Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
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Refer Reply To:
CC:CORP:B02
PLR-140000-12

Date:
March 18, 2013

Legend

Acquirer =

Target =

a =

b =

c =

d =

Year 1 =

Year 2 =

Year 3 =

Year 5 =

Dear

This letter responds to your September 14, 2012 letter requesting a ruling as to the federal income tax consequences of certain settlement payments. The material

information submitted in that letter and subsequent correspondence is summarized below.

The ruling contained in this letter is based upon facts and representations submitted by the taxpayer and accompanied by a penalty 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.

FACTS

In Year 1, a foreign corporation ("Acquirer") entered into a plan of acquisition ("Merger Agreement") with a U.S. company ("Target"). The parties treated the acquisition as a reorganization under Section 368(a)(1)(C) of the Internal Revenue Code ("Code"). The Acquirer assumed Target debt that exceeded 20 percent of the value of Target, rendering inapplicable the boot relaxation rule under Section 368(a)(2)(B).

Pursuant to the Merger Agreement, approximately a% of the Acquirer stock received in the merger was deposited into an escrow account ("Escrow Account"). The escrow agent ("Escrow Agent") managed the Escrow Account pursuant to the terms of the agreement ("Escrow Agreement"). Acquirer's sole remedy for indemnification for any breaches in Target's representations, warranties, and covenants under the Merger Agreement was limited to recovery of the escrowed shares.

Prior to the acquisition, Target had initiated a legal suit arising from a commercial dispute ("Plaintiff Litigation"). Under the terms of the Merger Agreement, if Target prevailed, any recovery would be property of the Acquirer, and the Target shareholders would be entitled to an early release of shares from the Escrow Account in the amount that Acquirer recovered in cash (net of taxes). If Target lost (i.e., no recovery), nothing changed between Acquirer and Target; Target had no duty to furnish additional consideration to Acquirer and the parties would not adjust the purchase price. The Target shareholders pursued the Plaintiff Litigation using the services of a law firm engaged on a contingent-fee basis.

In Year 2, the parties settled, agreeing the defendant in the commercial suit would pay Acquirer $b. Because of the contingent-fee arrangement, the defendant paid $b to the law firm. The firm deducted its fee of $c and remitted the balance ($b-$c) to Acquirer. Acquirer ordered the Escrow Account to release to the Target shareholders a number of shares equal to the settlement amount, $b (net of taxes).

A conflict arose when Acquirer sought to reimburse itself from the Escrow Account for the contingent fee of $c. Acquirer asserted the contingent attorneys' fees caused it to suffer an indemnifiable loss under the Merger Agreement. Target shareholders countered that Acquirer had no right to recover any escrowed shares in connection with

the favorable settlement, as Acquirer incurred no expenses and suffered no losses in the Plaintiff Litigation.

In Year 3, Target shareholders sued the Acquirer over the attorneys' fees, claiming breach of the Merger Agreement. More specifically, the Target shareholders claimed that Acquirer wrongfully took their property, the escrowed stock. In Year 5, the parties agreed to settle the dispute without admission of liability, with Acquirer agreeing to pay Target shareholders $d in cash.

REPRESENTATIONS

Taxpayer has made the following representations:

(a) To the best knowledge and belief of the taxpayer, Acquirer's acquisition of Target in Year 1 constituted a reorganization under Section 368(a)(1)(C).

(b) To the best knowledge and belief of the taxpayer, the former Target shareholders owned the Acquirer stock held in the Escrow Account.

RULING

Based solely on the information submitted and the representations set forth above, the payment of the settlement amount ($d), in cash, to the former Target shareholders, will not be considered a payment of other than voting stock that would cause the acquisition to fail to be a valid reorganization under Section 368(a) of the Code.

CAVEATS

Except as specifically provided herein, we express no opinion concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Specifically, this Office expresses no opinion regarding: (i) whether the reorganization qualified as a reorganization under Section 368(a)(1)(C), or (ii) whether the Target shareholders owned the escrowed stock.

PROCEDURAL STATEMENTS

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

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.

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

Sincerely,

Joanne M. Fay
Chief, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: