

$$i =$$

Year A =

Date 1 =

Date 2 =

Exchange =

Dear :

This letter responds to your April 11, 2007, letter and supplemental information dated May 23, 2007, requesting rulings as to the federal income tax consequences of the Proposed Transactions (defined below). The information submitted in that request and in later 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. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **Summary of Facts**

Target is a privately-held company with approximately a shareholders. Until approximately b years ago, Target was engaged in Business A. At that time, Target sold its operating assets and invested the cash proceeds in marketable securities. In the years thereafter, Target sold those marketable securities and used the proceeds to purchase shares of common stock of Acquiring and its predecessors from Acquiring stockholders and Acquiring management when Acquiring was a privately-held corporation. For federal tax purposes, Target has treated itself as a “personal holding company” as defined in § 542. As such and to avoid having to pay the personal holding company tax under § 541 on undistributed personal holding company income, Target represents that it has regularly distributed as dividends to its shareholders at least 90 percent of its personal holding company income, or has paid the personal holding company tax.

Acquiring conducted an initial public offering in Year A, and is now a widely-held corporation listed on Exchange. Acquiring has only one class of stock (voting common). Target’s assets currently consist solely of approximately c in cash and d shares of Acquiring stock, equaling approximately e (less than five) percent of the common stock of Acquiring, a publicly held corporation. The Acquiring stock is Target’s primary asset.

### **Proposed Transactions**

For what are represented to be valid business reasons, on Date 1, Target and Acquiring entered into an agreement and plan of reorganization (the "Reorganization Agreement") that provides for the following transactions (the "Proposed Transactions"):

(i) After Date 2 but prior to closing, Target will distribute to its shareholders pro rata, all of its cash less approximately f which will be retained to discharge all of Target's existing liabilities including payments to dissenters, if any.

(ii) Target will transfer all of its remaining assets consisting of d Acquiring shares (the "Old Acquiring Shares") to Acquiring in exchange for g newly issued Acquiring common shares (the "New Acquiring Shares") issued in the names of the Target shareholders, equal to h percent of the number of Old Acquiring Shares (the "Exchange"). Target will not transfer and Acquiring will not assume any Target liabilities in the Exchange.

(iii) Within thirty days of step (ii) above, Target will distribute to its shareholders the New Acquiring Shares and any cash reserve remaining after the payment of expenses.

(iv) Within 180 days of step (ii) above, Target will take all necessary steps to dissolve. Steps (i) through (iv) are collectively referred to as the "Downstream Reorganization."

## **Representations**

The following representations have been made regarding the proposed Downstream Reorganization:

(a) The fair market value of the New Acquiring Shares received by each Target shareholder will approximately equal the fair market value of the Target shares surrendered in the Exchange.

(b) At least 50 percent of the proprietary interest in Target will be exchanged for Acquiring stock and will be preserved (within the meaning of § 1.368-1(e)(1)(i)).

(c) Acquiring has no plan or intention to reacquire, directly or through a related person (within the meaning of § 1.368-1(e)(3)), any of its stock issued in the Downstream Reorganization.

(d) Neither Acquiring nor any person "related" (within the meaning of § 1.368-1(e)(4)) ("Related Person"): (i) has acquired or will have acquired any Target stock with consideration other than Acquiring stock (other than as required by the Reorganization Agreement); (ii) has furnished cash or other property directly or indirectly in connection with redemptions of Target stock or distributions by Target to Target shareholders in connection with redemptions of Target stock or distributions by Target to Target

shareholders in connection with or in contemplation of the Downstream Reorganization, or (iii) has any plan or intention to purchase, redeem or otherwise reacquire any of the Acquiring stock issued in connection with the Downstream Reorganization.

(e) Acquiring 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 before the transaction. For this representation, amounts paid by Target to dissenters (if any), amounts used by Target to pay its reorganization expenses, amounts paid by Target to shareholders who receive cash or other property, amounts paid by Target to Acquiring for Acquiring's expenses incurred in the transaction, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately before the transfer will be included as assets of Target held immediately before the transaction.

(f) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction.

(g) Target will distribute the stock, securities, and other property it receives in the transaction, and its other properties, in pursuance of the plan of reorganization.

(h) There are no liabilities of Target that will be assumed (within the meaning of § 357(d)) by Acquiring, nor are there any liabilities to which the transferred assets of Target will be subject.

(i) 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.

(j) Target will reimburse Acquiring for all reasonable expenses (up to i) incurred by Acquiring in connection with the transaction. Target and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the transaction.

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

(l) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(m) Acquiring does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Target.

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

(o) The non-issuance of fractional shares of Acquiring stock to the Target shareholders in the Exchange is solely for the purpose of avoiding the expense and inconvenience to Acquiring of issuing fractional shares, and any cash paid by Acquiring to Target pursuant to the Reorganization Agreement is not separately bargained for consideration.

## **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Proposed Transactions:

(1) The Downstream Reorganization will qualify as a reorganization under § 368(a)(1)(C). Acquiring and Target will each be a "party to a reorganization" under § 368(b).

(2) Target will recognize no gain or loss on the transfer of the Old Acquiring shares to Acquiring solely for New Acquiring Shares in the Exchange (§ 361(a)).

(3) Target will recognize no gain or loss on its distribution of the New Acquiring Shares to its shareholders (§ 361(c)(1)).

(4) Acquiring will recognize no gain or loss on its receipt of the Old Acquiring shares solely for New Acquiring Shares in the Exchange (§ 1032(a)).

(5) Gain, if any, will be recognized by a Target shareholder on the exchange of its Target shares for New Acquiring Shares and receipt of cash or other property in the Downstream Reorganization, the amount of which gain (if any) shall not exceed the amount of cash and other property received in the exchange (§ 356(a)(1)). If the exchange has the effect of the distribution of a dividend (determined with the application of § 318(a)), then the amount of the gain recognized that is not in excess of the Target shareholder's ratable share of undistributed earnings and profits of Target will be treated as a dividend (§ 356(a)(2)). The determination of whether the exchange has the effect of a distribution of a dividend will be made in accordance with the principles set forth in *Commissioner v. Clark*, 489 U.S. 726 (1989). The remainder, if any, of the gain recognized will be treated as gain from the exchange of property. No loss will be recognized on the exchange (§ 356(c)).

(6) A Target shareholder's basis in the New Acquiring Shares will equal the basis of the Target shares surrendered in exchange therefor, decreased by the amount of any money and the fair market value of any other property received by the Target shareholder, and increased by the amount, if any, which was treated as a dividend and the amount, if any, of gain (not including any portion of such gain which was treated as a dividend) to the Target shareholder which was recognized on the exchange (§ 358(a)(1)).

(7) A Target shareholder's holding period in the New Acquiring Shares received in the transaction will include the period during which the stock of Target surrendered in exchange therefor was held, provided that the Target stock is held as a capital asset by the Target shareholder on the date of the exchange (§ 1223(1)).

(8) Under § 381(a) and § 1.381(a)-1, the taxable year of Target will end on the effective date of the Downstream Reorganization, and Acquiring will succeed to and take into account the items of Target described in § 381(c), subject to the provisions and limitations of §§ 381, 382, 383, and 384, and the regulations thereunder.

### **Caveats**

We express no opinion on the tax effect of the Proposed Transactions under any other provision of the Code or Regulations, or the tax effect of any condition existing at the time of, or effect resulting from, the Proposed Transactions that is not specifically covered by the rulings set forth above. In particular, we express no opinion regarding whether Target is properly treated as a personal holding company for federal tax purposes, or whether Acquiring succeeds to any items of Target described in Ruling 8 above that are specific to personal holding companies. Additionally, we express no opinion under § 263 or § 1.263(a)-5 regarding the treatment of expenses reimbursed by Target to Acquiring (up to j) incurred by Acquiring in connection with the transaction.

### **Procedural Statements**

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

A copy of this letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the Proposed Transactions covered by this ruling letter are completed.

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

Sincerely,

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Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel (Corporate)