

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:
January 5, 2000

Acquiring =

Target =

Shareholder A =

Shareholder B =

Shareholder C =

Business A =

Business B =

Country A =

Country B =

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Country C =
Date A =
Date B =
Date C =
Date D =
Date E =
a =
b =
c =
d =
e =

Dear

This is in reply to your letter dated September 30, 1999 requesting that we rule on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in subsequent correspondence is substantially as set forth below.

Target, a Country A corporation, is engaged in Business A. Target has issued and outstanding a single class of voting common stock. Acquiring, a Country A corporation engaged in Business B, owns approximately a percent of Target's outstanding shares.

Shareholder A, a U.S. corporation, owns approximately b percent of Target's outstanding shares. Shareholder B, a U.S. corporation, owns c percent of Target's outstanding shares. Shareholder C, a Country B corporation, owns d percent of Target's outstanding shares. The employees of Target and Acquiring own approximately e percent of Target's outstanding shares. Target's remaining shares are widely dispersed among hundreds of shareholders. Shareholder A, Shareholder B, and Shareholder C are all customers of Target.

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For what is represented to be a valid business purpose, Target will merge into Acquiring under the laws of Country A. In the merger, all of Target's shareholders will be required to exchange their shares in Target solely in exchange for voting common stock in Acquiring. Following the exchange of shares, Target will dissolve, and Acquiring will succeed to, and become the legal owner of, all of the assets of Target. Target's board of directors approved the merger on Date D and Target's shareholders approved the merger on Date E.

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

- (a) The fair market value of the Acquiring voting common stock to be received by each Target shareholder will be approximately equal to the fair market value of the Target common stock surrendered in the exchange.
- (b) Acquiring will receive all of the assets of Target and, thus, will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target immediately prior to the transaction. For purposes of this representation, amounts paid by Target to dissenters, amounts used by Target to pay its reorganization expenses, amounts paid by Target to shareholders who receive cash or other property, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately preceding the transfer will be included as assets of Target held immediately prior to the transaction.
- (c) During the 5-year period beginning on the date of the proposed transaction, there is no plan or intention for Acquiring, or any person related (as defined in § 1.368-1(e)(3)) to Acquiring, to acquire, with consideration other than Acquiring stock, Acquiring stock furnished in exchange for a proprietary interest in Target in the proposed transaction, either directly or through any transaction, agreement, or arrangement with any other person, except for cash in lieu of fractional shares to be paid in the proposed transaction.
- (d) During the 5-year period ending on the date of the proposed transaction, (i) neither Acquiring, nor any person related (as defined in § 1.368-1(e)(3)) to Acquiring, will have acquired Target stock with consideration other than Acquiring stock (excluding exchanges by Acquiring of Target stock for a direct interest in the Target enterprise); (ii) neither Target, nor any person related (as defined in § 1.368-1(e)(3) determined without regard to § 1.368-1(e)(3)(i)(A)) to Target, will have acquired Target stock with consideration other than Acquiring stock or Target stock; and (iii) no distributions will have been made with respect to Target stock (other than

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ordinary, normal, regular, dividend distributions made pursuant to Target's historic dividend paying practice), either directly or through any transaction, agreement, or arrangement with any other person except for certain acquisitions by Acquiring of Target's stock in capital calls on Date A, Date B, and Date C.

- (e) The aggregate value of the acquisitions, redemptions, and distributions described in paragraphs (c) and (d) will not exceed 50 percent of the value (without giving effect to the acquisitions, redemptions, and distributions) of the proprietary interest in Target on the effective date of the proposed transaction.
- (f) Shareholder A, Shareholder B, Shareholder C, Target, Acquiring, and to the best of the knowledge and belief of the taxpayer, any other shareholder that is a U.S. citizen or resident, will treat the acquisition of Target by Acquiring as a tax-free reorganization under § 368(a)(1)(C) of the Internal Revenue Code.
- (g) To the best of taxpayer's knowledge, it is unlikely that any shareholder of Target will have paid an amount for its stock in Target that exceeds the fair market value of the Acquiring shares that such shareholder will receive in the proposed transaction.
- (h) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction, except for dispositions made in the ordinary course of business.
- (i) Target will not distribute any property as part of or as a result of the merger except in the ordinary course of business. Pursuant to the plan of reorganization, the assets of Target will become the assets of Acquiring. In addition, under the plan of reorganization, Target will not receive any shares of Acquiring; rather each of Target's shareholders will receive its proportionate number of Acquiring voting common shares under the applicable merger procedures.
- (j) The liabilities of Target assumed by Acquiring and the liabilities to which the transferred assets are subject were incurred by Target in the ordinary course of its business.
- (k) Following the transaction, Acquiring will continue the historic business of Target.
- (l) Acquiring, Target, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the transaction. Acquiring

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will assume those reasonable expenses of Target directly related to the transaction that are liabilities of Target on the books of Target as of the closing and no cash or other property will be transferred to Target or any shareholder of Target as payment for or reimbursement of expenses incurred in connection with the transaction.

- (m) There is no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or will be settled at a discount.
- (n) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv)
- (o) The fair market value of the assets of Target transferred to Acquiring will equal or exceed the sum of the liabilities assumed by Acquiring, plus the amount of liabilities, if any, to which the transferred assets are subject.
- (p) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (q) The payment of cash in lieu of fractional share interests of Acquiring common stock is solely to avoid the expense and inconvenience to Acquiring of issuing fractional share interests, 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 common stock will not exceed 1 percent 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.

Based solely on the information submitted and on the representations set forth above, and on Notice 2000-1, 2000-2 I.R.B 2 (Dec. 21, 1999), it is held as follows:

- (1) For federal income tax purposes, the transaction described above will be treated as the transfer by Target of substantially all of its assets to Acquiring solely in exchange for Acquiring voting common stock and the assumption of the liabilities of Target, followed by the distribution by Target of the Acquiring voting common stock to its shareholders in complete liquidation.
- (2) The acquisition by Acquiring of substantially all of the assets of Target in exchange for Acquiring voting common stock and the assumption by Acquiring of the liabilities of Target followed by Target's distribution of the

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Acquiring voting common stock in liquidation will constitute a "reorganization" within the meaning of § 368(a)(1)(C). For purposes of this ruling, "substantially all" means at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets of Target. Target and Acquiring will each be a "party to a reorganization" within the meaning of § 368(b).

- (3) No gain or loss will be recognized by Target on the transfer of substantially all of its assets to Acquiring solely in exchange for shares of Acquiring voting common stock and the assumption by Acquiring of the liabilities of Target or on the deemed distribution of the Acquiring voting common stock to Target's shareholders (§§ 357(a), 361(a), and 361(c)).
- (4) No gain or loss will be recognized by Acquiring on the receipt of Target's assets solely in exchange for shares of Acquiring voting common stock (§ 1032(a)).
- (5) The basis of the assets of Target in the hands of Acquiring will be the same as the basis of those assets in the hands of Target immediately prior to the transaction (§ 362(b)).
- (6) The holding period for the assets of Target in the hands of Acquiring will include the period during which those assets were held by Target (§ 1223(2)).
- (7) No gain or loss will be recognized by the shareholders of Target on the exchange of their stock in Target for shares of Acquiring voting common stock (§ 354(a)(1)).
- (8) The basis of the Acquiring voting common stock (including any fractional shares interests of stock deemed received) to be received by shareholders of Target will be the same as the basis of the Target stock surrendered in exchange therefor (§ 358(a)(1)).
- (9) The holding period of the Acquiring voting common stock (including any fractional share interests of stock deemed received) to be received by shareholders of Target will include the holding period of the Target stock surrendered in exchange therefor, provided the Target stock was held as a capital asset on the date of the exchange (§ 1223(1)).
- (10) The taxable year of Target will end on the effective date of the transaction (§ 1.381(b)-1(a) of the Income Tax Regulations), and as provided in § 381(a) and § 1.381(a)-(1), Acquiring will succeed to and take into account those attributes of Target described in § 381(c), subject to the provisions

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and limitations specified in §§ 381, 382, 383, and 384, if applicable, and the regulations thereunder.

- (11) Pursuant to § 381(c)(2) and § 1.381(c)(2)-1, 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 transfer. Any deficit in earnings and profits of either Target or Acquiring will be used only to offset the earnings and profits accumulated after the date of the transfer.

No opinion is expressed 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 letter is directed only to the taxpayers who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

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

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: Charles Whedbee

Charles Whedbee
Senior Technical Reviewer, Branch 5