Internal Revenue Service

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Washington, DC 20224

Person to Contact:

Telephone Number:

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Date:
June 1, 1999

Corporation A	=
Corporation B	=
Date X	=
Date Y	=
Year Z	=
c	=
d	=
e	=
f	=
g	=
h	=

This is in response to your letter dated January 15, 1999, requesting rulings under sections 280G and 4999 of the Internal Revenue Code. Specifically, you requested rulings that the merger of Corporation B into Corporation A constitutes a change of ownership in Corporation A under section 280G of the Code; this merger does not constitute a change in the ownership or effective control of Corporation B or a substantial portion of its assets under section 280G; and no part of any payments made by Corporation A to a former officer or executive of Corporation B as a result of the merger is subject to the excise tax under section 4999.

The facts, as submitted, are as follows. Corporations A and B entered into an Agreement and Plan of Merger (Merger Agreement) on Date X. The Merger Agreement was approved unanimously by the Board of Directors of Corporations A and B, and it was approved by the shareholders of Corporations A and B. The merger was consummated on Date Y.

Pursuant to the Merger Agreement, Corporation B merged with and into Corporation A, with Corporation A being the surviving entity. Additionally, each issued and outstanding share of Corporation B common stock was exchanged for c shares of Corporation A common stock with the following exceptions: (1) cash payment was made in lieuu of fractional Corporation B shares and (2) Corporation B Common Shares held in Corporation B's nonqualified deferred compensation plans and not attributable to any participant in such plans were canceled without payment.

Prior to the merger, Corporation A's capitalization consisted of d outstanding common shares. Corporation A's outstanding shares represented e% of the voting power of Corporation A's secruties at the time of the merger. Prior to the merger, Corporation B's capitalization consisted of f outstanding Corporation B common shares. Corporation B's outstanding shares represented e% of the voting power of Corporaiton B's outstanding secruities at the time of the merger. Following the merger, the former shareholders of Corporaiton B own approximately g% of the issued and outstanding Corporation A common stock, and the pre-merger shareholders own the remaining h% of common stock.

The directors and officers of Corporaiton A immediately prior to the effective date of the merger are the directors and officers of the Corporation A immediately following the merger.

In Year Z, Corporation B entered into employment agreements with several executives. These agreements provide for cash payments and other benefits in the event of a covered executive's termination upon or following a change in control. These agreements, and the obligations contained therein, became obligations of Corporation A on the consummation of the merger. Consequently, Corporation A will pay a previously agreed upon cash amount to each individual and will provide certain additional benefits. Additionally, Corporation A also compensates its own employees and consultants.

Sincerely,

Robert B. Misner
Assistant Chief, Branch 4
Office of Chief Counsel
(Employee Benefits and
Exempt Organizations)