Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:5-PLR-104015-00
Date:
July 27, 2000

Re:

Parent =

Merger-Sub =

Target =

Sub =

Country X =

State Y =

Business A =

Business B =

Date 1 =

Date 2 =

Date 3 =

This is in reply to a letter dated February 17, 2000, from your representatives in which a ruling is requested as to the federal income tax consequences of a transaction. The information submitted for consideration is summarized below.

Parent is a publicly traded corporation organized under the laws of Country X and is engaged in Business A. Parent owns all the stock of Sub, a U.S. corporation incorporated in State Y. Sub is the parent of a consolidated group of corporations.

Sub, with its subsidiaries, is engaged in the same business as Parent. Prior to the Acquisition Merger described below, Target was a publicly traded U.S. corporation, incorporated in State Y, engaged in Business B.

As part of a merger described below, Parent formed Merger-Sub, a wholly owned U.S. subsidiary of Parent. Merger-Sub conducted no business or operations except those necessary to facilitate Parent's acquisition of Target.

On Date 1, Parent, Merger-Sub and Target entered into an agreement ("Merger Agreement") pursuant to which Merger-Sub would be merged with and into Target (the "Acquisition Merger"), with Target surviving the merger and Target shareholders receiving Parent stock in exchange for Target stock, except that cash was paid to the Target shareholders in lieu of fractional Parent common shares. In addition, the Merger-Sub stock was converted into Target stock so that Target became a wholly owned subsidiary of Parent. In connection with the Acquisition Merger, the Target outstanding stock options were assumed by Parent and converted into Parent common stock options. The Acquisition Merger became effective on Date 2. It has been represented that the Acquisition Merger standing alone would qualify as a reorganization described in §§ 368(a)(1)(A) and (a)(2)(E) of the Internal Revenue Code.

On Date 3, Parent transferred the stock of Target to Sub in exchange for additional shares of Sub stock. It has been represented that, if viewed as an independent step, the transfer of the Target stock by Parent to Sub qualified for nonrecognition treatment under § 351 of the Code.

Sub and Target have determined that it would be more efficient for the businesses of Target and Sub to be combined. Therefore, Target plans on merging with and into Sub in accordance with the laws of State Y ("Upstream Merger"). It has been represented that the Upstream Merger will qualify as a statutory merger under State Y law. It has been represented that the Upstream Merger will qualify as a reorganization described in § 368(a)(1)(A) of the Code. It is also represented that the Upstream Merger will qualify as a transaction described in § 332 of the Code if it were treated independently of the Acquisition Merger. It is also represented that if the Acquisition Merger had not occurred and Target had merged directly into Sub, such merger would have qualified as a reorganization under §§ 368(a)(1)(A) and 368(a)(2)(D) of the Code.

The following additional representations have been made in connection with the Acquisition Merger, the transfer of stock of Target to Sub and the Upstream Merger viewed as a single integrated plan (the "Transaction") to ensure that the requirements of Treas. Reg. § 1.367(a)-3(c) are satisfied:

(a) Less than 50 percent of both the total voting power and the total value of Parent was or will be received in the Transaction, in the aggregate, by the shareholders

of Target**.**

(b) Less than 50 percent of each of the total voting power and the total value of the stock of Parent was or will be owned, in the aggregate, at any time during the Transaction or immediately after the Transaction by U.S. persons that were either officers or directors of Target or who owned 5 percent or more of the total voting power or the total value of the stock of Target immediately prior to the Transaction.

(c) None of the shareholders of Target owned or will own 5 percent or more of the total voting power or total value of the stock of Parent at any time during or immediately following the Transaction.

(d) Parent satisfies the active trade or business requirement contained in Treas. Reg. § 1.367(a)-3(c)(3) with respect to the Transaction.

(e) Neither the Target shareholders nor Parent had or have any intention to substantially dispose of or discontinue Target's trade or business as part of the Transaction.

(f) The fair market value of Parent was and will be substantially in excess of the fair market value of Target at all times during the transaction as determined for purposes of Treas. Reg. § 1.367(a)-3(c)(iii)(A).

(g) The shares of Parent stock reserved for issuance in connection with the assumption of the Target options together with the Parent stock issued as part of the Transaction represented less than 1 percent of the Parent outstanding stock.

(h) Parent is not, and has not been within the last 5 years, a controlled foreign corporation within the meaning of § 957 or a passive foreign investment company within the meaning of § 1297.

(i) Parent is a corporation within the meaning of Treas. Reg. § 1.7701-3.

Pursuant to § 3.01 of Rev. Proc. 2000-3, 2000-1 C.B. 103, 105, the Internal Revenue Service will not rule as to whether a proposed transaction qualifies under § 368(a)(1)(A) by reason of § 368(a)(2)(D). However, the Service has discretion to rule on significant sub-issues 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, the transfer of the stock of Target to Sub and the Upstream merger are treated as steps in an integrated plan pursuant to the

step transaction doctrine, and (II) the Acquisition Merger and Upstream Merger qualify as statutory mergers under applicable state law, we rule as follows:

The combined transaction consisting of the Acquisition Merger, the transfer of the Target stock to Sub and the Upstream Merger will be treated as if Sub directly acquired the assets of Target in a statutory merger for purposes of section 368(a)(1)(A) and 368(a)(2)(D) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information 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.

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

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