DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

May 30, 2002

Number: **200237004**
Release Date: 9/13/2002
CC:CORP:BR:06
PostF-151723-01
UILC: 351.00-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE LEGAL ADVICE

MEMORANDUM FOR
Associate Area Counsel (Large and Mid-size Business)
CC:LM:HMT:NEW:2

FROM: William D. Alexander
Acting Associate Chief Counsel CC:CORP

SUBJECT: Section 351 Control

This Chief Counsel Advice responds to your memorandum dated May 10, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Target =

Year 1 =

Date 1 =

#a =

#b =

#c =

State A =

Business 1 =

Business 2 =

ISSUE

1. Whether the target acquisitions by Acquiring as well as the related IPO of Acquiring stock meet the “control” requirement of I.R.C. § 351.

FACTS

Acquirer was founded in Year 1 as a State A corporation. Its goal was to become a leading consolidator and operator of Business 1 and Business 2. Pursuant to a plan of acquisition contained in its Date 1 SEC prospectus, Acquirer sought to engage in a series of transactions whereby Target 1 and eleven (11) other independent Business 1 and related companies would, through reorganization, become subsidiaries of Acquirer.

The consummation of an IPO was to be contemporaneous and contingent upon the closing of twelve separate merger agreements between temporary transitory subsidiaries of Acquirer, formed for the purpose of this reorganization, and the twelve operating companies including Target. The subsidiaries would merge into the operating target companies, with the targets surviving as twelve separate subsidiaries of Acquirer. The approximate values of the eleven other companies, all smaller than Target 1, ranged from #a to #b. None of the above transactions qualified under I.R.C. § 368(a)(2)(E) because 20% or more of the consideration each target received from Acquiring consisted of boot.

Acquirer transferred cash and nearly #c of its equity in the IPO and mergers to the underwriters, public and target owners in exchange for cash and stock of the targets. Transfer of this amount of stock to the various transferors constituted “control” under the provisions of I.R.C. § 368(c).

LAW AND ANALYSIS

You have stated that none of the above acquisitions by Acquiring of Targets 1-12 through the use of merger subsidiaries qualify under I.R.C. § 368(a)(2)(E) because 20% or more of the consideration each target received from Acquiring consisted of boot. We agree with this conclusion.

In addition, you state that the above mentioned target acquisitions by Acquiring as well as the related IPO of Acquiring stock meet the “control” requirement of I.R.C. § 351. Under I.R.C. § 351, the shareholders of Targets 1-12 will be treated as transferring all their stock in Targets 1-12 and the public investors in the IPO would be treated as transferring cash in exchange for stock of the Acquiring corporation and cash. Since at least #c of the stock of Acquiring was acquired by the

transferors (the individual investors in the IPO and the shareholders of Targets 1-12) the transaction will meet the "control" requirement of I.R.C. § 351.

In addition, we agree that the public investors in the IPO of Acquiring stock will be treated as if they transferred cash directly to Acquiring in exchange for Acquiring stock. The underwriter will be disregarded for purposes of I.R.C. § 351. See Treas. Reg. § 1. 351-1(a)(3).

Further, when the transferors in a transaction qualifying under I.R.C. § 351 obtain "control" in the transferee (as defined in I.R.C. § 368(c)) no additional continuity of shareholder interest is required. See Rev. Rul. 84-71, 1984-1 C.B. 106. (Continuity of interest is unnecessary in order for a transaction to qualify under I.R.C. § 351 if it meets the other requirements of I.R.C. § 351.)

Please call if you have any further questions.

William D. Alexander
Acting Associate Chief Counsel

By: _____

ALFRED BISHOP JR.
Branch Chief
Corporate Branch 6