Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200203058**
Release Date: 1/18/2002
Index Numbers: 368.01-00, 367-00.00

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Refer Reply To:
CC:DOM:CORP:4 PLR-131602-01
Date:
October 22, 2001

Acquiring =
Acquiring Sub 1 =
Acquiring Sub 2 =
Acquiring Sub 3 =
Acquiring Sub 4 =
Acquiring Sub 5 =

Target 1 =
Target 2 =
Target 3 =
Target 4 =
Target 5 =

Sub 1 =
Sub 1A =
Sub 1B =
Sub 1C =

Sub 2 =
Sub 2A =
Sub 2B =
Sub 2C =
Sub 2D =

Foreign Corp 1 =
Foreign Corp 2 =
Foreign Corp 3 =

Country 1 =
Country 2 =
Country 3 =

Business A =
Business B =

Date 1 =
Date 2 =
Date 3 =

Date 4 =
Date 5 =

This letter responds to your June 5, 2001 request for certain rulings on the federal income tax consequences of a series of transactions. The information submitted in that request and in subsequent correspondence is summarized below.

Acquiring is a publicly traded domestic corporation that engages in Business A. Acquiring is the common parent of an affiliated group of corporations that files a consolidated return.

Target 1, Target 2, and Target 4 are domestic corporations that engage in Business A, and Target 3 and Target 5 are domestic corporations that engage in Business B.

For what are represented to be valid business reasons, the Boards of Directors of Acquiring and Target 1 determined to combine the businesses of Acquiring and Target 1. Accordingly, on or about Date 1, Acquiring formed domestic Acquiring Sub 1. Acquiring Sub 1 conducted no business or operations except those necessary to facilitate the combination. On Date 1, Acquiring Sub 1 merged into Target 1 in a transaction in which the shareholders of Target 1 received solely Acquiring voting common stock in exchange for their Target 1 stock ("Acquisition Merger 1").

For what are represented to be valid business reasons, the Boards of Directors of Acquiring and Target 2 determined to combine the businesses of Acquiring and Target 2. Accordingly, on or about Date 2, Acquiring formed domestic Acquiring Sub 2. Acquiring Sub 2 conducted no business or operations except those necessary to facilitate the combination. On Date 2, Acquiring Sub 2 merged into Target 2 in a transaction in which the shareholders of Target 2 received solely Acquiring voting common stock in exchange for their Target 2 stock (“Acquisition Merger 2").

For what are represented to be valid business reasons, the Boards of Directors of Acquiring and Target 3 determined to combine the businesses of Acquiring and Target 3. Accordingly, on or about Date 3, Acquiring formed domestic Acquiring Sub 3. Acquiring Sub 3 conducted no business or operations except those necessary to facilitate the combination. On Date 3, Acquiring Sub 3 merged into Target 3 in a transaction in which the shareholders of Target 3 received solely Acquiring voting common stock in exchange for their Target 3 stock ("Acquisition Merger 3").

For what are represented to be valid business reasons, the Boards of Directors of Acquiring and Target 4 determined to combine the businesses of Acquiring and Target 4. Accordingly, on or about Date 4, Acquiring formed domestic Acquiring Sub 4. Acquiring Sub 4 conducted no business or operations except those necessary to facilitate the combination. On Date 4, Acquiring Sub 4 merged into Target 4 in a transaction in which the shareholders of Target 4 received solely Acquiring voting common stock in exchange for their Target 4 stock ("Acquisition Merger 4").

For what are represented to be valid business reasons, the Boards of Directors of Acquiring and Target 5 determined to combine the businesses of Acquiring and Target 5. Accordingly, on or about Date 5, Acquiring formed domestic Acquiring Sub 5. Acquiring Sub 5 conducted no business operations except those necessary to facilitate the combination. On Date 5, Acquiring Sub 5 merged into Target 5 in a transaction in which the shareholders of Target 5 received solely Acquiring voting common stock in exchange for their Target 5 stock ("Acquisition Merger 5").

Acquisition Merger 1, Acquisition Merger 2, Acquisition Merger 3, Acquisition Merger 4, and Acquisition Merger 5 will hereafter be referred to collectively as the “Acquisition Mergers.”

In each of the Acquisition Mergers, the management of Acquiring and the respective target corporation believed that a fast and efficient integration was necessary to maximize the operating synergies of the two companies. Thus, in each case, the parties would have preferred that the target corporation merge directly into Acquiring. However, in each case, an immediate combination by direct merger was not feasible because each of the target corporations had outstanding contracts, agreements, licenses, and other business arrangements with primary customers, suppliers, distributors, and business partners for which assignments could not be readily negotiated.

Management of Acquiring has now resolved all of the necessary contracts, agreements, license assignments, and remaining business arrangements with respect to each of the Acquisition Mergers, and would like to complete the integration of the target corporations into Acquiring. Accordingly, it now proposes the following transactions:

(i) Target 1 will merge into Acquiring ("Upstream Merger 1").

(ii) Target 2 will merge into Acquiring ("Upstream Merger 2").

(iii) Target 3 will merge into Acquiring ("Upstream Merger 3").

(iv) Target 4 will merge into Acquiring ("Upstream Merger 4").

(v) Target 5 will merge into Acquiring ("Upstream Merger 5").

Upstream Merger 1, Upstream Merger 2, Upstream Merger 3, Upstream Merger 4, and Upstream Merger 5 will hereafter be referred to collectively as the “Upstream Mergers.”

Following completion of the Upstream Mergers, Acquiring may also undertake some additional restructuring steps that would include the mergers of several first and second tier subsidiaries within the chain of affiliation of Target 1, Target 2, Target 3, Target 4, or Target 5, respectively. Incident to the additional restructuring, domestic Sub 1, domestic Sub 1A, and Foreign Corp 1 (a Country 1 corporation that has a

negative earnings and profits balance), each wholly owned by Target 1, may merge into Acquiring following Upstream Merger 1. Prior to this, domestic Sub 1B and domestic Sub 1C, both wholly owned by Sub 1, will liquidate into Sub 1.

Also incident to the additional restructuring, Sub 2, Sub 2A, Sub 2B, and Sub 2C, all wholly owned domestic subsidiaries of Target 5, may merge into Acquiring after Upstream Merger 5, after which Foreign Corp 2, a Country 2 corporation with a negative balance in earnings and profits and currently wholly owned by Sub 2A, may make a check-the-box election under § 301.7701-3(c)(1)(i) and be deemed to liquidate into Acquiring under § 301.7701-3(g)(1)(iii). Prior to these events, domestic Sub 2D may also liquidate into Sub 2A.

Lastly, incident to the additional restructuring, Foreign Corp 3, currently a wholly owned Country 3 subsidiary of Target 3, may liquidate into Acquiring after Upstream Merger 3.

All other transactions that may be undertaken in connection with the additional restructuring steps would involve corporations other than Target 1, Target 2, Target 3, Target 4, Target 5, and corporations currently in Target 1's, Target 2's, Target 3's , Target 4's and Target 5's chain of affiliation. Hereafter, all of the additional restructuring steps will be referred to collectively as the “Other Events”.

The following representations have been submitted regarding the Acquisition Mergers and the Upstream Mergers:

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

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

(c) If Acquisition Merger 1 had not occurred and Target 1 had merged directly into Acquiring, the merger would have qualified as a reorganization under § 368(a)(1)(A) and applicable state law.

(d) All other transactions undertaken contemporaneously with or in any way related to proposed Upstream Merger 1 have been fully disclosed.

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

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

(g) If Acquisition Merger 2 had not occurred and Target 2 had merged directly into Acquiring, the merger would have qualified as a reorganization under § 368(a)(1)(A) and applicable state law.

(h) All other transactions undertaken contemporaneously with or in any way related to proposed Upstream Merger 2 have been fully disclosed.

(i) Acquisition Merger 3, viewed independently of proposed Upstream Merger 3, qualified as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(E)

(j) Proposed Upstream Merger 3 will qualify as a statutory merger under applicable state law and, viewed independently of Acquisition Merger 3, would qualify under § 332.

(k) If Acquisition Merger 3 had not occurred and Target 3 had merged directly into Acquiring, the merger would have qualified as a reorganization under § 368(a)(1)(A) and applicable state law.

(l) All other transactions undertaken contemporaneously with or in any way related to proposed Upstream Merger 3 have been fully disclosed.

(m) Acquisition Merger 4, viewed independently of proposed Upstream Merger 4, qualified as a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(E).

(n) Proposed Upstream Merger 4 will qualify as a statutory merger under applicable state law and, viewed independently of Acquisition Merger 4, would qualify under § 332.

(o) If Acquisition Merger 4 had not occurred and Target 4 had merged directly into Acquiring, the merger would have qualified as a reorganization under § 368(a)(1)(A) and applicable state law.

(p) All other transactions undertaken contemporaneously with or in any way related to proposed Upstream Merger 4 have been fully disclosed.

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

(r) Proposed Upstream Merger 5 will qualify as a statutory merger under applicable state X law and, viewed independently of Acquisition Merger 5, would qualify under § 332.

(s) If Acquisition Merger 5 had not occurred and Target 5 had merged directly into Acquiring, the merger would have qualified as a reorganization under § 368(a)(1)(A) and applicable state law.

(t) All other transactions undertaken contemporaneously with or in any way related to proposed Upstream Merger 5 have been fully disclosed.

(u) None of the Acquisition Mergers or Upstream Mergers, whether viewed independently of each other or viewed as single transactions, did or will result in a reverse acquisition under § 1.1502-75(d)(3).

(v) Following the above-described transactions, Acquiring will continue the historic businesses or use a significant portion of the historic business assets of each corporation that is liquidated by upstream merger.

(w) The fair market value of the assets of each corporation to be liquidated by upstream merger and to be transferred to Acquiring will equal or exceed the sum of the liabilities assumed by Acquiring plus the amount of liabilities, if any, to which the transferred assets are subject.

(x) No parties to any of the above-described transactions are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

The following representations have been submitted regarding the liquidation of Foreign Corp 1 into Acquiring, as described above (hereafter, the "Foreign Corp 1 Liquidation"):

(y) Foreign Corp 1 will be a controlled foreign corporation, within the meaning of § 957(a), immediately before the Foreign Corp 1 Liquidation.

(z) Acquiring will be a "United States Shareholder" of Foreign Corp 1, within the meaning of § 1.367(b)-3(b)(2), immediately before the Foreign Corp 1 Liquidation.

(aa) Foreign Corp 1 will not be a passive foreign investment company, within the meaning of § 1297(a), immediately before the Foreign Corp 1 Liquidation.

(bb) Foreign Corp 1 is not insolvent.

The following representations have been submitted regarding the deemed liquidation of Foreign Corp 2 into Acquiring, as described above (hereafter, the "Foreign Corp 2 Liquidation"):

(cc) Foreign Corp 2 will be an eligible foreign entity immediately before and after the effective date of its change in entity classification.

(dd) Foreign Corp 2 will be a controlled foreign corporation, within the meaning of § 957(a), immediately before the Foreign Corp 2 Liquidation.

(ee) Acquiring will be a "United States Shareholder" of Foreign Corp 2, within the meaning of § 1.367(b)-3(b)(2), immediately before the Foreign Corp 2 Liquidation.

(ff) Foreign Corp 2 will not be a passive foreign investment company, within the meaning of § 1297(a), immediately before the Foreign Corp 2 Liquidation.

(gg) Foreign Corp 2 is not insolvent.

Pursuant to section 3.01(29) of Rev. Proc. 2001-3, 2001-1 I.R.B. 111, 114, the Internal Revenue Service will not rule on whether a transaction qualifies under § 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 § 368(a)(1)(A).

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

(1) For federal income tax purposes, Acquisition Merger 1 and Upstream Merger 1 will be treated as if Acquiring had directly acquired Target 1's assets in exchange for Acquiring stock and the assumption of Target 1's liabilities through a statutory merger as that term is used in § 368(a)(1)(A).

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

(2) For federal income tax purposes, Acquisition Merger 2 and Upstream Merger 2 will be treated as if Acquiring had directly acquired Target 2's assets in exchange for Acquiring stock and the assumption of Target 2's liabilities through a statutory merger as that term is used in § 368(a)(1)(A) .

Based solely on the information submitted and the representations made, and provided that (i) Acquisition Merger 3 and Upstream Merger 3 are treated as steps in an integrated plan pursuant to the step transaction doctrine, and (ii) Acquisition Merger 3 and Upstream Merger 3 qualify as statutory mergers under applicable state law, we rule as follows:

(3) For federal income tax purposes, Acquisition Merger 3 and Upstream Merger 3 will be treated as if Acquiring had directly acquired Target 3's assets in exchange for Acquiring stock and the assumption of Target 3's liabilities through a statutory merger as that term is used in § 368(a)(1)(A).

Based solely on the information submitted and the representations made, and provided that (i) Acquisition Merger 4 and Upstream Merger 4 are treated as steps in an integrated plan pursuant to the step transaction doctrine, and (ii) Acquisition Merger 4

and Upstream Merger 4 qualify as statutory mergers under applicable state law, we rule as follows:

(4) For federal income tax purposes, Acquisition Merger 4 and Upstream Merger 4 will be treated as if Acquiring had directly acquired Target 4's assets in exchange for Acquiring stock and the assumption of Target 4's liabilities through a statutory merger as that term is used in § 368(a)(1)(A).

Based solely on the information submitted and the representations made, and provided that (i) Acquisition Merger 5 and Upstream Merger 5 are treated as steps in an integrated plan pursuant to the step transaction doctrine, and (ii) Acquisition Merger 5 and Upstream Merger 5 qualify as statutory mergers under applicable state law, we rule as follows:

(5) For federal income tax purposes, Acquisition Merger 5 and Upstream Merger 5 will be treated as if Acquiring had directly acquired Target 5's assets in exchange for Acquiring stock and the assumption of Target 5's liabilities through a statutory merger as that term is used in § 368(a)(1)(A).

The taxpayer did not request rulings regarding the Foreign Corp 1 Liquidation or the Foreign Corp 2 Liquidation. However, pursuant to Rev. Proc. 2001-1, a ruling may be given on the effect of a transaction under § 367 even though none is requested. Accordingly, based on the information submitted and the representations made, and provided that the Foreign Corp 1 Liquidation and the Foreign Corp 2 Liquidation meet the requirements of § 332, we also rule as follows:

(6) The Foreign Corp 1 Liquidation, if consummated, will be a liquidating distribution to which §§ 1.367(b)-1(c)(2), 1.367(b)-3(a), and 1.367(b)-3(b)(3) apply. Acquiring shall include in income as a deemed dividend the "all earnings and profits amount," within the meaning of § 1.367(b)-2(d), with respect to its stock in Foreign Corp 1.

(7) The Foreign Corp 2 Liquidation, if consummated, will be a liquidating distribution to which §§ 1.367(b)-1(c)(2), 1.367(b)-3(a), and 1.367(b)-3(b)(3) apply. Acquiring shall include in income as a deemed dividend the "all earnings and profits amount," within the meaning of § 1.367(b)-2(d), with respect to its stock in Foreign Corp 2.

No opinion is expressed about the tax treatment of the above-described transactions under any other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the above-described transactions that are not specifically addressed by the above rulings. In particular, no opinion is expressed as to:

(A) Whether any Acquisition Merger and its corresponding Upstream Merger should be viewed as integrated steps pursuant to a plan under the step transaction doctrine,

(B) Whether any Acquisition Merger and its corresponding Upstream Merger will qualify as a reorganization under § 368(a)(1)(A) if the step transaction doctrine is found to apply,

(C) The federal tax treatment of any Acquisition Merger and Upstream Merger if the step transaction doctrine is found not to apply to these transactions,

(D) The federal tax treatment of any domestic or foreign transactions that may be undertaken in connection with the Other Events, except as noted in rulings (6) and (7) above,

(E) The adjustments to earnings and profits or deficit in earnings and profits, if any, in the foreign restructuring to which §§ 367(a) or (b) apply,

(F) Whether Foreign Corp 1 and Foreign Corp 2 are passive foreign investment companies within the meaning of § 1297(a). If it is determined that either of these corporations are passive foreign investment companies, no opinion is expressed concerning the application of §§ 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provision of the Code, and

(G) Whether the Foreign Corp 1 Liquidation and the Foreign Corp 2 Liquidation qualify for non-recognition treatment under § 332.

The rulings contained in this letter are predicated upon the facts and representations submitted by the taxpayer and accompanied by the signature of an appropriate party under penalty of perjury. This office has not verified any of the materials submitted in support of the ruling request. The taxpayer, as part of the audit process, may be required to verify the information, representations, and other data.

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

A copy of this letter should be attached to the federal income tax return of each taxpayer affected by the transactions described in this letter.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
Associate Chief Counsel (Corporate)
By: Lewis K Brickates
Senior Technical Reviewer, Branch 4
Office of the Associate Chief Counsel
(Corporate)