**Internal Revenue Service**

Department of the Treasury

Washington, DC 20224

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Person to Contact:

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This letter responds to your October 8, 1999, request that we rule on a subissue under § 368(a)(1)(A) of the Internal Revenue Code concerning the statutory merger of [redacted], into [redacted]. We decline to issue the requested ruling because the subissue is clearly and adequately addressed by revenue rulings.

This letter also responds to your November 24, 1999, request, through your representative, that an information letter be issued in lieu of the requested ruling. An information letter calls attention to well-established legal principles of tax law without applying them to a specific set of facts. An information letter is advisory only and has no binding effect on the Internal Revenue Service. See Rev. Proc. 99-1, § 2.04, 1999-1 I.R.B. 13.

Your request for an information letter asks whether "the current position of the Internal Revenue Service is the same as the position concluded in prior revenue rulings which hold that a merger is not disqualified from being a 'reorganization' within the meaning of section 368(a) because stock of the surviving (acquiring) corporation is owned by the merged (acquired) corporation prior to the merger." The letter also asks whether the fact that the surviving corporation is less than 80 percent owned by the merged corporation prevents the transaction from qualifying as a reorganization.

The current position of the Service is reflected in, inter alia, Rev. Rul. 70-223, 1970-1 C.B. 79. See also Rev. Rul. 78-47, 1978-1 C.B. 113. In Rev. Rul. 70-223, a corporation merged into its wholly owned subsidiary. The ruling holds that the merger constitutes a reorganization under § 368(a)(1)(A). In Rev. Rul. 78-47, a target corporation that owned 5 percent of the stock of another corporation transferred all of its assets (except its stock in the other corporation) to the other corporation solely in

exchange for stock of the other corporation. The target corporation then liquidated. The ruling holds that the "substantially all" requirement of § 368(a)(1)(C) is satisfied notwithstanding that the target corporation did not transfer its stock in the other corporation to such corporation in the transaction.

The rulings indicate that the "downstream" nature of the transaction does not preclude reorganization treatment under § 368(a)(1)(A) or § 368(a)(1)(C). Taken together, the rulings also indicate that the amount of stock of the acquired corporation owned by the target corporation, be it 100 percent or 5 percent, does not by itself prevent the transaction from qualifying as a tax-free reorganization under the aforementioned provisions.

The above information does not constitute a ruling and may not be relied upon by the taxpayer. If you have any further questions, please feel free to call Steve Fattman at 202-622-7427.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By_____
Wayne T. Murray
Senior Technician / Reviewer, Branch 4