

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:  
CC:DOM:CORP:3-PLR-101518-00  
Date:  
February 24, 2000

Target	=
State X	=
<u>A</u>	=
<u>B</u>	=
<u>C</u>	=
<u>a</u>	=
Date 1	=
Acquiring	=
Acquiring Parent	=
P	=

This letter responds to a request dated December 20, 1999, for supplemental rulings with respect to a ruling letter dated November 5, 1999, (Control Number PLR-111814-99, LTR 200005016) (the "Prior Ruling") involving the federal income tax consequences of a proposed transaction (the "Proposed Transaction.") Additional information was submitted in a letter dated February 17, 2000. Except as modified herein, the facts and representations set forth in the Prior Ruling are still valid. The taxpayers have consummated the Proposed Transaction described in the Prior Ruling on Date 1.

The Prior Ruling involved the acquisition by Acquiring of substantially all the assets of Target, solely in exchange for Acquiring Parent voting member interests and the assumption by Acquiring of liabilities of Target, followed by the distribution by Target of the Acquiring Parent voting member interests to its shareholders in complete

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liquidation in a transaction which was ruled to be a reorganization under § 368(a)(1)(C).

You have now informed us that within a short period after Date 1, Acquiring will make a distribution to P (which is treated as a division of Acquiring Parent for federal tax purposes) and Acquiring Parent in the total amount of \$ a. Any distribution to P will be followed by a distribution in the same amount from P to Acquiring Parent. Immediately thereafter, Acquiring Parent will declare and make a distribution of \$ a to its owners (the historic Target shareholders). All of the distributions described above will be referred to as "the Distribution." At the time of the Distribution, all of the shareholders of Target will be voting member interest holders of Acquiring Parent in the same proportion as their previous ownership in Target.

You have modified representations (a), (b), (c), (q), and (r) of the Prior Ruling to read as follows:

- (a) The fair market value of the Acquiring Parent member interests received in the transaction (determined immediately after the Distribution) by each shareholder of Target, plus the money received pursuant to the Distribution by each such Target shareholder, will be approximately equal to the fair market value of the Target stock surrendered in the exchange.
- (b) 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 dissenters, amounts used by Target to pay its reorganization expenses, amounts paid by Target to shareholders who receive cash or other property (including the Distribution), 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.
- (c) 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, transfers described in § 368(a)(2)(C), and the Distribution.
- (q) There is no plan or intention for P, Acquiring or Acquiring Parent (*i.e.*, the issuing corporation as defined in § 1.368-1(b)) or any person related (as defined in § 1.368-1(e)(3)) to P, Acquiring or Acquiring Parent, to acquire, during the five year period beginning on the date of the transaction, with consideration other than Acquiring Parent voting member interests, the Acquiring Parent voting member interests furnished in exchange for a proprietary interest in Target in the proposed transaction, either directly or through any transaction, agreement, or

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arrangement with any other person.

(r) During the five year period ending on the date of the proposed transaction:

(1) none of the following will have acquired Target stock with consideration other than Acquiring Parent voting member interests either directly or through any transaction, agreement, or arrangement with any other person: P, Acquiring, Acquiring Parent, or any person related (as defined in § 1.368-1(e)(3)) to P, Acquiring or Acquiring Parent.

(2) neither Target, nor any person related (as defined in § 1.368-1(e)(3) determined without regard to § 1.368-1(e)(3)(i)(A)) to Target, will have acquired Target stock with consideration other than Acquiring Parent voting member interests or Target stock either directly or through any transaction, agreement, or arrangement with any other person, other than the Distribution; and

(3) no distributions (except for ordinary, normal, regular dividend distributions made pursuant to Target's historic dividend paying practice) will have been made with respect to Target stock either directly or through any transaction, agreement, or arrangement with any other person, other than the Distribution.

The aggregate value of the acquisitions, redemptions, and distributions described in paragraphs (1), (2), (3), if any, Representation (q), above, and the Distribution, will not exceed 50 percent of the value (without giving effect to the acquisitions, redemptions, and distributions, if any, and the Distribution) of the proprietary interests in Target on the effective date of the proposed transaction.

You have also made the following additional representation:

Regardless of whether the Distribution is treated as other property transferred by Acquiring in the reorganization transaction, Acquiring will acquire from Target at least 80 percent of the fair market value of the assets of Target solely in exchange for voting member interests of Acquiring Parent. For purposes of this representation, amounts paid to dissenting Target shareholders and liabilities of Target assumed by Acquiring (within the meaning of § 357(d)) shall be treated as money paid for such property.

In light of the additional facts and representations described above, Rulings 2, 5, 6, 9, and 11, of the Prior Ruling should be renumbered as rulings 3, 6, 7, 10, and 12, respectively, and are reaffirmed. Each of those rulings will have the same effect as if completely set forth in this letter.

All the other rulings in the Prior Ruling are null and void. However, the following

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rulings are added.

1. For federal income tax purposes, Target will be treated as having transferred all of its assets, except for \$ a, to Acquiring in exchange for Acquiring Parent voting member interests and the assumption of Target liabilities by Acquiring, followed by the distribution by Target of the Acquiring Parent voting member interests and \$ a to its shareholders in exchange for their Target stock.
2. The transfer by Target of substantially all of its assets to Acquiring in exchange for Acquiring Parent voting member interests and Acquiring's assumption of Target's liabilities, followed by Target's distribution of the Acquiring Parent voting member interests and the \$ a to its shareholders in complete liquidation, will be a reorganization under § 368(a)(1)(C). For purposes of this ruling, "substantially all" means 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 of Target. Acquiring Parent, Acquiring, and Target will each be a "party to a reorganization" pursuant to § 368(b).
4. No gain or loss will be recognized by Acquiring on receiving the Target assets in exchange for Acquiring Parent voting member interests (§1.1032-2(b)).
5. Acquiring Parent's basis in its Acquiring member interests will be equal to the basis Target had in the Target assets prior to the transaction decreased, but not below zero, by the amount of liabilities assumed by Acquiring (within the meaning of § 357(d)) (§ 1.358-6(c)(1)).
8. No gain or loss will be recognized by the shareholders of Target who receive only Acquiring Parent voting member interests in exchange for Target stock (§ 354(a)(1)). Gain will be recognized by those Target shareholders who receive cash and other property in addition to the Acquiring Parent voting member interests in exchange for their Target stock, but not in excess of the amount of cash and other property received (§ 356(a)(1)). If the exchange has the effect of the distribution of a dividend, then the amount of the gain recognized that is not in excess of the shareholder's ratable share of undistributed earnings and profits will be treated as a dividend (§ 356(a)(2)). No loss will be recognized on the exchange (§ 356(c)).
9. The basis of the Acquiring Parent voting member interests received by each shareholder of Target will equal the basis of the Target stock surrendered by such shareholder in exchange therefor, decreased by the amount of any money and the fair market value of any other property received by the Target shareholder, and increased by the amount that was treated as a dividend and the amount of gain to the Target shareholder that is recognized in the exchange (not including any portion

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of such gain which was treated as a dividend)(§ 358(a)(1)).

11. No gain or loss will be recognized by Target on the distribution of Acquiring Parent voting member interests and cash to its shareholders in pursuance of the plan of reorganization (§ 361(c)(1)).

No opinion is expressed 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 letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,  
Assistant Chief Counsel (Corporate)

By: *Ken Cohen*

Senior Technician Reviewer, Branch 3