Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:CORP:B05 - PLR-115087-00
Date:
October 11, 2000

Re:

Acquiring =

Acquiring Sub =

Target =

State A =

Business X =

Business Y =

Date 1 =

This letter is in reply to your letter dated July 26, 2000, requesting rulings about the federal income tax consequences of a proposed transaction. The information submitted is summarized below.

Acquiring is a State A corporation engaged in Business X. Acquiring is publicly traded and is the common parent of a consolidated group of corporations. Acquiring files its federal income tax returns on a calendar year basis using the accrual method of accounting.

Acquiring Sub was organized by Acquiring solely for the purpose of acquiring

Target. Acquiring Sub conducted no business or operations except those necessary to facilitate the transaction. Before the transactions described below Acquiring owned all of the stock of Acquiring Sub.

Target is a State A corporation engaged in Business Y. Prior to the transaction described below, Target was a publically traded corporation and had only common stock outstanding. Target filed its federal tax returns on a calendar year basis using the accrual method of accounting.

On Date 1, and in accordance with a plan of reorganization, Acquiring Sub merged with and into Target (the “Acquisition Merger”). Target survived the merger and Target shareholders received solely shares of Acquiring stock in exchange for their Target stock. The taxpayers represent that the Acquisition Merger, viewed independently of the proposed Upstream Merger, qualified as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(E) of the Internal Revenue Code.

The managements of Acquiring and Target would have preferred a direct merger of Target into Acquiring but an immediate combination by direct merger was not feasible. Accordingly, Acquiring now proposes to merge Target with and into Acquiring (the “Upstream Merger”). The taxpayers represent that the Upstream Merger will qualify as a statutory merger under applicable state law and, viewed independently of the Acquisition Merger, would qualify under § 332. In addition, the taxpayers represent that Acquiring’s acquisition of Target is not a reverse acquisition within the meaning of § 1.1502-75(d)(3) of the Income Tax Regulations.

The taxpayers further represent that, if the Acquisition Merger had not occurred and Target had merged directly into Acquiring, such merger would have qualified as a reorganization under § 368(a)(1)(A). Pursuant to Sec. 3.01(23) of Rev. Proc. 2000-3, 2000-1 I.R.B. 103, 105, the Internal Revenue Service will not rule as to whether a proposed transaction qualifies under § 368(a)(1)(A). However, the Service has the discretion to rule on significant subissues that must be resolved to determine whether a transaction qualifies under § 368(a)(1)(A).

Accordingly, based on the information submitted and the representations made, and provided that (i) the Acquisition Merger and the Upstream Merger are treated as steps in an integrated plan pursuant to the step transaction doctrine, and (ii) the Acquisition Merger and the Upstream Merger qualify as statutory mergers under applicable state law, we hold as follows:

> For federal income tax purposes, the Acquisition Merger and the Upstream Merger will be treated as if Acquiring directly acquired the Target assets in exchange for Acquiring stock and Acquiring’s assumption of Target liabilities through a “statutory merger” as that term is used in § 368(a)(1)(A). See Rev. Rul. 67-274, 1967-2 C.B. 141 and Rev. Rul. 72-405, 1972-2 C.B. 217.

We express no opinion regarding whether the Acquisition Merger and the Upstream Merger are steps in an integrated plan or whether the Acquisition Merger or the Upstream Merger qualifies as a reorganization under § 368(a)(1)(A).

We express no opinion 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 is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

We have sent copies to the taxpayer's representatives as designated on the power of attorney on file in this office.

Sincerely yours,
Associate Chief Counsel (Corporate)
By Debra Carlisle
Chief, Branch 5