

**Internal Revenue Service**

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February 19, 2010

LEGEND:

OldCo =

Acquiring =

H =

W =

C =

StateA =

CountryB =

Year1 =

BusinessA =

Dear :

This letter responds to your representative's letter of October 20, 2009, requesting rulings as to the Federal income tax consequences of a proposed

transaction. The material information submitted in that letter and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of the taxpayer and that were accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. However, verification of the information, representations, and other data may be required as part of the audit process.

### SUMMARY OF FACTS

OldCo, a State A corporation that uses the accrual method of accounting and a calendar year, is a holding company whose main asset is stock in Acquiring. OldCo has outstanding a single class of stock ("OldCo Stock"). Over % of the OldCo Stock is held by three shareholders: H, W, and C. All of OldCo's previously outstanding warrants have now expired.

Acquiring, a StateA corporation that uses the accrual method of accounting and a calendar year, is engaged in BusinessA. Acquiring has outstanding voting common stock ("Acquiring Stock") all of which is held by OldCo. In addition, Acquiring has outstanding convertible preferred stock and convertible debt, both convertible into Acquiring Stock. This convertible preferred stock and debt are not held by OldCo. The Acquiring Stock held by OldCo is over % but under % of the value of all the outstanding stock in Acquiring.

### PRIOR TRANSACTION

In Year1, OldCo distributed stock in a subsidiary to certain OldCo shareholders in exchange for OldCo Stock. The subsidiary was directly or indirectly engaged in business in CountryB.

### PROPOSED TRANSACTIONS

Step (I) OldCo Stock Issuance. OldCo will issue additional shares of OldCo Stock to various persons including W in exchange for cash.

Step (II) Liability Payments. OldCo will use some or all of the cash it receives to pay liabilities.

Step (III) The Merger. OldCo will merge with and into Acquiring in accord with applicable StateA law with Acquiring surviving and with Acquiring receiving all the assets and liabilities of OldCo. The separate corporate existence of OldCo will cease. The shareholders of OldCo, including those persons who

became shareholders in Step (I)), (“the “OldCo Shareholders”) will receive solely Acquiring Stock, plus cash in lieu of fractional shares (“Fractional Shares”) in exchange for their OldCo Stock.

### FUTURE TRANSACTION

Within the next year, Acquiring expects to substantially increase its capital through the issuance of shares of preferred stock to unrelated investors in an unrelated future transaction (“Future Transaction”).

### REPRESENTATIONS

(a) The Prior Transaction was consummated prior to any plan being established, any commitments being made, or any agreements being entered into with regard to the Proposed Transactions.

(b) At the time the Proposed Transactions are consummated, there will be no plan established, no commitments made, and no agreements entered into with regard to any other transaction, including the Future Transaction.

(c) The Step (I) OldCo Stock Issuance will be at fair market value. For each shareholder, the amount of cash transferred to OldCo will approximately equal the value of the OldCo Stock received in exchange therefor.

(d) The Step (II) Liability Payments will be payments by OldCo of OldCo liabilities. None of any liabilities being paid by OldCo are primarily liabilities of any person other than OldCo.

(e) At the time that the Step (III) Merger is undertaken, OldCo’s only outstanding stock will be OldCo Stock. At such time, OldCo will have outstanding no debt or convertible securities, warrants or options, or any other type of right, where such interest in OldCo in actuality constitutes an equity interest in OldCo.

(f) Under applicable state law, none of the holders of OldCo Stock will have dissenter’s rights.

(g) Acquiring will acquire all the outstanding stock in OldCo solely in exchange for Acquiring Stock (and cash for fractional share interests).

(h) The fair market value of the Acquiring Stock (and cash for fractional share interests) received by each OldCo Shareholder will be approximately equal to the fair market value of the OldCo Stock surrendered by such OldCo Shareholder in exchange therefor.

- (i) At least forty percent ( 40 %) of the proprietary interest in OldCo will be exchanged in the reorganization for a proprietary interest in Acquiring that will be preserved (within the meaning of § 1.368-1(e) of the Income Tax Regulations).
- (j) At the time the Step (III) Merger is undertaken, OldCo will have no assets other than stock in Acquiring and, possibly, some cash.
- (k) There is no plan or intention by Acquiring (or through any person related to Acquiring within the meaning of § 1.368-1(e)(3)), to either directly or indirectly purchase any of the Acquiring Stock issued in the Step (III) Merger (other than the cash for fractional share interests).
- (l) Acquiring, OldCo, and each of the OldCo Shareholders will each pay his, her, or its own expenses incurred in connection with each of the Proposed Transactions.
- (m) Acquiring will neither pay nor assume (either directly or indirectly) any liabilities of the OldCo Shareholders.
- (n) Neither OldCo nor Acquiring is, or will be, an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (o) None of the Acquiring Stock is being received by an OldCo Shareholder as a creditor, employee, or in any capacity other than as a holder of OldCo Stock.
- (p) The receipt of cash by an OldCo Shareholder in lieu of receiving a Fractional Share will be the result of the exchange ratio which was negotiated without seeking to maximize the issuance of Fractional Shares. Neither the use of Fractional Shares, or the amount of Fractional Shares, or the payment of cash for fractional share interests was separately bargained for. The payment of cash for fractional share interests is solely for the purpose of avoiding the expense and inconvenience of issuing Fractional Shares and having Fractional Shares outstanding. The total amount of cash that Acquiring will pay for fractional share interests in the entire transaction is less than one percent (1%) of the total fair market value of all the shares of Acquiring Stock being issued in the Step (III) Merger.
- (q) OldCo is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A) of the Internal Revenue Code.
- (r) The Proposed Transactions are being undertaken for business purposes of Acquiring and OldCo including simplifying capital structure and reducing filing requirements.

(s) Immediately prior to the Step (III) Merger, the fair market value of the assets of OldCo will exceed the sum of its liabilities (if any) plus the liabilities (if any) to which its assets are subject.

(t) There is no indebtedness existing between OldCo and Acquiring.

(u) Acquiring does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock in OldCo.

(v) During the 5-year period prior to Step (III): (i) neither Acquiring nor any person related to Acquiring (within the meaning of § 1.368-1(e)(3)) will have acquired stock in OldCo with consideration other than Acquiring Stock; (ii) neither OldCo nor any person related to OldCo (as defined in § 1.368-1(e)(3) without regard to § 1.368-1(e)(4)(i)(A)) will have acquired OldCo Stock (with consideration other than stock in OldCo or stock in Acquiring); and (iii) OldCo will have made no distributions, either directly or indirectly, to its shareholders other than ordinary, normal, regular dividend distributions pursuant to OldCo's historic dividend practice.

(w) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of OldCo acquired in the Step (III) Merger.

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

(y) Following the Proposed Transactions, Acquiring will continue its historic business or use a significant portion of its historic business assets in a business.

(z) OldCo will distribute the stock, securities, and other property it receives in the Step (III) Merger, and its other properties, in pursuance of the plan of reorganization.

## RULINGS

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

(1) The Step (III) Merger pursuant to applicable state law, as described above, of OldCo into Acquiring with Acquiring surviving is a reorganization within the meaning of § 368(a)(1)(A). OldCo and Acquiring will each be a "party to a reorganization" within the meaning of meaning of § 368(b).

(2) No gain or loss will be recognized by OldCo upon the transfer of all its assets to Acquiring solely in exchange for Acquiring Stock (including Fractional Shares) and the assumption of OldCo liabilities (if any) by Acquiring (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Acquiring upon its receipt of OldCo's assets in exchange for Acquiring Stock (including Fractional Shares) (§ 1032(a)).

(4) No gain or loss will be recognized to OldCo on the distribution of Acquiring Stock (including Fractional Shares) to the OldCo Shareholders in the reorganization (§ 361(c)(1)).

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

(6) No gain or loss will be recognized by an OldCo Shareholder on the exchange of its OldCo Stock for Acquiring Stock (including any Fractional Share) in the Step (III) Merger. The payment of cash to an OldCo shareholder in lieu of receiving a Fractional Share of Acquiring stock will be treated for federal income tax purposes as if the Fractional Share was distributed as part of the Merger and subsequently redeemed by Acquiring. These cash payments will be treated as distributions in full payment in exchange for the stock redeemed as provided in § 302(a). See Rev. Rul. 66-365, 1966-2 C.B. 116.

(7) For each OldCo Shareholder, such shareholder's basis in the Acquiring Stock received (including any Fractional Share) will be equal to the basis of the OldCo Stock surrendered by such shareholder in exchange therefor (§ 358(a)(1)).

(8) For each OldCo Shareholder, the shareholder's holding period for the Acquiring Stock (including any Fractional Share) received will include the period during which such shareholder held the OldCo Stock exchanged therefor, provided such OldCo Stock is held as a capital asset in the hands of such shareholder on the date of the exchange (§ 1223(1)).

#### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. In particular, opinion is expressly reserved with regard to: the Prior Transaction; the Future Transaction; and Steps (I) and (II) of the Proposed Transactions.

Furthermore, no opinion is expressed about the tax treatment of the transactions (or of any other matter) under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions not specifically covered by the above rulings.

## PROCEDURAL STATEMENTS

This private letter ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that this private letter ruling may not be used or cited as precedent.

A copy of this letter must be attached to the Federal income tax returns of each taxpayer involved for the taxable year(s) in which the transactions are consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-147090-09) of this ruling letter.

Pursuant to a power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Douglas C. Bates*

Douglas C. Bates  
Assistant to the Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Corporate)

cc: