Internal Revenue Service

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Person to Contact:

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Acquiring =

Acquiring Sub =

Target =

State A =

Business X =

Business Y =

Date 1 =

Date 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

This letter is in reply to your letter dated November 20, 1998, requesting rulings about the federal income tax consequences of a proposed transaction. Additional information was received in letters dated February 3, 1999 and February 15, 1999. The information submitted is summarized below.

Acquiring is a State A corporation engaged in Business X. Acquiring is a publicly traded parent of a consolidated group of corporations which includes Target. The authorized stock of Acquiring consists of common and preferred stock. The outstanding stock of Acquiring consists of common stock. Acquiring files its federal consolidated income tax returns on a fiscal 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 had the following wholly owned subsidiaries: Sub 1, Sub 2, Sub 3, and Sub 4. In addition, Sub 4 had the following wholly owned subsidiary: Sub 5. Sub 1, Sub 2, Sub 3, and Sub 5 were foreign corporations. Target had common and

preferred stock authorized and common stock outstanding. Target and Sub 4 filed a federal consolidated income tax return on a fiscal year basis using the accrual method of accounting.

On Date 1, the management of Acquiring and Target entered into an agreement to combine the businesses of the two companies. Both Acquiring and Target believed that to maximize the benefits of a combination of the companies, a fast and efficient integration was necessary. However, 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 which could not be assigned prior to the combination due to time constraints.

Therefore, on Date 2, pursuant to State A 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 shares of Acquiring stock in exchange for their Target stock. Now, Acquiring proposes to merge Target with and into Acquiring (the “Upstream Merger”). In preparation of the proposed Upstream Merger, Sub 1, Sub 2, Sub 3, Sub 4, and Sub 5 have all been liquidated.

The taxpayers have made the following representations in connection with the proposed transaction:

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

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

(3) 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(23) of Rev. Proc. 99-3, 1999-1 I.R.B. 103, 106, the Internal Revenue Service will not rule as to whether a proposed transaction qualifies under § 368(a)(1)(A). 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).

Based solely 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 the 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 Upstream Merger qualify as a reorganization under § 368(a)(1)(A).

We express no opinion 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 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.

In accordance with the power of attorney on file this office, copies of this letter are being sent to your authorized representatives.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By Ken Cohen

Ken Cohen
Senior Technical Reviewer, Branch 3