

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:4-PLR-106142-03

Date:

July 23, 2003

LEGEND:

Acquiring =

Target =

Shareholder A =

a =

b =

c =

d =

e =

f =

g =

State X =

Business A =

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Dear

This letter responds to your December 17, 2002 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in such request and subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts 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 the material submitted in support of the request for rulings, it is subject to verification on examination.

Summary of Facts

Target is a State X sub-chapter S corporation and is a holding company whose principal asset is the stock of Acquiring. Target has one class of common stock owned a% by Shareholder A and b% by persons related to Shareholder A. Persons unrelated to Shareholder A own the remaining c% of Target stock.

Acquiring is a closely held corporation engaged in Business A. Target owns d% of Acquiring stock and Shareholder A owns e% of Acquiring stock. Persons related to Shareholder A own f% of Acquiring stock. Persons unrelated to Shareholder A own the remaining g% of Acquiring stock.

Proposed Transaction

For what have been represented to be valid business reasons, Acquiring proposes the following transaction (the "Proposed Transaction"):

(i) Certain Target shareholders will make a cash contribution to Target in exchange for additional target stock. Target will use the cash to pay off existing debt.

(ii) Pursuant to an agreement of merger and State X law, Target will merge with and into Acquiring pursuant to a plan executed under State X law solely in consideration for newly issued Acquiring common stock (the "Merger"). Target's former shareholders will receive the newly issued Acquiring common stock in proportion to the number of shares of Target they previously held. Acquiring will cancel the Acquiring common stock formerly held by Target. No fractional shares of Acquiring stock will be issued. Target shareholders who are entitled to receive a fractional share interest of Acquiring common stock will receive cash for such fractional interest.

(iii) Acquiring will cancel the Acquiring common stock that Target formerly held.

Representations

The taxpayer has made the following representations in connection with the proposed transaction:

(a) The fair market value of the Acquiring stock and other consideration received by each Target shareholder will approximately equal the fair market value of the Target stock surrendered in the exchange.

(b) There is no plan or intention by the Target shareholders who own 1 percent or more of the Target stock, and to the best knowledge of Target management, there is no plan or intention on the part of the remaining Target shareholders to sell, exchange, or otherwise dispose of a number of shares of Acquiring stock received in the transaction that would reduce the Target shareholders' ownership of Acquiring stock to a number of shares having a value, as of the date of the transaction, of less than 50 percent of the value of all of the formerly outstanding Target stock as of the same date. For purposes of this representation, shares of Target stock exchanged for cash or other property, surrendered by dissenters, or exchanged for cash in lieu of fractional shares of Acquiring stock will be treated as outstanding Target stock on the date of the transaction. Moreover, shares of Target stock and shares of Acquiring stock held by Target shareholders and otherwise sold, redeemed, or disposed of before or after the transaction will be considered in making this representation.

(c) Acquiring has no plan or intention to reacquire any of its stock issued in the transaction.

(d) Acquiring has no plan or intention to sell or otherwise dispose of any of the Target assets acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C).

(e) The Target liabilities assumed by Acquiring and the liabilities to which the transferred Target assets are subject were incurred by Target in the ordinary course of its business.

(f) Following the transaction, Acquiring will continue the historic business of Target or use a significant portion of Target's historic business assets in a business.

(g) Acquiring, Target, and Target shareholders will pay their respective expenses, if any, incurred in connection with the transaction.

(h) There is no intercorporate indebtedness existing between Target and Acquiring that was issued, acquired, or will be settled at a discount.

(i) No two parties to the transaction are investment companies as defined in

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§368(a)(2)(F)(iii) and (iv).

(j) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of §368(a)(3)(A).

(k) 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.

(l) The basis 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.

(m) The payment of cash in lieu of fractional 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 to be paid to the Target shareholders instead of issuing fractional shares of Acquiring stock will not exceed one percent of the total consideration that will be issued in the transaction to the 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.

(n) None of the compensation received by any Target shareholder-employees 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-employees will be separate consideration for, or allocable to any employment agreement; and the compensation paid to any shareholder-employees will be for services actually rendered and will be commensurate with amounts paid to third parties bargaining at arm's-length for similar services.

(o) Acquiring will pay or assume only those expenses of Target that are solely and directly related to the transaction in accordance with the guidelines established in Rev. Rul. 73-54, 1973-1 C.B. 187.

Rulings

Based solely on the information and representations submitted with the ruling request, we rule as follows:

(1) Provided the Merger qualifies as a statutory merger under State X law, the acquisition by Acquiring of Target solely in exchange for Acquiring common stock will qualify as a reorganization within the meaning of § 368(a)(1)(A) of the Internal Revenue Code. Acquiring and Target will each be "a party to a reorganization" within the

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meaning of § 368(b).

(2) No gain or loss will be recognized by Target upon the transfer of its assets to Acquiring in exchange for Acquiring common stock (§ 361).

(3) No gain or loss will be recognized by Target on the distribution of the Acquiring stock received to its shareholders (§ 361(c)(1)).

(4) No gain or loss will be recognized to those Target shareholders who receive solely Acquiring common stock, including any fractional shares, in exchange for their Target common stock (§ 354(a)(1)).

(5) The basis of the Acquiring common stock received by Target shareholders will, in each instance, be the same as the basis of the Target common stock surrendered in exchange therefor (§ 358(a)(1)).

(6) The holding period of the Acquiring common stock received by Target shareholders will, in each instance, include the period during which the Target stock surrendered in exchange therefor were held, provided the Target shares were held as a capital asset on the date of the exchange (§ 1223(1)).

(7) No gain or loss will be recognized by Acquiring on receipt of Target assets in exchange for Acquiring common stock (§ 1032(a)).

(8) Where cash is received by a Target shareholder in lieu of a fractional share interest in Acquiring stock, the cash payment will be treated as received by such shareholder as a distribution in redemption of the fractional share interest, subject to the provisions and limitations of § 302(a). Rev. Proc. 77-41, 1977-2 C.B. 574.

Caveats

We express no opinion on the Federal income tax treatment of the proposed transaction under any other provision of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered in the above rulings.

Procedural Statements

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.

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

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In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer representative.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)

cc: