h of Acquiring common stock (the "Recapitalization").
- (ii) Acquiring will form Merger Sub, a Country 2 entity required under Treas. Reg. § 301.7701-2(b)(8) to be treated as a corporation for U.S. Federal tax purposes. Acquiring will transfer a nominal amount of cash necessary to satisfy Country 2 corporate law capitalization requirements in exchange for all the stock of Merger Sub.
- (iii) Pursuant to a Merger Agreement, Target will merge with and into Merger Sub pursuant to Country 2 corporate law (the "Merger"). In the Merger: (a) the Shareholders will receive solely shares of Acquiring voting stock in exchange for all of their Target stock; (b) all of the assets and liabilities of Target will automatically become the assets and liabilities of Merger Sub by operation of the applicable Country 2 merger statute; and (c) Target will cease to exist for all purposes. Because the Shareholders own the stock of Acquiring and Target in identical proportions, their proportionate interests in the stock of Acquiring will not change as a result of the Merger.
- (iv) Acquiring will establish an ESOP intended to meet the requirements of section 4975(e)(7) and appoint a trustee that is unrelated to Acquiring or the Shareholders (the "Trustee"). The beneficiaries of the ESOP will be all of the eligible employees of Acquiring as well as the eligible employees in Country 3 of New Country 3 Sub, a total of i employees. None of the Shareholders, or other persons who would be disqualified from participation by virtue of their relationship to the Shareholders, will participate in, or benefit from, the ESOP or any other qualified plan. A nonqualified deferred compensation plan will provide benefits payable in cash only to the Select Sales Representatives.
- (v) Immediately following the Merger, the Shareholders intend to sell all of their stock in Acquiring (including the shares of Acquiring stock received in the Merger) to the ESOP in a transaction intended to qualify for nonrecognition treatment under section 1042(a) (the "Sale"). The consideration paid by the ESOP will be negotiated with the Trustee and will be equal to the fair market value of the

Acquiring stock as determined by the ESOP's independent appraisal. Based upon discussions with Acquiring's investment bankers, Acquiring believes the fair market value of the stock of Acquiring after the Merger will be between \$j and \$k. Based on this range of estimated fair market values, the consideration provided to the Shareholders by the ESOP is expected to consist of \$l of cash, between \$m to \$n of subordinated notes issued by the ESOP (the "Bridge Notes"), and between \$o and \$m of notes from the Shareholders (the "Seller Notes"). The amount of cash received by the Shareholders and the principal amount of the Bridge Notes and the Seller Notes is subject to adjustment based upon the final sales price for the Acquiring stock agreed upon by the Trustee and the Shareholders, and the cash available from the ESOP Note (defined below).

The consideration for the Sale will be financed by the ESOP with loans from Acquiring and the Shareholders as follows:

- (a) Acquiring will borrow \$p from an unrelated lender under a senior secured first lien term loan facility, the term of which is expected to be between q and r years. Acquiring will immediately loan substantially all of the proceeds to the ESOP in exchange for a note issued by the ESOP (the "ESOP Note"), and the ESOP will then transfer the proceeds to the Shareholders in the Sale. The term of the ESOP Note is expected to be between s and t years.
- (b) The Bridge Notes issued by the ESOP to the Shareholders are expected to have a term of between q and r years, but the parties intend that Target, either directly or through Acquiring, will loan to the ESOP \$m to \$n following all of the steps above, and the ESOP will use such amounts to repay the Bridge Notes. Any loans from Target or Acquiring for this purpose will be on terms substantially the same as the ESOP Note.
- (c) The Seller Notes issued by the ESOP to the Shareholders will bear interest at a reasonable rate not expected to be greater than u percent over the rate of interest charged under the senior secured first lien term loan facility. Interest will be paid quarterly, and the balance of any interest due will be paid by increasing the principal amount of the Seller Notes. The Seller Notes will have a term of approximately q to v years. The exact term of the Seller Notes will depend on the value of the Acquiring stock at the time of the Sale as well as on the interest rate under the Seller Notes.

The ESOP will pledge all of the stock of Acquiring to the Shareholders and Acquiring as security for the loans described above.

- (vi) Immediately after the Sale has closed, the ESOP, as the sole shareholder of Acquiring, will consent to, and Acquiring will make, an election to be treated as a

subchapter S corporation (an “S corporation”). In addition, Acquiring will make elections to treat each of its eligible subsidiaries as qualified subchapter S subsidiaries (“QSubs”).

- (vii) Acquiring will make annual contributions to the ESOP within the limits prescribed under section 404(a)(3).

Representations

In connection with the Merger, the taxpayer represents that:

- (a) The Sub 1 Transfer together with the Sub 1 Election qualified as a reorganization under section 368(a)(1)(D) or section 368(a)(1)(F).
- (b) Each of Trust 1 and Trust 2 is a grantor trust within the meaning of section 671.
- (c) The Recapitalization will qualify as a reorganization under section 368(a)(1)(E).
- (d) The fair market value of the shares of Acquiring stock received by each Target shareholder will be approximately equal to the fair market value of the shares of Target stock surrendered in the exchange.
- (e) There is no plan or intention for Acquiring or a person related to Acquiring (as defined in Treas. Reg. § 1.368-1(e)) to acquire, or reacquire, any Acquiring stock issued to the Target shareholders in the Merger. The ESOP will not be a related person within the meaning of Treas. Reg. § 1.368-1(e)(4).
- (f) Merger Sub 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 prior to the Merger. For purposes of this representation, amounts paid by Target to dissenters, amounts paid by Target to shareholders who receive cash or other property, Target assets used to pay its reorganization expenses and all redemptions and distributions (except for regular, normal dividends) made by Target immediately preceding the transfer, will be included as assets of Target held immediately prior to the Merger.
- (g) Prior to the Merger, Acquiring will be in control of Merger Sub (within the meaning of section 368(c)). Merger Sub will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person can acquire stock in Merger Sub that, if exercised or converted, will affect Acquiring’s retention of control (within the meaning of § 368(c)) of Merger Sub.

- (h) Following the Merger, Merger Sub will not issue additional shares of its stock that would result in Acquiring losing control of Merger Sub within the meaning of section 368(c).
- (i) Acquiring has no plan or intention to liquidate Merger Sub; to merge Merger Sub with and into another corporation; to sell or otherwise dispose of the stock of Merger Sub; or to cause Merger Sub to sell or otherwise dispose of any of the assets of Target acquired in the Merger, except for dispositions made in the ordinary course of business or transfers described in section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).
- (j) The liabilities of Target assumed (within the meaning of § 357(d)) by Merger Sub and the liabilities to which the transferred assets of Target are subject were incurred by Target in the ordinary course of its business.
- (k) Following the Merger, Merger Sub will continue the historic business of Target or use a significant portion of Target's historic business assets in a business.
- (l) Acquiring, Merger Sub, Target, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the Merger.
- (m) There is no intercorporate indebtedness existing between Acquiring and Target or between Merger Sub and Target that was issued, acquired, or will be settled at a discount.
- (n) None of Acquiring, Target, or Merger Sub, each a party to the Merger, is an investment company as defined in section 368(a)(2)(F)(iii) and (iv).
- (o) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).
- (p) The fair market value of the assets of Target transferred to Merger Sub will equal or exceed the sum of the liabilities assumed (within the meaning of § 357(d)) by Merger Sub plus the amount of liabilities, if any, to which the transferred assets are subject.
- (q) No shares of stock of Merger Sub will be issued in the Merger. All of the stock in Target will be exchanged solely for voting shares of Acquiring stock.
- (r) On the date of the Merger, the fair market value of the assets of Target will exceed the amount of its liabilities immediately prior to the Merger.
- (s) On the date of the Merger, the fair market value of the assets of Acquiring will exceed the amount of its liabilities immediately after the Merger.

- (t) The Merger will be undertaken for valid business purposes. Specifically, the Merger will enable the Shareholders to combine Acquiring and Target, and transfer ownership of Acquiring to an ESOP to facilitate the alignment of the interests of the Group with those of its workers by sharing in the global growth of the Group irrespective of the entity in the Group for which they work or the particular markets they serve. In addition, the Group expects to realize significant operational savings, particularly from the elimination of certain duplicative functions currently conducted by the Target headquarters office maintained in Country 2. Streamlining office functions should also simplify marketing and contracting as the Group expands internationally. Finally, the parent-subsidary structure resulting from the Proposed Transactions is expected to reduce Country 2 withholding taxes on distributions from Merger Sub (formerly, Target).
- (u) The taxpayer represents that the notice requirements of Treas. Reg. § 1.367(b)-1(c) will be satisfied.

In connection with the Sale, the taxpayer represents that:

- (v) Acquiring will apply for a determination letter with respect to the ESOP following receipt of the rulings requested herein and will make any required adjustments to the ESOP necessary to obtain one.
- (w) In the case of each purchase of stock of the employer by the ESOP, the purchase price will be equal to the fair market value of the stock exchanged, and such value will be determined by an independent appraisal prepared for the ESOP trustee.
- (x) There is no plan, intention, or understanding for the employer to redeem any of the purchased stock from the plan.
- (y) The combined beneficial interest in the plan of each selling shareholder and all related persons will not exceed 20 percent, based on the following:
 - (i) The combined covered compensation of each selling shareholder and all related persons will not exceed 20 percent of the total covered compensation under the plan;
 - (ii) The total of the account balances (vested and nonvested) of the selling shareholder and related persons will not exceed 20 percent of the total of all employee account balances (vested and nonvested) in the plan; and

- (iii) The combined interest (vested and nonvested) of the selling shareholder and related person, in any separately managed fund or account within the plan (not taking into account a separately managed fund or account within the plan that at no time may be credited with stock of the employer) will not exceed 20 percent of the total net assets in that fund or account.
- (z) The restrictions on disposition of the shares of stock to be distributed to employee-participants from the plan (other than restrictions imposed by federal or state laws) will be no more onerous than the disposition restrictions on at least a majority of the shares of stock held by other shareholders of the employer. For purposes of this representation, any right of first refusal with respect to the stock to be distributed from the plan will not be considered a restriction on disposition, if the right of first refusal will:
 - (i) apply to shares of stock that are not publicly traded (within the meaning of § 54.4975-7(b)(1)(iv) of the Pension Excise Taxes Regulations) at the time the right is exercised;
 - (ii) be in favor of the plan, the employer, or both, in any order of priority;
 - (iii) not provide for a selling price and other terms that will be less favorable to the seller than the greater of: (1) the fair market value of the stock; or (2) the purchase price and other terms offered by a purchaser (other than the employer or the plan) making a good faith offer to purchase the stock of the employer; and
 - (iv) lapse no later than 14 days after the shareholder gives written notice to the holder or holders of the right that an offer by a third party to purchase the stock has been received.
- (aa) In accordance with section 1042 and Treas. Reg. § 1.1042-1T, the Acquiring shares will be qualified securities within the meaning of section 409(l), and the Shareholders will purchase qualified replacement property within the replacement period at a cost that is at least equal to the amount realized by the Shareholders on the sale of their shares. The Shareholders will file “statements of election” and “statements of purchase” in accordance with Treas. Reg. § 1.1042-1T, Q&A-3.
- (bb) The shares of Acquiring that will be sold to the ESOP are “qualified securities” as described in section 1042(c)(1) and Treas. Reg. § 1.1042-1T, Q&A-1(b). Such shares will not have been acquired by the Shareholders in a distribution from a section 401(a) plan or a transfer pursuant to an option or other right to acquire stock that is subject to section 83, 422, or 423.

- (cc) The Shareholders will file the required written statement consenting to the application of sections 4978 and 4979A with respect to Acquiring in accordance with section 1042(b)(3) and Treas. Reg. § 1.1042-1T, Q&A-3.
- (dd) In accordance with section 1042(b)(4), each Shareholder's holding period with respect to the Acquiring stock (including the Acquiring stock received in the Merger, for which the holding period will include the period during which each Shareholder held the Target stock surrendered in exchange therefore provided such Target stock was a capital asset) will be at least three years.
- (ee) Neither the Shareholders nor any related persons or 25 percent shareholders as described in section 409(n) will participate in the ESOP or receive allocations under any other qualified plan in lieu of benefits under the ESOP. The Section provides that the Shareholders, and all related persons and 25 percent shareholders as described in section 409(n), will not receive allocations of shares under the plan prior to the tenth anniversary of the date on which shares are released from the loan suspense account as a result of the final payment on the plan loan.
- (ff) After the Sale, the ESOP will be the only shareholder of the employer. As permitted by section 409(h)(2), ESOP distributions will be made either in cash or in shares of Acquiring stock subject to a requirement that the shares be immediately resold to Acquiring in the manner contemplated by section 409(h)(2) and Rev. Proc. 2003-23.

Rulings

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

- (1) Provided that the Merger qualifies as a statutory merger in accordance with applicable Country 2 law, the Merger will qualify as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D). Acquiring, Merger Sub, and Target will each be "a party to a reorganization" within the meaning of section 368(b). See also, Rev. Proc. 87-22, 1987-1 CB 718.
- (2) No gain or loss will be recognized by Target on the transfer of its assets to Merger Sub in exchange for Acquiring common stock, other property (if any), and the assumption of Target liabilities by Merger Sub (sections 361(a) and (b), and section 357(a)).
- (3) No gain or loss will be recognized by either Acquiring or Merger Sub on the receipt by Merger Sub of the assets of Target in exchange for Acquiring common

- stock and the assumption by Merger Sub of the liabilities of Target (Treas. Reg. § 1.1032-2).
- (4) The basis of each asset of Target received by Merger Sub in the Merger will be the same as the basis of that asset in the hands of Target immediately before its transfer (section 362(b)).
 - (5) The holding period of each asset of Target received by Merger Sub in the Merger will include the period during which such asset was held by Target (section 1223(2)).
 - (6) No gain or loss will be recognized by Target on its distribution of Acquiring stock and other property (if any) to the Shareholders of Target in pursuance of the plan of reorganization (section 361(c)(1)).
 - (7) Gain will not be recognized by the Target Shareholders on the exchange of Target stock for Acquiring stock except to the extent other property (other than the Acquiring Shares) is received by the Shareholders in the Merger (sections 354 and 356). The amount of such gain (if any) shall not exceed the fair market value of such other property received in the exchange (section 356(a)(1)). If the exchange has the effect of the distribution of a dividend (determined with the application of section 318(a)), then the amount of the gain recognized that is not in excess of the Shareholders' ratable share of undistributed earnings and profits of Target will be treated as a dividend (section 356(a)(2)). The remainder of the gain recognized, if any, will be treated as gain from the sale or exchange of property (section 356(a)(2)). No loss will be recognized on the exchange (section 356(c)).
 - (8) The basis of Acquiring stock received by each shareholder of Target will equal such shareholder's basis in the Target stock surrendered in exchange therefor, decreased by the fair market value of other property (if any) received, and increased by the amount of gain, if any, treated as a dividend and the amount of gain (not including any part of the gain treated as a dividend) recognized by the shareholder on the exchange (section 358(a)(1)).
 - (9) The holding period of the Acquiring stock received by a shareholder of Target in the Merger will include the period during which such shareholder held the Target stock surrendered in exchange therefor, provided the Target stock was a capital asset at the time of the Merger (section 1223(1)).
 - (10) The basis of the Merger Sub stock in the hands of Acquiring will be determined under Treas. Reg. § 1.358-6(c)(1).

- (11) Pursuant to section 381(a) and Treas. Reg. § 1.381(a)-1, Merger Sub will succeed to and take into account the items of Target described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder.
- (12) Provided that a valid election under section 1362 is made to treat Acquiring as an S corporation, the Acquiring consolidated group will terminate (section 1504(b)(8) and Treas. Reg. § 1.1502-76(d)). Immediately before the termination, each group member will take into account its items of income, gain, loss, deduction, and credit as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13).
- (13) Provided that a valid election under section 1362 is made to treat Acquiring as an S corporation, Acquiring will be subject to the provisions of section 1374 and the regulations thereunder with respect to its assets (including those assets deemed transferred from an Acquiring subsidiary to Acquiring as a result of a valid election under Treas. Reg. § 1.1361-3).
- (14) Provided that the ESOP established by Acquiring meets the requirements set forth in section 4975(e)(7) and that the requirements of section 1042(a) and Treas. Reg. § 1.1042-1T are satisfied, the Sale will qualify for nonrecognition treatment under section 1042.

Caveats

No opinion is expressed about the Federal income tax treatment of the Proposed Transactions under other provisions of the Code or regulations or the Federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, we express no opinion regarding:

- (i) the Federal income tax treatment of the Recapitalization described in step (i) of the Proposed Transactions;
- (ii) whether Acquiring is eligible to make an election under section 1362 to be treated as an S corporation and whether Acquiring may make valid elections under Treas. Reg. section 1.1361-3 to treat any of its subsidiaries as a QSub, as described in step (vi) of the Proposed Transactions;
- (iii) the Federal income tax consequences of any financing (or refinancing) between Target (or Merger Sub) and Acquiring, or between Target (or Merger Sub) and the ESOP, that relates to the sale of the stock of Acquiring (specifically, no opinion is expressed as to whether any such

financings would constitute an investment in United States property within the meaning of section 956); and

- (iv) whether the ESOP satisfies the requirements of section 409(n).

Procedural Matters

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

A copy of this ruling letter must be attached to the Federal income tax return of each party involved in the Proposed Transactions for the taxable year in which the Proposed Transactions are completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.

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

Sincerely,

Frances L. Kelly
Assistant Branch Chief (Branch 2)
Office of Associate Chief Counsel
(Corporate)