Internal Revenue Service

Department of the Treasury

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Acquiring =

Acquiring Sub =

Target =

Target Sub =

State A =

State B =

Business X =

Business Y =

Date C	=
Date D	=
Date E	=
Date F	=
G	=
H	=
i	=
J	=
K	=
L	=
M	=
N	=
O	=

This letter is in reply to a letter dated December 22, 1998, submitted on your behalf by your authorized representative, requesting rulings about the federal income tax consequences of a proposed transaction. Additional information was submitted in a letter dated January 20, 1999. The information submitted is summarized below.

Acquiring is a State A corporation engaged in Business X. Acquiring is a publicly traded corporation and the parent of an affiliated group of corporations that file a consolidated federal income tax return on a calendar year basis using an accrual method of accounting. At Date F, approximately G million shares of common stock of Acquiring were issued and outstanding. No preferred shares were issued or outstanding. At Date F, Acquiring had one greater-than-five-percent shareholder, H, who held i percent of the outstanding Acquiring stock.

Prior to the transaction described below, Target was the publicly traded parent of an affiliated group which included one United States subsidiary, Target Sub, and filed a consolidated federal income tax return on a calendar year basis using an accrual method of accounting. At Date C, approximately J million shares of common stock of Target were issued and outstanding. No preferred shares were issued and outstanding. At Date C, Target had three greater-than-five-percent shareholders, K, L, and M, who held N percent, N percent, and O percent, respectively, of the outstanding Target stock.

On Date D, the management of Acquiring and Target entered into an agreement to combine the Business X of Acquiring and the Business Y of Target. The management of Acquiring and Target believed that a fast and efficient integration was necessary to achieve the desired benefits of the combination. While the management of both Acquiring and Target would have preferred to merge Target directly into Acquiring, this type of combination was not possible because Target had significant and numerous contract arrangements which could not be assigned prior to the combination due to time constraints. Given that Target and Acquiring had finalized their negotiations, and both companies believed that the benefits of the combination depended partly on timeliness, neither company wished to delay the transaction to wait for consents to assignment to be obtained.

Accordingly, Acquiring and Target adopted a plan which would permit the combination to the extent possible without the need for consents to assign Target's contracts. On Date E, the first step of the combination of Target and Acquiring was accomplished as follows:

(i) Acquiring Sub was a State B corporation organized by Acquiring solely to facilitate the Acquisition Merger (described below), and never engaged in any business activities except those necessary to facilitate the transaction. Acquiring owned all of the stock of Acquiring Sub.

(ii) Acquiring Sub merged with and into Target in a reverse subsidiary merger (the "Acquisition Merger"), with Target surviving as a wholly owned subsidiary of Acquiring. Incident to the Acquisition Merger, Target's shareholders received solely voting common stock of Acquiring in exchange for their Target stock, and options to acquire Target shares were converted into options to acquire Acquiring shares.

The taxpayers represent that the Acquisition Merger, viewed independently of the proposed Target Upstream Merger (described below), qualified as a reorganization under §§368(a)(1)(A) and 368(a)(2)(E) of the Internal Revenue Code.

Acquiring anticipates that all necessary assignment consents for Target's contracts will be finalized shortly. Accordingly, Acquiring proposes to combine Target with Acquiring through the following transaction:

(i) Target Sub will liquidate with and into Target by upstream merger.

(ii) Target will liquidate with and into Acquiring by upstream merger (the "Target Upstream Merger").

The taxpayers represent that the Target Upstream Merger will qualify as a statutory merger under applicable state law and, viewed independently of the Acquisition Merger, would qualify under §332.

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(23) of Rev. Proc. 99-3, 1999-1 I.R.B. 103, 106, 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 Target Upstream Merger are treated as steps in an integrated plan pursuant to the step-transaction doctrine, and (ii) the Acquisition Merger and the Target Upstream Merger qualify as statutory mergers under applicable state law, we hold as follows:

> For federal income tax purposes, the Acquisition Merger and the Target 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 Target Upstream Merger are steps in an integrated plan or whether the Acquisition Merger and the Target Upstream Merger qualify 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.

Pursuant to a power of attorney on file in this office, we have sent copies of this letter to your authorized representatives.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By Ken Cohen

Ken Cohen
Senior Technical Reviewer, Branch 3