Internal Revenue Service

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Date:
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Acquiring =

Acquiring Sub =

Target =

Target Sub =

State A =

State B =

Business X =

Business Y =

Date 1 =

This letter is in reply to your letter dated October 7, 1998, requesting rulings about the federal income tax consequences of a proposed transaction. The information submitted is summarized below.

Acquiring is a State A corporation engaged in Business X. Acquiring is a closely held corporation with common and preferred stock authorized and common stock outstanding. Acquiring files its federal income tax returns on a calendar year basis using the accrual method of accounting.

Acquiring Sub was a State B corporation organized by Acquiring solely for the purpose of acquiring Target. Acquiring Sub conducted no business or operations except those necessary to facilitate the transaction. Before the transactions described below, Acquiring owned all of the stock of Acquiring Sub.

Target is a State B corporation engaged in Business Y. Prior to the transaction described below, Target was a closely held corporation with one subsidiary, Target Sub. Target had common and four series of preferred stock authorized and outstanding. Target and Target Sub filed a federal consolidated income tax return on a calendar year basis using the accrual method of accounting.

On Date 1, pursuant to State B law and in accordance with a plan of reorganization, Acquiring Sub merged with and into Target (the “Acquisition Merger”). Target survived the merger and Target shareholders received shares of Acquiring stock in exchange for their Target stock. The taxpayers represent that the Acquisition Merger, viewed independently of the proposed Upstream Merger, qualified as a reorganization under §§368(a)(1)(A) and 368(a)(2)(E) of the Internal Revenue Code.

It became clear to the management of Acquiring and Target that, for good business reasons, the businesses of Acquiring and Target (and Target Sub) should be operated as one enterprise. Accordingly, Acquiring proposes to merge Target Sub with and into Target, and to merge Target with and into Acquiring (the “Upstream Merger”). The taxpayers represent that the Upstream Merger will qualify as a statutory merger under applicable state law and, viewed independently of the Acquisition Merger, would qualify under §332. In addition, the taxpayers represent that Acquiring’s acquisition of Target is not a reverse acquisition within the meaning of §1.1502-75(d)(3).

The taxpayers further represent that, if the Acquisition Merger had not occurred and Target had merged directly into Acquiring, such merger would have qualified as a reorganization under §368(a)(1)(A). Pursuant to §3.01(24) of Rev. Proc. 98-3, 1998-1 I.R.B. 100, 103, the Internal Revenue Service will not rule as to whether a proposed transaction qualifies under §368(a)(1)(A). However, the Service has the discretion to rule on significant subissues that must be resolved to determine whether a transaction qualifies under §368(a)(1)(A).

Accordingly, based on the information submitted and the representations made, and provided that (i) the Acquisition Merger and the Upstream Merger are treated as steps in an integrated plan pursuant to the step-transaction doctrine, and (ii) the Acquisition Merger and the Upstream Merger qualify as statutory mergers under applicable state law, we hold as follows:

> For federal income tax purposes, the Acquisition Merger and the Upstream Merger will be treated as if Acquiring directly acquired the Target assets in exchange for Acquiring stock and Acquiring's assumption of Target liabilities through a "statutory merger" as that term is used in §368(a)(1)(A). *See* Rev. Rul. 67-274, 1967-2 C.B. 141 and Rev. Rul. 72-405, 1972-2 C.B. 217.

We express no opinion regarding whether the Acquisition Merger and the Upstream Merger are steps in an integrated plan or whether the Acquisition Merger or the Upstream Merger qualifies as a reorganization under §368(a)(1)(A).

We express no opinion about the tax treatment of the proposed transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings.

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

Each affected taxpayer should attach a copy of this letter to its federal income tax return for the taxable year in which the transaction covered by this ruling letter is consummated.

We have sent a copy to the taxpayer as designated on the power of attorney on file in this office.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By Ken Cohen
Ken Cohen
Senior Technical Reviewer, Branch 3