Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Refer Reply To:
CC:CORP:B05 - PLR-110049-00
Date:
July 7, 2000

In re:

Parent =

Target =

MergerSub =

Country X =

State A =

Exchange A =
Exchange B =

x =
y =

Class A stock =
Class B stock =

Dear

This is in reply to your letter dated May 10, 2000 requesting that we rule on a significant federal income tax subissue present in a proposed transaction. See Section 3.01(23) of Rev. Proc. 2000-3, 2000-1 I.R.B. 103, 105. The facts submitted for consideration are substantially as set forth below.

Parent is a Country X entity that is classified as a corporation for U.S. federal income tax purposes. Parent's capital stock consists of two classes of voting common stock, Class A and Class B. Each Class A share entitles its holder to one vote, and each 10 Class B shares entitle their holders to one vote, except that each shareholder may never have less than one vote. Class A shares are convertible into Class B shares

on a one-for-one basis. Both classes are traded on Exchange A and Exchange B.

Target, a State A corporation, has issued and outstanding a single class of voting common stock, which is publicly traded in the United States.

For what is represented to be a valid business purpose, Target will merge under the laws of State A with and into MergerSub, a newly formed, wholly owned U.S. subsidiary of Parent. The merger is intended to qualify under §§ 368(a)(1)(A) and 368(a)(2)(D) of the Internal Revenue Code.

Target shareholders will receive consideration worth approximately $x , approximately y percent of which will be Class B shares of Parent, with the remainder in cash. The cash portion of the merger consideration will be financed through a loan from Parent to MergerSub (the "Merger Borrowing"). It is expected that all payments on the Merger Borrowing will be funded from future earnings generated by the acquired Target business.

The following representations have been made by the taxpayer in connection with the proposed transaction:

(a) The Merger Borrowing will be repaid only from future earnings of MergerSub or from capital contributions made to MergerSub from Parent.

(b) To the best of its knowledge and belief, the merger will qualify under §§ 368(a)(1)(A) and 368(a)(2)(D) provided that the Merger Borrowing will not be treated as reducing the net or gross assets acquired from Target in the merger for purposes of determining whether the merger constitutes an acquisition of substantially all of the properties of Target within the meaning of § 368(a)(2)(D).

(c) Under §§ 367(a) and 367(b), Parent will be considered to be a corporation for U.S. federal income tax purposes.

(d) No U.S. person who is a shareholder of Target will be a 5 percent shareholder of Parent within the meaning of §1.367(a)-3(c)(1)(iii) of the Income Tax Regulations immediately following the Merger.

(e) With regard to the Merger, the requirements of § 1.367(a)-3(c) relating to transfers by U.S. persons of stock or securities of domestic corporations to foreign corporations will be satisfied.

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

The Merger Borrowing will not be treated as reducing the net or gross assets acquired from Target in the merger for purposes of determining whether the merger constitutes an acquisition of substantially all of the properties of Target within the meaning of § 368(a)(2)(D).

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

Specifically, no opinion is expressed whether any or all of the above-referenced foreign corporations are passive foreign investment companies (within the meaning of § 1297(a) and regulations to be promulgated thereunder). If it is determined that any or all of the above-described foreign corporations are passive foreign corporations, no opinion is expressed with respect to 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.

The rulings contained in this letter are based on the facts and representations submitted under penalties of perjury in support of the request for rulings. Verification of this information may be required as part of the audit process.

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

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

Pursuant to a power of attorney on file in this office, a copy of this letter has been sent to the taxpayer and the taxpayer's other representative.

Sincerely yours,
Associate Chief Counsel (Corporate)

By Filiz A. Serbes
Assistant to the Chief, Branch 5