Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP: 5 - PLR-101644-99
Date:
March 23, 1999

Re:

Parent =

Acquiring =

Target =

State A =

Business 1 =

Business 2 =

Date 1 =

Date 2 =

Dear

We respond to your January 11, 1999 request for rulings as to the federal income tax consequences of a series of proposed transactions. The facts submitted for consideration are substantially as set forth below.

Acquiring is a State A corporation which is a holding company. Acquiring's outstanding stock is widely held and publicly traded.

Target is a State A corporation which is engaged in Business 1. Target's outstanding stock is widely held and publicly traded.

Parent is a State A corporation which is engaged in Business 2. Parent's stock is widely held and publicly traded.

For what are represented to be valid business reasons, the following transaction has been proposed and, in part, consummated :

(i) Acquiring incorporated a wholly-owned subsidiary, Interim, under the laws of State A, and shortly thereafter, on Date 1, caused Interim to merge with and into Target in a statutory merger under State A law (the "Acquisition Merger"). In the Acquisition Merger, the shareholders of Target exchanged their Target voting common stock solely for Acquiring common stock (except for cash in lieu of fractional shares).

(ii) On Date 2, a newly formed wholly owned subsidiary of Parent merged with and into Acquiring in a statutory merger under state law. Acquiring shareholders, including former shareholders of Target, exchanged their Acquiring stock solely for Parent voting common stock (except for cash in lieu of fractional shares) (the "Parent Merger"). The taxpayer has represented that the Parent Merger qualifies as a reorganization as described in § 368 (a)(1)(A) and (a)(2)(E).

(iii) Target will merge with and into Acquiring (the "Upstream Merger") pursuant to a statutory merger under the laws of State A.

The taxpayer has represented that the Acquisition Merger constitutes a statutory merger under applicable state law and, if viewed independently, would qualify as a reorganization as described in § 368 (a)(1)(A) and (a)(2)(E) of the Internal Revenue Code. It is also represented that the Upstream Merger will constitute a statutory merger under applicable state law, and, if viewed independently, would qualify as a reorganization as described in § 368 (a)(1)(A). Finally, it is represented that, if Target were not to have merged with Interim but were to have merged directly into Acquiring after the Parent Merger in a transaction in which Target shareholders received solely

Parent stock in exchange for their Target shares (except for cash in lieu of fractional shares), such merger would qualify as a reorganization described in § 368 (a)(1)(A) and (a)(2)(D).

The taxpayer also has represented that there is no plan or intention for Acquiring to merge, liquidate, or otherwise dispose of any of its assets, other than in the ordinary course of business. The taxpayer represents that the Parent Merger constitutes a reverse acquisition within the meaning of § 1.1502-75(d)(3) of the regulations and that the consolidated tax returns of the combined Parent - Acquiring group will be filed in accordance with the cited regulations and related provisions thereof.

Pursuant to Section 3.01 (23) of Rev. Proc 99-3, 1999 -1 C.B. 103, 106, the Internal Revenue Service will not rule as to whether a proposed transaction qualifies under § 368 (a)(1)(A) by reason of § 368 (a)(2)(D). However, the Service has discretion to rule on significant sub-issues 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, the Upstream Merger, and the Parent Merger are treated as steps in an integrated plan pursuant to the step transaction doctrine and (II) the Acquisition Merger, the Upstream Merger, and the Parent Merger qualify as statutory mergers under applicable state law, we hold that: the Acquisition Merger and the Upstream Merger will be treated as if Acquiring acquired the Target assets in exchange for Parent stock and Acquiring's assumption of Target liabilities through a "statutory merger" as that term is used in § 368 (a)(1)(A) and § 368 (a)(2)(D).

We express no other opinion as to whether any of the three mergers will qualify as a reorganization under § 368(a)(1)(A). Further, we express no opinion as to the tax treatment of the transaction under other provisions of the Code and regulations, specifically the consolidated return rules, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings.

This ruling is directed only to the taxpayer who requested it. Section 6110 (k)(3) of the Code provides that it may not be used or cited as precedent.

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

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to the taxpayer.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: _____
Filiz A. Serbes
Assistant to the Chief, Branch 5