Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200105040**
Release Date: 2/2/2001
Index Number: 0368.01-00

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:1-PLR-115084-00
Date:
October 30, 2000

Acquiring =

Acquiring Sub 1 =

Acquiring Sub 2 =

Target 1 =

Target 2 =

State X =

Business A =

Business B =

Business C =

Date 1 =

Date 2 =

This is in response to your letter dated July 27, 2000, in which you requested rulings on the federal income tax consequences of certain completed and proposed transactions under section 368(a)(1)(A). Pursuant to section 3.01(23) of Rev. Proc. 2000-3, 2000-1 I.R.B. 103,105, the Internal Revenue Service will not rule as to whether a proposed transaction qualifies under section 368(a)(1)(A). However, the Service has discretion to rule on significant subissues that must be resolved to determine whether a transaction qualifies under section 368(a)(1)(A). The information submitted for our review is summarized as follows.

Acquiring, a State X corporation, is the publicly traded parent of a consolidated group of corporations. Acquiring is engaged in Business A, which is in the same industry as Business B and Business C. Acquiring files its consolidated returns on a

calendar year basis.

Prior to Date 1, the managements of Acquiring and Target 1, a State X corporation engaged in Business B, decided to combine their businesses because the combination would create a one stop shop for businesses seeking to convert e-shoppers to e-buyers and would improve overall online experience. The managements further believed that a combination of the two companies would provide customers immediate answers on the Web through a combination of automated self-service and live agent interaction.

On Date 1, the first steps of the combination of Acquiring and Target 1 were accomplished as follows:

(i) Acquiring formed a wholly-owned subsidiary, Acquiring Sub 1;

(ii) Acquiring Sub 1 merged with and into Target 1 in a reverse subsidiary merger (Acquisition Merger 1), with Target 1 surviving as Acquiring's wholly-owned subsidiary;

(iii) Target 1 shareholders received solely Acquiring voting common stock in exchange for their Target 1 stock.

Acquiring has represented that a direct merger of Target 1 into Acquiring was intended but was not feasible at the time of Target 1's acquisition because certain of Target 1's contracts could not be timely assigned. Acquiring has represented that the contracts have been assigned and, consequently, Acquiring proposes to merge Target 1 with and into Acquiring (Upstream Merger 1).

In addition, prior to Date 2, the managements of Acquiring and Target 2, a State X corporation involved in Business C, decided to combine those two companies because a combined corporation would enable a higher quality experience for consumers seeking information and a more robust service for companies looking to target, acquire and retain customers.

On Date 2, the first steps of the combination were accomplished as follows:

(i) Acquiring formed a wholly-owned subsidiary, Acquiring Sub 2;

(ii) Acquiring Sub 2 merged with and into Target 2 in a reverse subsidiary merger (Acquisition Merger 2), with Target 2 surviving as Acquiring's wholly-owned subsidiary;

(iii) Target 2 shareholders received solely Acquiring voting common stock in exchange for their Target 2 stock.

Acquiring has represented that a direct merger of Target 2 into Acquiring was intended but could not be accomplished because it was not possible for Target 2 to obtain assignment consents on certain key contracts with its customers without risking interruption to its operations. Acquiring has represented that these restrictions have been lifted and now proposes to merge Target 2 with and into Acquiring (Upstream Merger 2).

With respect to proposed Upstream Merger 1, Acquiring has made the following additional representations:

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

(2) Proposed Upstream Merger 1 will qualify as a statutory merger under applicable state law and, viewed independently of Acquisition Merger 1, would qualify under section 332.

(3) If Acquisition Merger 1 had not occurred, and Target 1 had merged directly into Acquiring, such merger would have qualified as a reorganization under section 368(a)(1)(A).

(4) Acquiring Sub 1 was formed solely to facilitate the acquisition of Target 1 and engaged in no business activities other than necessary for the acquisition.

With respect to proposed Upstream Merger 2, Acquiring has made the following representations:

(5) Acquisition Merger 2, viewed independently of proposed Upstream Merger 2, qualified as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E).

(6) Proposed Upstream Merger 2 will qualify as a statutory merger under applicable state law and, viewed independently of Acquisition Merger 2, would qualify under section 332.

(7) If Acquisition Merger 2 had not occurred, and Target 2 had merged directly into Acquiring, such merger would have qualified as a reorganization under section 368(a)(1)(A).

(8) Acquiring Sub 2 was formed solely to facilitate the acquisition of Target 2 and engaged in no business activities other than necessary for the acquisition.

Based solely on the information submitted and the representations made, we rule as follows:

(1) Provided that (i) Acquisition Merger 1 and Upstream Merger 1 are treated as steps in an integrated plan pursuant to the step transaction doctrine, and (ii) Acquisition Merger 1 and Upstream Merger 1 qualify as statutory mergers under applicable state law, Acquiring will be treated as if it directly acquired the Target 1 assets in exchange for Acquiring stock and the assumption of Target 1 liabilities through a statutory merger as that term is defined in section 368(a)(1)(A). See Rev. Rul. 67-274, 1967-2 C.B. 141 and Rev. Rul. 72-405, 1972-2 C.B. 217.

(2) Provided that (i) Acquisition Merger 2 and Upstream Merger 2 are treated as steps in an integrated plan pursuant to the step transaction doctrine, and (ii) Acquisition Merger 2 and Upstream Merger 2 qualify as statutory mergers under applicable state law, Acquiring will be treated as if it directly acquired the Target 2 assets in exchange for Acquiring stock and the assumption of Target 2 liabilities through a statutory merger as that term is defined in section 368(a)(1)(A). See Rev. Rul. 67-274, 1967-2 C.B. 141 and Rev. Rul. 72-405, 1972-2 C.B. 217.

We express no opinion regarding whether the Acquisition Mergers and the Upstream Mergers are steps in an integrated plan or whether the Acquisition Mergers and Upstream Mergers qualify as reorganizations under section 368(a)(1)(A). Additionally, we express no opinion about the tax treatment of the proposed transactions 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 is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Each affected taxpayer should attach a copy of this letter to its federal income tax return for the taxable year in which the transaction covered by this ruling letter is consummated.

Sincerely yours,
Associate Chief Counsel (Corporate)
By Theresa A. Abell
Acting Senior Technician Reviewer
CC:CORP:1