Internal Revenue Service

Department of the Treasury

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Refer Reply To:
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Date:
February 7, 2001

In re:

Acquiring =

Acquiring Sub =

Target =

State A =

Business X =

Business Y =

Date 1 =

Date 2 =

Date 3 =

This letter is in reply to your letter dated October 17, 2000, requesting rulings about the federal income tax consequences of a partially completed transaction. The information submitted is summarized below.

Acquiring is a State A corporation engaged in Business X. Acquiring is a publicly traded corporation with common and preferred stock authorized and common stock outstanding. Acquiring is the common parent of a consolidated group that files its consolidated returns on a calendar year basis, using the accrual method of accounting.

Acquiring Sub was a State A corporation organized by Acquiring solely for the purpose of acquiring Target. Acquiring Sub conducted no business or operations except those necessary to facilitate the transaction. Before the transactions described below, Acquiring owned all of the stock of Acquiring Sub.

Target is a State A corporation engaged in Business Y. Prior to the transaction described below, Target was a publicly traded corporation. Target had common and preferred stock authorized and common stock outstanding.

On Date 1, pursuant to discussions which commenced in Date 2, the management of Acquiring and Target entered into an agreement to combine the businesses of the two companies. While management would have preferred to merge Target directly into Acquiring, this type of combination was not possible because Target had significant contracts and agreements with certain customers and business partners which could not be assigned prior to the combination due to time constraints. Accordingly, on Date 3, pursuant to state law and in accordance with a plan of reorganization, Acquiring Sub merged with and into Target (the "Acquisition Merger"). Target survived the merger and Target shareholders received Acquiring voting common stock in exchange for their Target stock. The taxpayers represent that the Acquisition Merger, viewed independently of the proposed Upstream Merger, qualified as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(E) of the Internal Revenue Code.

Because the necessary contract assignments either have been or will shortly be obtained, Acquiring proposes to liquidate Target with and into Acquiring by upstream merger (the "Upstream Merger"). The taxpayers represent that the Upstream Merger will qualify as a statutory merger under applicable state law and, viewed independently of the Acquisition Merger, would qualify under § 332. The taxpayers further represent that, if the Acquisition Merger had not occurred and Target had merged directly into Acquiring, such merger would have qualified as a reorganization under § 368(a)(1)(A).

Pursuant to § 3.01(29) of Rev. Proc. 2001-3, 2001-1 I.R.B. 111,114, the Internal Revenue Service will not rule as to whether a proposed transaction qualifies under § 368(a)(1)(A), including a transaction that qualifies under § 368(a)(1)(A) by reason of § 368(a)(2)(D) or § 368(a)(2)(E). However, the Service has the discretion to rule on significant subissues 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 and the Upstream Merger are treated as steps in an integrated plan pursuant to the step-transaction doctrine, and (ii) the Acquisition Merger and the Upstream Merger qualify as statutory mergers under applicable state law, we hold as follows:

> For federal income tax purposes, the Acquisition Merger and the Upstream Merger will be treated as if Acquiring directly acquired the Target assets in exchange for Acquiring stock and Acquiring's assumption of Target liabilities through a "statutory merger" as that term is used in § 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 Merger and the

Upstream Merger are steps in an integrated plan or whether the Acquisition Merger and the Upstream Merger qualify as reorganizations under § 368(a)(1)(A).

We express no opinion about the tax treatment of the 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 transaction that are not specifically covered by the above rulings.

This ruling is directed only to the taxpayers on whose behalf it was requested. Section 6110(k)(3) 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.

We have sent copies of this letter to the taxpayer representatives as designated on the power of attorney on file in this office.

Sincerely yours,
Associate Chief Counsel (Corporate)
By Debra Carlisle
Chief, Branch 5