Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:5 PLR-117142-99
Date:
February 23, 2000

Re:

Acquiring =

Acquiring Sub =

Target =

State A =

Business X =

Business Y =

Date 1 =

Date 2 =

:

We respond to your October 18, 1999, request that we rule on the federal income tax consequences of a consummated transaction.

Acquiring is a publicly traded State A corporation engaged in Business X. Acquiring Sub was a State A corporation organized by Acquiring solely for the purpose of acquiring Target, a State A corporation engaged in Business Y. Acquiring Sub conducted no business or operations except those necessary to facilitate the transaction.

On Date 1, pursuant to State A law and in accordance with a plan of reorganization, Acquiring caused Acquiring Sub to merge with and into Target, with Target surviving, in a transaction intended to qualify as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(E) of the Internal Revenue Code (the Acquisition Merger). Target shareholders received solely Acquiring voting common stock in exchange for their Target stock. The parties would have preferred to merge Target directly into Acquiring but were unable to do so for various reasons, including numerous contractual obligations of Acquiring and Target which may have triggered assignment provisions upon a merger of Target and Acquiring.

Subsequently, on Date 2, pursuant to State A law and in accordance with a plan of reorganization, Target merged with and into Acquiring with Acquiring as the surviving corporation (the Upstream Merger).

Acquiring has made the following representations concerning the transaction:

(a) The Acquisition Merger, viewed independently of the Upstream Merger, qualified as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(E).

(b) The Upstream Merger qualified as a statutory merger under applicable state law and, viewed independently of the Acquisition Merger, would have qualified under § 332.

(c) 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).

(d) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Upstream Merger have been fully disclosed.

(e) Acquiring and Target treated the transaction as a liquidation of Target

which complied with regulatory and filing requirements consistent with such characterization.

(f) Acquiring has no plan or intention to sell or otherwise dispose of any of Target's assets received in the Upstream Merger, except for (i) dispositions made in the ordinary course of business or (ii) transfers described in § 368(a)(2)(C) or the regulations thereunder.

(g) Following the transaction, Acquiring will continue Target's core historic business or use a significant portion of its historic business assets in a business. For this purpose, Acquiring shall be treated as conducting the business and holding the assets of related entities, as described in § 1.368-1(d)(4).

(h) The fair market value of Target's assets transferred to Acquiring equaled or exceeded the sum of the liabilities assumed by Acquiring plus the amount of liabilities, if any, to which the transferred assets are subject.

(i) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

Under section 3.01(23) of Rev. Proc. 2000-3, 2000-1 I.R.B. 103, 105, the Internal Revenue Service will not rule on whether a transaction qualifies under § 368(a)(1)(A) by reason of § 368(a)(2)(E). However, the Service has discretion to rule on significant subissues that must be resolved to determine whether a transaction qualifies under these sections.

Accordingly, based on the information submitted and 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). (Rev. Rul. 67-274, 1967-2 C.B. 141, and Rev. Rul. 72-405, 1972-2 C.B. 217)

No opinion is expressed as to whether or not the Acquisition Merger qualified under § 368(a)(1)(A) by reason of § 368(a)(2)(E), whether the Upstream merger qualified as a statutory merger, whether, viewed independently of the Acquisition Merger, the Upstream Merger would have qualified under § 332, or whether the step transaction doctrine applies to these transactions.

This ruling is directed only to the taxpayer(s) 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 the taxpayer.

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 yours,

Assistant Chief Counsel (Corporate)

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