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Person To Contact:
, ID No.
Telephone Number:

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March 09, 2010

LEGEND:

Old Acquiring =

New Acquiring =

Target1 =

Target2 =

NewCo =

FC1 =

FC2 =

FC3 =

FC4 =

FC5 =

FC6 =

FC7 =

FC8 =

Class AA =

Class BB =

Class DD =

Class EE =

Class UU =

City B =

State X =

State Y =

Country E =

Country F	=
$<u>U</u>	=
$<u>V</u>	=
$<u>W</u>	=
$<u>X</u>	=
$<u>Y</u>	=
$<u>Z</u>	=
<u>a</u>	=
<u>b</u>	=
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Date1	=
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Date9	=

Dear :

This is in response to a letter, dated September 8, 2009 in which rulings are requested as to the federal income tax consequences of a proposed transaction. The information submitted 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 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

Old Acquiring, a corporation incorporated in State X, operated as a non-exempt cooperative under Subchapter T of the Internal Revenue Code (Code). Target1 and Target2 were Subchapter C corporations incorporated in State Y.

Old Acquiring and Target2 each operated ongoing businesses, marketing and distributing r for sale to customers in the U.S. Target1 operated an ongoing business, marketing and distributing r on behalf of Old Acquiring's non-members.

Old Acquiring, Target1, and Target2 each maintained its respective books and records on the accrual method of accounting and had a taxable year ending on Date9. The principal office of each was located in City B.

FC1, FC2, FC3, and FC4 are Country E corporations. FC5, FC6, FC7, and FC8 are Country F corporations.

FC1 owned a shares, FC2 owned b shares, and FC4 owned c shares of the common stock of Old Acquiring (Existing Common Stock).

FC1 owned d shares, FC2 owned e shares, and FC3 owned f shares of the outstanding common stock of Target1. FC1 owned g shares, FC2 and FC3 each owned i shares of Class BB common stock of Target 2. FC5 and FC6 each owned j shares, FC7 owned l shares, and FC8 owned m shares of Class AA common stock of Target2 (Class AA and Class BB are collectively referred to as Target2 stock).

FC1, FC2, and FC4 were co-op members of Old Acquiring, and each held a qualified per-unit retained certificate in the amount of $U, $V, and $Z, respectively. None of the members had a U.S. trade or business.

TRANSACTION

For what are represented to be valid business reasons, the following steps have been undertaken:

1. On Date1, Old Acquiring formed NewCo, a State X corporation, and made a capital contribution of $X in exchange for k shares.

2. On Date2, Old Acquiring amended its Articles of Incorporation to change its name to New Acquiring (Name Change) and to authorize the issuance of the following: h shares of each of the following classes: Class UU common stock, Class EE common stock and Class DD preferred stock. Class UU and Class EE stock each have the same right to dividends and to assets on liquidation. Subject to the Board of Directors' approval, Class UU stock is convertible into Class EE stock and vice-versa. Both classes may only be issued to shareholders, who are also members of New Acquiring. Each class votes separately. Each holder of Class UU or Class EE

stock is entitled to only one vote regardless of the number of shares owned. Class DD preferred stock is non-voting, redeemable preferred stock with a par value of $Y and an annual dividend cumulatively payable at a rate of $W per share. Upon liquidation, Class DD is entitled to a liquidation preference equal to $Y plus any accrued dividends. The Existing Common Stock remained authorized and outstanding.

3. On Date3, FC3 caused FC4 to distribute the following: (i) c shares in the Existing Common Stock and a qualified per-unit retained certificate in the amount of $Z in New Acquiring; and (ii) f shares in Target1.

4. On Date4, Target1 and Target2 each declared a distribution equal to its respective net earnings for taxable year ending Date5. Each made its respective distribution in the form of newly issued notes to its respective shareholders (collectively referred to as Notes1).

5. On Date 6, Target1, Target2, and New Acquiring entered into a merger agreement providing for the merger of Target1 and Target2 into New Acquiring, with New Acquiring as the surviving corporation. In the merger, FC1, FC2 and FC3 received, in exchange for their stock in Target1 and Target2, Class EE common stock, and FC5, FC6, FC7, and FC8, in exchange for their stock in Target2, received Class UU common stock. FC5, FC6, and FC8 also received Class DD preferred stock as part of the exchange of their Target2 stock. Class EE and Class UU were issued based on the shareholder's country of incorporation. The merger was effected under the laws of State X ("Merger").

6. Contemporaneous with the Merger, FC1, FC2, and FC3 each surrendered its Existing Common Stock and per-unit retained certificate in New Acquiring in exchange for shares of Class EE stock and promissory notes (Notes2). FC2 and FC3 also received Class DD preferred stock as part of the exchange. Notes2 provide a term of o years and bear compound interest payable semi-annually at an annually adjusted rate equal to p. The Existing Common Stock was cancelled and became authorized, but unissued ("Recapitalization"). New Acquiring also contributed net assets related to its non-member business to Newco.

7. On Date 7, New Acquiring declared and subsequently distributed patronage dividends for the taxable year ending Date5, payable in the form of s% in promissory notes and the remainder in cash to FC1, FC2 and FC4.

REPRESENTATIONS

The following representations have been made in connection with the transaction:

1. The Merger qualified as a statutory merger under applicable law of State X. Pursuant to the plan of Merger, by operation of law of State X, the following occurred simultaneously: (i) all of the assets held by Target1 and Target2 and all of the liabilities of Target1 and Target2 (except to the extent satisfied or discharged in the transaction) became assets and liabilities of New Acquiring; and (ii) Target1 and Target2 ceased their separate legal existence.

2. The Recapitalization qualified as a reorganization under § 368(a)(1)(E) of the Internal Revenue Code.

3. The Name Change qualified as a reorganization under § 368(a)(1)(F).

4. None of the shareholders of Target1 and Target2 has any plan or intention to sell or otherwise dispose of any of the New Acquiring stock received in the Merger.

5. The fair market value of New Acquiring stock actually or constructively received by each shareholder of Target1 and Target2 was approximately equal to the fair market value of Target1 or Target2 stock surrendered in the exchange.

6. At least 40 percent of the proprietary interest in Target1 and Target2 was exchanged actually or constructively for New Acquiring stock and was preserved (within the meaning of § 1.368-1(e)(1) of the Treasury Regulations)

7. Neither Target1 nor Target2 was nor will have been, at any time during the five-year period prior to the Merger, a U.S. real property holding corporation within the meaning of § 897(c)(2).

8. Neither New Acquiring nor any person related (within the meaning of § 1.368-1(e)(4)) to New Acquiring has any plan or intention to reacquire any of the Class EE or Class UU stock received in the Merger.

9. New Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of each Target1 or Target2 acquired in the Merger, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).

10. Except for Notes1, the liabilities of Target1 and Target2 assumed (within the meaning of § 357(d)) by New Acquiring were incurred by Target1 and Target2 in the ordinary course of their respective businesses and are associated with the assets transferred.

11. Following the Merger, New Acquiring has continued and will continue the historic business of Target1 and Target2 or has used or will use a significant portion of such historic business assets in a business.

12. The parties to the Merger paid their respective expenses, if any, incurred in connection with the Merger.

13. No intercorporate indebtedness existed between Target1 and New Acquiring or Target2 and New Acquiring other than that arising in the normal course of business and none was issued, acquired, or settled at a discount.

14. None of the parties to the Merger were investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).

15. Immediately before the Merger, the total fair market value of Target1's and Target2's assets transferred to New Acquiring each exceeded the sum of: (i) the amount of liabilities assumed (as determined under § 357(d)) by New Acquiring in connection with the Merger; (ii) the amount of liabilities owed to New Acquiring by either Target1 or Target2 that was discharged or extinguished in connection with the Merger; and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 361(a) without the recognition of gain) received by Target1 or Target2 in connection with the Merger.

16. The fair market value of New Acquiring's assets exceeded its liabilities immediately after the Merger.

17. Neither Target1 nor Target 2 was under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

18. Class DD preferred stock constituted nonqualified preferred stock within the meaning of § 351(g)(2).

19. The declaration and payment of patronage dividends for year ending Date5 were made in accordance with the provisions of subchapter T.

OPERATING ON A COOPERATIVE BASIS

Section 1381 of the Code provides that subchapter T shall apply to "any corporation operating on a cooperative basis…" with certain exception not here relevant. Section 1.1381-1(a) states that Subchapter T of the Code "applies to any corporation operating on a cooperative basis and allocating amounts to patrons on the basis of business done with or for patrons."

Rev. Rul. 93-21, 1993-1 C.B. 188, provides that the cooperative principles in Puget Sound Plywood, Inc. v. Commissioner, 44 T.C. 305 (1965), acq. 1966-1 C.B. 3, provide the basis for determining whether a corporation is operating on a cooperative basis for purposes of subchapter T of the Code.

In Puget Sound Plywood, three principles are described as fundamental to cooperative operation: 1) subordination of capital; 2) democratic control by the members; and 3) operation at cost, the vesting in and allocation among the members of all fruits and increases arising from their cooperative endeavor.

Subordination of capital requires that control of the cooperative and ownership of the pecuniary benefits arising from the cooperative's business remains in the hands of the member/patrons of the cooperative rather than with nonpatron equity investors in the cooperative. The purpose of this limitation is to insure that the gains that accrue to the cooperative from the business that it transacts with its patrons will largely or completely inure to the benefit of those patrons rather than to its stockholders. To be operating on a cooperative basis, a cooperative must limit the financial return with respect to its equity capital. Puget Sound, 44 T.C. at 308. Stated differently, a cooperative may not be operated for the purpose of paying a return on equity investments.

Democratic control of the cooperative, as envisioned in Puget Sound at 308, is typically achieved by voting on a one-member, one-vote basis. The principle of democratic control was further discussed in Etter Grain Co. v. United States, 462 F.2d 259, 263 (5th Cir. 1972), in which the court noted that § 521 of the Code, regarding exempt cooperatives, contemplates that the stock will be owned by the patrons of the cooperative. That section, "envision(s) the exempt association organized according to a model of a widely-based participatory democracy in which all the members are able to exercise a franchise of equal strength." Each member must have a single vote regardless of the size of its investment or the amount of business it does with the corporation.

The requirement of operation at cost is met if the cooperative's net earnings or savings are distributed to the cooperative's patrons in proportion to the amount of business conducted with them. This requirement relates to:

> the proportionate vesting in and allocation among the worker-members of all fruits and increases from their cooperative endeavor, is achieved through statutes, Bylaws, and contractual arrangements between the association and its members, whereby the elected officers of the associations are required to make periodic allocations of the same among the members in proportion to their active participation as workers. Puget Sound, at 308.

Rev. Rul. 70-481, 1970-2 C.B. 170, holds that a corporation supplying services to its members at cost and making distributions to each member based on the value of business done with each member was "operating on a cooperative basis" within the meaning of §1381(a)(2).

Rev. Rul. 72-36, 1972-1 C.B. 151, states that in accordance with fundamental cooperative principles, the rights and interests of the members in the savings of a cooperative should be determined in proportion to their business with the cooperative. With respect to liquidating distributions, the Service has stated that the cooperative principle of operation at cost requires that a cooperative's Articles of Incorporation or Bylaws obligate the cooperative to distribute its remaining assets upon liquidation to both its current and former members in proportion to the value or quantity of business that each did with the cooperative over some reasonable number of years.

Section 1382(b)(1) provides, in part, that in determining the taxable income of a cooperative there shall not be taken into account amounts paid during the payment period for the taxable year as patronage dividends to the extent paid in money, qualified written notices of allocation or other property with respect to patronage occurring during such taxable year and as per-unit retain allocations to the extent paid in money, qualified per-unit retain certificates or other property with respect to marketing occurring during such taxable year.

Section 1382(b)(1) and section 1.1381-2(b)(1) provide, in pertinent part, that there is allowed as deduction from the gross income of any cooperative to which part 1 of Subchapter T applies, amounts paid to patrons during the payment period for the taxable year as patronage dividends to the extent that such amounts are paid in money, qualified written notices of allocation, or other property (other than nonqualified written notices of allocation). Section 1388(d) defines the term "nonqualified written notices of allocation" as meaning a written notice of allocation other than a qualified written notice of allocation, or a qualified check that is not cashed on or before the 90th day after the close of the payment period for the taxable year.

Section 1382(d) of the Code provides, in part, that the payment period for any taxable year is the period beginning with the first day of such taxable year and ending with the fifteenth day of the ninth month following the close of such year.

Section 1388(a)(1) of the Code provides that the term "patronage dividend" means an amount paid to a patron by a cooperative on the basis of the quantity or value of business done with or done for such patron. Section 1388(a)(2) provides that a "patronage dividend" is an amount paid "under an obligation" that must have existed before the cooperative received the amount so paid. Section 1388(a)(3) provides that "patronage dividend" means an amount paid to a patron that is determined by reference to the net earnings of the corporation from business done with or for its patrons. That section further provides that "patronage dividend" does not include any amount paid to a patron to the extent that such amount is out of earnings other than from business done with or for patrons. Section 1.1382-3(c)(2) of the regulations states that income derived from sources other than patronage means incidental income derived from sources not directly related to the marketing, purchasing, or service activities of the cooperative association.

Section 1388(f) of the Code defines the term "per-unit retain allocation" to mean any allocation, by an organization to which part I of this subchapter applies, to a patron with respect to products marketed for him, the amount of which is fixed without reference to the net earnings of the organization pursuant to an agreement between the organization and the patron.

Per-unit retain allocations may be made in money, property or certificates. Per-unit retain allocations paid in money and in property are excludable or deductible under § 1382(b)(3). Per-unit retain allocations paid in certificates are deductible under § 1382(b)(3) if the certificates are qualified. If the certificates are nonqualified, the cooperative is permitted a deduction under sections 1382(b)(4) (or a tax benefit figured under section 1383) when the certificates are later redeemed.

For cooperatives that market products under pooling arrangements, section 1382(e) of the Code provides that the patronage shall be treated as patronage occurring during the taxable year the pool closes and that the marketing of products shall be treated as occurring during any of the taxable years in which the pool is open.

Rev. Rul. 67-33, 1967-2 C.B. 299, provides that advances and payments made to patrons while a pool is open are treated as per-unit retain allocations and the final payment in settlement of a pool is treated as a patronage dividend.

Rev. Rul. 74-567, 1974-2 C.B. 174, provides that establishment of separate allocation units does not violate the principle of "equitable allocation" since all patrons within each of the allocation units are treated equally. If the cooperative operates two or more different businesses on a cooperative basis, a separate accounting pool for each business can be established in order to separately determine the net earnings of each pool and to distribute the net earnings of each pool solely to the patrons that utilized the service for which the pool was formed.

New Acquiring's Bylaws provide that each Member-Shareholder shall be entitled to one and only one vote on all member business that requires member approval as prescribed by the Bylaws. Thus, the Bylaws satisfy the democratic control requirement for cooperative operation.

Numerous provisions of New Acquiring's Articles of Incorporation and Bylaws ensure that it meets the requirement of subordination of capital. New Acquiring's Articles of Incorporation and Bylaws both have provisions that mandate that it operate on a cooperative basis for the benefit of its Member-Shareholders. Specifically, t of the Bylaws provides, in part, that in order to induce patronage and to assure that this Cooperative will operate on a service-at-cost basis on all its transactions with its members, the Cooperative is obligated to account on a patronage basis to all its member patrons on an annual basis for all amounts received from business conducted with members on a patronage basis, over and above the cost of providing such services. In other words, all net earnings of the cooperative are to be returned to the member patrons in accordance with each member's respective patronage transacted. In addition, after dissolution distribution of remaining assets shall be distributed to all member patrons on the basis of their amount of patronage with the cooperative. New Acquiring will not have any nonpatron investors, nor does it plan to accept any nonpatron investors. Thus, as structured, New Acquiring's Articles of Incorporation and Bylaws satisfy the subordination of capital requirement for cooperative operation.

New Acquiring's Articles of Incorporation and Bylaws ensure that the net earnings or savings are distributed to the Member-Shareholders in proportion the value of business done with the corporation by the Member-Shareholder during the fiscal year, and amounts so allocated shall be distributed within the payment period set for in section 1382(d) of the Code. Moreover, in carrying out the purpose and effect of New Acquiring's Bylaws, the cooperative will: (1) account on a patronage basis to all Member-Shareholders for the amounts collected from such patrons in excess of the cost of service; (2) make payment of all amounts collected in excess of cost from Member Shareholders in the form of patronage dividends and allocated on a dollar value basis; and (3) maintain books and records such that at the end of each fiscal year the amount of capital furnished by patronage is clearly reflected and my be credited to the Member-Shareholder's account. Thus, the Articles of Incorporation and Bylaws satisfy the operation at cost requirement for cooperative operation

RULINGS

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

1. The Merger of New Acquiring, Target1, and Target2, as described above, qualifies as a reorganization within the meaning of § 368(a)(1)(A).

2. New Acquiring, Target1 and Target2 are each "a party to a reorganization" within the meaning of § 368(b).

3. No gain or loss is recognized by either Target1 or Target2 upon the transfer of its respective assets to New Acquiring and the assumption of the applicable Target's liabilities by New Acquiring in exchange solely for stock in New Acquiring (§§ 361(a), (b) and 357(a)).

4. No gain or loss is recognized by either Target1 or Target2 upon the transfer of stock in New Acquiring to its respective shareholders pursuant to the plan of reorganization. (§ 361(c)).

5. No gain or loss is recognized by New Acquiring on the acquisition of Target1's or Target2's assets in exchange for the issuance of stock in New Acquiring (§ 1032(a)).

6. The basis that New Acquiring has in each asset received from Target1 and Target2 is the same as the basis of such asset in the hands of Target1 or Target2, as applicable, immediately before the Merger (§ 362(b)).

7. No gain or loss is recognized by Target1 and Target2 shareholders on the exchange of Target1 or Target2 stock for Class EE or Class UU common stock, as applicable (§ 354(a)). Gain, but not loss is realized by applicable Target1 and Target2 shareholders on the exchange of their common stock for Class DD preferred stock; if the exchange has the effect of a distribution of a dividend (as determined with the application of section 318(a)), then the gain is recognized as a dividend to the extent of Target1 or Target2 shareholders' ratable share of the applicable corporation's undistributed, accumulated earnings and profits after February 28, 1913, and the remainder is treated as a gain from the exchange of property. (§ 356(a) and (e)).

8. The basis of Class EE common stock or Class UU common stock received by Target1 and Target2 shareholders in the Merger, as applicable, is the same as the basis of the applicable Target1 or Target2 stock surrendered in the exchange as part of the Merger (§ 358(a)(1)) decreased by the fair market value of the Class DD preferred stock received in the Merger, if any. The basis of the Class DD preferred stock received by Target1 and Target2 shareholders is its fair market value as of Date6 (§ 358(a)(2)).

9. The holding period of Class EE and Class UU stock received by Target1 and Target2 shareholders in the Merger, as applicable, includes the period during which the exchanged Target1 or Target2 stock was held, provided the applicable stock was held as a capital asset on the date of the Merger (§ 1223(1)). The holding period of the Class DD preferred stock received by certain Target1 and Target2 shareholders as part of the Merger begins as of Date6 (§ 1223(1)).

10. New Acquiring succeeds to and takes into account the items of Target1 and Target2 described in § 381(c), subject to the provisions and limitations specified in §§ 381, 382, 383, and 384 and regulations thereunder (§ 381(a)).

11. New Acquiring is operating on a cooperative basis within the meaning of §1381(a)(2) of the Code and is treated as a cooperative under subchapter T of the Code.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item described above under other provisions of the Internal Revenue Code or Income Tax Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions described above that are not specifically covered by the above rulings. We specifically express no opinion regarding the tax treatment of:

1. the patronage dividends under the international provisions of the Code or any income tax treaty;

2. the declaration and payment of dividends by Target 1 and Target2 prior to the Merger, and the declaration and payment of the patronage dividends by New Acquiring after the Merger;

3. the issuance of Notes1 by Target1 and Target2 and the assumption of those instruments by New Acquiring;

4. the gain realized by applicable Target1 and Target2 shareholders on the exchange of their applicable common stock for Class DD preferred stock (see § 356(a)(2));

5. the transfer from FC4 to FC3 of: (i) c shares in Existing Common Stock and a qualified per-unit retained certificate in the amount of $Z in Old Acquiring and (ii) f shares in Target1;

6. the Recapitalization and the Name Change;

7. FC1, FC2 or FC3 regarding the Recapitalization.

PROCEDURAL MATTERS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

A copy of this letter must be attached to any 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 the letter ruling.

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.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
(Corporate)

cc: