

## Internal Revenue Service

Department of the Treasury

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### LEGEND:

Disregarded Entity =

Acquiring =

Acquiring Unit =

Target =

Target Unit =

State X =

Business Y =

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Business Z =

Market =

a% =

Dear

This letter responds to your authorized representative's letter dated December 4, 2001, in which you requested rulings under section 368 of the Internal Revenue Code. Additional information was submitted in letters dated December 13, 2001, January 8, 2002, and May 7, 2002. The material information submitted for consideration is summarized below.

Acquiring, a State X corporation, is the common parent of an affiliated group of corporations filing a consolidated return. Acquiring has a 52/53 week fiscal year ending on the first Saturday in November year end and uses the accrual method of accounting. Acquiring has outstanding a single class of common stock which is publicly traded on Market. Acquiring is engaged in Business Y.

Disregarded Entity is a newly formed, State X limited liability company that is wholly-owned by Acquiring. Disregarded Entity is treated as a disregarded entity for Federal tax purposes. Disregarded Entity has been organized for the sole purpose of effecting the proposed transaction.

Target, a State X corporation, is the common parent of an affiliated group of corporations filing a consolidated return. Target has a calendar year end and uses the accrual method of accounting. Target has outstanding a single class of common stock which is publicly traded on Market. Target is engaged in Business Z.

For what are represented as valid business reasons, Acquiring and Target have proposed the following transaction:

Under State X General Corporation Law and the State X Limited Liability Company Act, Target will be merged with and into Disregarded Entity, with Disregarded Entity surviving (the "Merger"). Disregarded Entity will acquire all of the assets and assume all of the liabilities of Target. Target shareholders will be entitled to receive a% of a share of Acquiring common stock in exchange for

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each share of Target common stock. Target shareholders will receive cash in lieu of fractional shares.

The following representations have been made in connection with the proposed transactions. For purposes of these representations and the following rulings, the following terms are defined:

Acquiring Unit = Acquiring, and all of the business entities whose assets are treated as Acquiring's for Federal tax purposes.

Target Unit = Target, and all of the business entities whose assets are treated as Target's for Federal tax purposes.

- a. The fair market value of Acquiring stock and other consideration, if any, received by each Target shareholder will be approximately equal to the fair market value of the shares of Target stock surrendered in the exchange.
- b. At least 50% of the proprietary interest in Target will be exchanged for stock of Acquiring and will have been preserved within the meaning of Treas. Reg. section 1.368-1(e).
- c. In connection with the potential reorganization, neither Acquiring Unit, nor any person related to Acquiring Unit (within the meaning of Treas. Reg. section 1.368-1(e)(3)) has any plan or intention to reacquire any Acquiring stock issued in the transaction in exchange for any consideration other than Acquiring stock.
- d. Acquiring Unit does not have any plan or intention to sell or otherwise dispose of any of the assets of Target Unit acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in section 368(a)(2)(C) of the Code or described in Treas. Reg. section 1.368-2(k).
- e. The liabilities of Target Unit assumed by Acquiring Unit and the liabilities to which the transferred assets of Target Unit are subject were incurred by Target Unit in the ordinary course of its business.
- f. Following the transaction, Acquiring Unit will continue the historic business of Target Unit or use a significant portion of Target Unit's historic business assets in its business.

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- g. Acquiring Unit, Target Unit, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the transaction.
- h. There is no indebtedness between Target Unit and Acquiring Unit that was issued, acquired or will be settled at a discount.
- i. No parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) of the Code.
- j. No member of Target Unit is under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A) of the Code.
- k. The fair market value of the assets of Target Unit to be transferred to Acquiring Unit will equal or exceed the sum of the liabilities to be assumed by Acquiring Unit plus the amount of liabilities, if any, to which the transferred assets are subject.
- l. The payment of cash in lieu of fractional shares of Acquiring stock is solely for the purpose of avoiding the expense and inconvenience to Acquiring of issuing fractional shares and does not represent separately bargained-for consideration. The total cash consideration that will be paid in the transaction to Target shareholders instead of issuing fractional shares of Acquiring stock will be less than 1% of the total consideration that will be issued in the transaction to Target shareholders in exchange for their shares of Target stock. The fractional share interests of each Target shareholder will be aggregated and no Target shareholder will receive cash in an amount equal to or greater than the value of one full share of Acquiring stock.
- m. None of the compensation received by any shareholder of Target who is also an employee of Target Unit ("shareholder-employee") will be separate consideration for, or allocable to, any of their shares of Target stock; none of the shares of Acquiring stock received by any shareholder-employee will be separate consideration for, or allocable to, any employment agreement; and the compensation paid to any shareholder-employee will be for services actually rendered and will be commensurate with amounts paid to third parties bargaining at arm-length for similar services.
- n. The merger will be effected pursuant to the laws of the United States or a State or the District of Columbia, in which, as a result of the operation of such laws, the following events will occur simultaneously at the effective time of the merger: (i) all of the assets (other than those distributed in the transaction) and liabilities (except to the extent satisfied or discharged in

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the transaction) of each member of Target Unit will become the assets and liabilities of one or more members of Acquiring Unit; and (ii) Target will cease its separate legal existence for all purposes.

- o. Target, Acquiring, Disregarded Entity and each business entity through which Acquiring holds its interests in such Disregarded Entity is organized under the laws of the United States or a State or the District of Columbia.
- p. Disregarded Entity is a domestic single member limited liability company which is a “disregarded entity” within the meaning of Proposed regulation section 1.368-2(b)(1)(i)(A).

Based solely on the information submitted and the representations made, we hold that:

- (1) Provided that the merger of Target into Disregarded Entity qualifies as a statutory merger in accordance with applicable state law, the proposed merger of Target into Disregarded Entity will qualify as a statutory merger as that term is used in section 368(a)(1)(A) of the Code, and the transaction will constitute a reorganization within the meaning of section 368(a)(1)(A).
- (2) Target will recognize no gain or loss upon the transfer of substantially all of the assets of the Target Unit to the Acquiring Unit solely in exchange for shares of Acquiring stock and the assumption of liabilities by the Acquiring Unit.
- (3) No gain or loss will be recognized by Acquiring upon the Acquiring Unit's receipt of Target Unit's assets in exchange for shares of Acquiring stock.
- (4) The basis of the Target Unit's assets in the hands of the Acquiring Unit immediately after the transaction will, in each instance, be the same as the basis of those assets in the hands of the Target Unit immediately prior to the transaction.
- (5) The holding period of the assets of the Target Unit in the hands of the Acquiring Unit will, in each instance, include the period during which such assets were held by the Target Unit.
- (6) No gain or loss will be recognized by those Target shareholders who receive solely Acquiring stock in exchange for their Target stock.

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- (7) The basis of the Acquiring stock received by the Target shareholders will, in each instance, be the same as the basis of the Target stock surrendered in exchange therefor.
- (8) The holding period of the Acquiring stock received by the Target shareholders will, in each instance, include the period during which the Target stock surrendered in exchange therefor was held, provided that the Target stock was held as a capital asset in the hands of the shareholder on the date of the exchange.
- (9) The payment of cash to a Target shareholder in lieu of receiving a fractional share of Acquiring stock will be treated for federal income tax purposes as if the fractional share was distributed as part of the transaction and subsequently redeemed by Acquiring. These cash payments will be treated as distributions in full payment in exchange for the stock redeemed as provided in section 302(a) of the Code.
- (10) Acquiring will succeed to and take into account the items of Target described in section 381(c). These items will be taken into account by Acquiring subject to the applicable conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations thereunder.
- (11) Acquiring will succeed to and take into account the earnings and profits or deficit in earnings and profits of Target as of the date of the transfer. Any deficit in earnings and profits will be used only to offset earnings and profits accumulated after the date of transfer.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of

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the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,  
Associate Chief Counsel (Corporate)

by: \_\_\_\_\_  
Marlene P. Oppenheim  
Assistant Branch Chief, Branch 2