

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:03

PLR-149284-06

Date:

December 22, 2006

Re:

Target =

Acquiring =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

State A =

State B =

State C =

Business X =

Business Y =

Business Z =

d =

f =

g =

Date 1 =

Dear :

We respond to your request dated October 5, 2006, for rulings on the federal income tax consequences of a proposed transaction. The information submitted for consideration is summarized below.

Target is a State A holding company and the common parent of a consolidated group. Target engages in Business X through its wholly owned subsidiary, Sub1, a State B corporation. Target also owns all of the stock of Sub 2, a State A corporation engaged in Business Y. Target has d shareholders that own directly or indirectly 5 percent or more of Target. None of Target's 5 percent shareholders own more than f percent of the outstanding Target stock.

Target originally owned g percent (less than 80 percent) of Acquiring, a State A holding company engaged in Business Z through its wholly owned subsidiary, Sub 3, a State C corporation. Acquiring also owns all of the stock of Sub 4, a State B corporation. Acquiring has one class of stock issued and outstanding. On Date 1, Target owned 80 percent of Acquiring, and Acquiring and each member of its consolidated group, Sub 3 and Sub 4, became members of Target's consolidated group (the Target Group).

Both Acquiring and Target have a pre-existing right to require an Acquiring or Target shareholder, respectively, to offer to sell its shares to Acquiring or Target, as appropriate, before such shareholder sells such shares to an unrelated third party

(Acquiring's Right of First Refusal and Target's Right of First Refusal). The managements of Acquiring and Target are unaware that either Acquiring or Target has ever exercised its Right of First Refusal. Neither Acquiring nor Target has exercised its respective Right of First Refusal within the past five years. The managements of Acquiring and Target are unaware of any plans or intention on the part of Target's shareholders to sell the Acquiring stock they receive in the Merger.

For what have been represented as valid business purposes, taxpayer proposes that, in a statutory merger pursuant to the laws of State A, Target merge with and into Acquiring with Acquiring surviving. The following will occur as a result of the merger:

- (i) Target will transfer all of its assets to Acquiring solely in exchange for voting shares of Acquiring (including fractional shares) and Acquiring's assumption of Target's liabilities;
- (ii) The stock of Target will be converted to the right to receive voting shares of Acquiring stock and cash in lieu of fractional shares, and Target will cease to exist; and
- (iii) Acquiring will change its name to Target (New Target).

The taxpayer has made the following representations with respect to steps (i) and (ii) of the proposed transaction:

- (a) The fair market value of Acquiring stock and other consideration received by each Target shareholder will be approximately equal to the fair market value of the Target stock surrendered in the exchange.
- (b) Acquiring will issue newly issued shares of its stock to the Target shareholders in the merger. Target will not distribute any of its existing shares of Acquiring stock in the transaction.
- (c) Acquiring will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target immediately prior to the transaction. For purposes of this representation, amounts paid by Target to any dissenters, amounts paid by Target to shareholders who received cash and other property, amounts used by Target to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately preceding the transfer will be included as assets of Target held immediately prior to the transaction.
- (d) After the transaction, Target shareholders will be in control of Acquiring within the meaning of §368(a)(2)(H) of the Internal Revenue Code.

- (e) There is no plan or intention for Acquiring to redeem any of its outstanding stock.
- (f) There is no plan or intention for Acquiring, or a party related to Acquiring (within the meaning of §1.368-1(e)(3) of the Income Tax Regulations), to reacquire any of its stock issued in the transaction for consideration other than stock of Acquiring, except that Acquiring will continue to have its Right of First Refusal to purchase stock from shareholders who desire to sell their shares. Cash flow, regulatory, and other business concerns would limit Acquiring's ability to exercise its Right of First Refusal with respect to the Acquiring shares issued in the merger. Accordingly, Acquiring has no current plan or intention to exercise the Acquiring Right of First Refusal to redeem an amount of Acquiring shares issued to Target shareholders in the merger with a fair market value greater than 50 percent of the fair market value of the Target shares surrendered pursuant to the merger.
- (g) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction, except for dispositions made in the ordinary course of business.
- (h) The liabilities of Target assumed by Acquiring plus the liabilities, if any, to which the transferred assets are subject were incurred by Target in the ordinary course of its business and are associated with the assets transferred.
- (i) Following the transaction, Acquiring will continue the historical business of Target or use a significant portion of Target's historical business assets in a business.
- (j) At the time of the transaction, Acquiring will not have any outstanding warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Acquiring that, if exercised or converted, would affect the Target shareholders' acquisition or retention of control of Acquiring, as defined in §368(a)(2)(H).
- (k) Acquiring, Target, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the transaction.
- (l) There is no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or will be settled at a discount.

- (m) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv).
- (n) The fair market value of the assets of Target that are transferred to Acquiring will equal or exceed the assets' aggregate adjusted basis.
- (o) The fair market value of the assets of Target transferred to Acquiring will equal or exceed the sum of the liabilities assumed by Acquiring, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (p) The fair market value of Acquiring's assets will exceed the amount of Acquiring's liabilities immediately after the proposed transaction.
- (q) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of §368(a)(3)(A).
- (r) The payment of cash in lieu of fractional shares of Acquiring stock is solely for the purpose of avoiding the expense and inconvenience to Acquiring of issuing fractional shares and does not represent separately bargained-for consideration. The total cash consideration that will be paid in the merger to the Target shareholders instead of issuing fractional shares of Acquiring stock will not exceed one percent of the total consideration that will be issued in the merger to the Target shareholders in exchange for their shares of Target stock. The fractional share interests of each shareholder will be aggregated, and no Target shareholder will receive cash in an amount equal to or greater than the value of one full share of Acquiring stock.

The taxpayer has made the following representations with respect to step (iii) of the proposed transaction:

- (s) The fair market value of New Target stock received by each Acquiring shareholder approximately will equal the fair market value of the Acquiring stock surrendered in the exchange.
- (t) Immediately following the name change, the shareholders of Acquiring (determined after the merger with Target) will own all of the outstanding shares of New Target and will own such stock by reason of their ownership of Acquiring stock immediately prior to the name change.
- (u) New Target has no plan or intention to issue additional shares of its stock following the name change (other than those issued to reflect its new name).

- (v) Immediately following the consummation of the name change, New Target will possess the same assets and liabilities, except for those used to pay expenses incurred in connection with the proposed transaction, as those possessed by Acquiring immediately prior to the name change. Assets used to pay expenses will constitute less than one percent of the net assets of Acquiring.
- (w) The liabilities of Acquiring assumed by New Target plus the liabilities, if any, to which the transferred assets are subject were incurred by Acquiring in the ordinary course of its business and are associated with the assets transferred.
- (x) At the time of the name change, Acquiring will not have any outstanding warrants, options, convertible securities or any other type of right pursuant to which any person could acquire stock in Acquiring, except to the extent of the shareholders' right of second refusal if Acquiring declined to purchase stock from a selling shareholder.
- (y) The shareholders of Acquiring will pay their respective expenses, if any, incurred in connection with the name change.
- (z) Acquiring is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of §368(a)(3)(A).

Based solely on the information submitted and on the representations set forth above, we rule as follows with respect to the proposed transaction:

- (1) The acquisition by Acquiring of all of the assets of Target in exchange for the common stock of Acquiring and the assumption of Target liabilities, followed by the distribution of the Acquiring stock to the shareholders of Target in complete liquidation of Target, will constitute a reorganization pursuant to §368(a)(1)(D). Acquiring and Target each will be a "party to the reorganization" within the meaning of §368(b).
- (2) Acquiring's name change from Acquiring to New Target will qualify as a reorganization pursuant to §368(a)(1)(F), and each of Acquiring and New Target will be a "party to the reorganization" within the meaning of §368(b).
- (3) Target will recognize no gain or loss on the transfer of all of its assets to Acquiring in exchange for Acquiring stock and Acquiring's assumption of Target liabilities, if any (§§361(a) and 357(a)).

- (4) Acquiring will not recognize any gain or loss on its receipt of all of the assets of Target in exchange for Acquiring stock and its assumption of Target liabilities, if any (§1032(a)).
- (5) Acquiring's (and, after the name change, New Target's) basis in the assets received from Target will equal the basis of such assets in the hands of Target immediately before their transfer to Acquiring (§362(b)).
- (6) Acquiring's (and, after the name change, New Target's) holding period in the assets received from Target will include the period during which Target held the assets (§1223(2)).
- (7) Target will recognize no gain or loss on its deemed distribution of the Acquiring stock received in the transfer to Target shareholders pursuant to the plan of reorganization (§361(c)(1)).
- (8) Target shareholders will recognize no gain or loss (and will not include any amount in income except for the cash received in lieu of fractional shares) upon the exchange of their Target shares for shares of Acquiring (§354(a)(1)).
- (9) Acquiring shareholders will recognize no gain or loss upon the exchange of Acquiring stock for shares of New Target stock (§354(a)(1)).
- (10) A Target shareholder's basis in the stock of Acquiring received (and, after the name change, the stock of New Target received) will equal the basis of the Target stock that such Target shareholder held immediately before the proposed transaction (§358(a)).
- (11) A Target shareholder's holding period of the stock of Acquiring received (and, after the name change, the stock of New Target received) will include the holding period of the stock of Target (and the stock of Acquiring) surrendered in the exchange, provided that the Target shareholder held such Target stock (and Acquiring stock) as a capital asset on the date of the exchanges (§1223(1)).
- (12) The Target Group will remain in existence, with Acquiring (and after the name change, New Target) being the parent of the Target Group, and its tax year will not close after the proposed transaction (§1.1502-75(d)(2)(ii)).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it 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 a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)