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Internal Revenue Service

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Department of the Treasury

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Contact Person:

Telephone Number:

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Date: JUL 17 1998

Target =

Acquiring =

Affiliate =

Target Sub1 =

Target Sub2 =

Target Sub3 =

Target Sub4 =

Acquiring Sub =

Limited Partnership =

Newco =

LLC =

Date A =

Date B =

Date C =

Date D =

Date E =

State F =

State G =

Family =

v =

w =

x =

y =

z =

Dear

This letter responds to your March 23, 1998 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in later correspondence is summarized below.

Target is a publicly traded domestic corporation formed on Date A. Target wholly owns Target Sub1, Target Sub2, and Target Sub3, and Target Sub1 wholly owns Target Sub4. Target Sub2 and Target Sub3 together wholly own Limited Partnership. Target maintains a stock option plan under which it grants options to acquire its stock (the "Target Options") to certain key employees, officers, directors, consultants, and advisors. On Date E, Target acquired v shares of its stock from an unrelated party in connection with an asset sale by Target (the "Asset Sale").

Acquiring is a domestic corporation owned by members of Family, primarily through trusts. Acquiring was formed on Date B and has owned approximately w percent of Target's stock since Date A. Acquiring's remaining assets include Acquiring Sub stock, cash, notes, and receivables (the "Remaining Assets").

Affiliate is a domestic corporation that has filed an election to be treated as a subchapter S corporation. Affiliate and Acquiring have some common shareholders. Affiliate has owned

approximately x percent of Target's stock since Date A. Prior to Target's formation on Date A, Affiliate and Acquiring had, for several years, directly operated the business they contributed to Target on Date A.

To achieve what are represented to be valid business objectives, the following transaction has been proposed:

(i) Acquiring will change its state of incorporation from State F to State G by engaging in a transaction intended to qualify as a reorganization under § 368(a)(1)(F) of the Internal Revenue Code.

(ii) Acquiring will declare a stock split such that immediately prior to the Merger described in step (iv) below, the shareholders of Acquiring, in the aggregate, will own a number of shares of Acquiring stock that will constitute w percent of the total ownership of Acquiring after the Merger.

(iii) To eliminate any issue regarding the valuation of the Remaining Assets in the acquisition of Target stock from the public in the Merger and to insulate Target from potential liabilities that may arise from the ownership of the Remaining Assets, Acquiring will transfer the Remaining Assets and certain liabilities to newly formed limited liability company LLC. Acquiring will distribute its interest in LLC to its shareholders pro rata in exchange for a portion of their Acquiring stock of equal value.

(iv) Acquiring will form domestic Newco, and Newco will merge into Target under applicable state law (the "Merger"). Pursuant to the Merger, (a) the Newco stock held by Acquiring will be converted into all of the outstanding stock of Target, and (b) the Target stock held by Target shareholders (other than Acquiring) will be converted into the right to receive solely Acquiring voting stock. Any Target shareholder who dissents from the Merger will have appraisal rights, and any amounts paid in satisfaction of those rights will be paid solely from the assets of Target. Shares of Target stock acquired from dissenters will not exceed two percent of Target's stock outstanding immediately prior to the Merger. Following the Merger, Acquiring will own all of the stock of Target. Any Target Options outstanding on the date of the Merger will be converted into options to acquire Acquiring stock on terms and conditions similar to those of Target's stock option plan.

As a condition precedent to Target's obligation to consummate the Merger, LLC will indemnify Acquiring for claims or liabilities that arise or result from the Remaining Assets with

respect to periods ending on or before the Merger (the "Indemnification").

The following representations have been submitted in support of the requested rulings:

(a) The fair market value of the Acquiring stock received by each Target shareholder will be approximately equal to the fair market value of the Target stock surrendered in the Merger.

(b) There is no plan or intention for Acquiring, Acquiring Sub, Affiliate, LLC, or any person related (as defined in § 1.368-1(e)(3) of the Income Tax Regulations) to Acquiring (including Target), Acquiring Sub, Affiliate, or LLC, to acquire or redeem any of the Acquiring stock issued in the Merger (not including Acquiring fractional shares exchanged for cash in the Merger), either directly or through any transaction, agreement, or arrangement with any other person.

(c) Prior to or in the Merger, neither Target nor any person related (as defined in § 1.368-1(e)(3), determined without regard to § 1.368-1(e)(3)(i)(A)) to Target will have, either directly or through any transaction, agreement, or arrangement with any other person, (i) acquired shares of Target stock with consideration other than shares of Acquiring stock or Target stock (except for shares of Target stock acquired by Target in the Asset Sale or shares of Target stock acquired by Target from dissenters in the Merger), or (ii) redeemed or made a distribution with respect to Target stock.

(d) Prior to or in the Merger, neither Acquiring, Acquiring Sub, Affiliate, LLC, nor any person (other than Target) related (as defined in § 1.368-1(e)(3)) to Acquiring, Acquiring Sub, Affiliate, or LLC, will have, either directly or through any transaction, agreement, or arrangement with any other person, acquired shares of Target stock (other than shares of Target stock acquired in connection with the formation of Target on Date A, and shares of Target stock received pursuant to stock splits of Target stock on Date C and Date D) with consideration other than shares of Acquiring stock.

(e) Following the Merger, Target will continue its historic business or use a significant portion of its historic business assets in a business.

(f) Acquiring has no plan or intention to liquidate Target; to merge Target into another corporation; to cause Target to sell or otherwise dispose of any of its assets, except for dispositions made in the ordinary course of business; or to sell or otherwise dispose of any of the Target stock it presently owns or the Target stock it will acquire in the Merger, except for

transfers or successive transfers to one or more corporations controlled in each transfer by the transferor corporation. For purposes of this representation, control is defined under § 368(c).

(g) Target has no plan or intention to issue additional shares of its stock that would result in Acquiring losing control of Target within the meaning of § 368(c).

(h) Acquiring will pay or assume only those expenses of Target and Target's shareholders that are solely and directly related to the Merger in accordance with the guidelines of Rev. Rul. 73-54, 1973-1 C.B. 187. Otherwise, Acquiring, Target and the Target shareholders each will pay their own expenses, if any, incurred in connection with the proposed transaction.

(i) Acquiring will acquire Target stock solely in exchange for Acquiring voting stock. For purposes of this representation, Target stock redeemed for cash or other property furnished by Acquiring will be considered as acquired by Acquiring. Further, no liabilities of Target or the Target shareholders will be assumed by Acquiring, nor will any of the Target stock be subject to any liabilities.

(j) At the time of the Merger, Target will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire Target stock that, if exercised or converted, would affect Acquiring's acquisition or retention of control of Target, as defined in § 368(c).

(k) Acquiring does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any Target stock, other than (i) the Target stock that Acquiring has held since the formation of Target on Date A, (ii) approximately y shares of Target stock received pursuant to a stock split of Target stock on Date C, and (iii) approximately z shares of Target stock received pursuant to a stock split of Target stock on Date D.

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

(m) Target will pay any dissenting shareholders the value of their stock out of its own funds. No funds will be supplied for that purpose, directly or indirectly, by Acquiring, nor will Acquiring directly or indirectly reimburse Target for any payments to dissenters.

(n) On the date of the Merger, the fair market value of the assets of Target will exceed the sum of its liabilities plus the liabilities, if any, to which its assets are subject.

(o) Any payment of cash in lieu of fractional shares of 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 that will be paid in the Merger 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 Merger to the Target shareholders in exchange for their 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.

Based solely on the information submitted and the representations made, we rule as follows regarding the Merger described in step (iv) above:

(1) The formation of Newco by Acquiring and Newco's merger into Target will be ignored for federal income tax purposes and instead treated as an acquisition by Acquiring of all the outstanding stock of Target not already owned by it in exchange solely for shares of Acquiring voting stock (Rev. Rul. 67-448, 1967-2 C.B. 144; Rev. Rul. 74-564, 1974-2 C.B. 124; Rev. Rul. 74-565, 1974-2 C.B. 125). The Merger will be a reorganization under § 368(a)(1)(B), and Acquiring and Target each will be "a party to a reorganization" under § 368(b).

(2) No gain or loss will be recognized by Acquiring on the receipt of Target stock solely for Acquiring voting stock (§ 1032).

(3) The basis of the Target stock acquired by Acquiring in the Merger will be the same as the basis of that stock in the hands of the Target shareholders immediately before the Merger (§ 362(b)).

(4) The holding period of the Target stock acquired by Acquiring in the Merger will include the period during which the Target shareholders held that stock (§ 1223(2)).

(5) No gain or loss will be recognized by the Target shareholders on their exchange of Target stock solely for Acquiring voting stock (§ 354(a)(1)).

(6) The basis of the Acquiring voting stock received by each Target shareholder in the Merger will be the same as the basis of the Target stock surrendered in exchange therefor (§ 358(a)(1)).

(7) The holding period of the Acquiring voting stock received by each Target shareholder in the Merger will include the period during which that shareholder held the Target stock

surrendered in exchange therefor, provided the Target stock is held as a capital asset on the date of the Merger (§ 1223(1)).

(8) Any payment of cash in lieu of fractional share interests of Acquiring voting stock will be treated as if fractional shares of Acquiring stock had been issued in the Merger and then redeemed by Acquiring. The cash payments will be treated as having been received in exchange for the stock constructively redeemed as provided in § 302(a) (Rev. Proc. 77-41, 1977-2 C.B. 574).

We express no opinion regarding the tax treatment of the proposed transaction under other provisions of the Code and 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 by the above rulings. Specifically, we express no opinion as to the validity of Affiliate's S corporation election or as to the federal income tax consequences of (a) the transactions described in steps (i), (ii), and (iii) above, (b) any payments to dissenting Target shareholders in step (iv), (c) the conversion of any Target Options into Acquiring options, or (d) any claims or payments made under the Indemnification.

The rulings in this letter are based on the facts and representations submitted under penalties of perjury in support of the request. Verification of that information may be required as part of the audit process.

This letter has no effect on any earlier documents and is directed only to the taxpayers who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Each taxpayer involved in this transaction should attach a copy of this letter to the federal income tax return of the taxpayer for the taxable year in which the transaction is completed.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Acquiring and Acquiring's second-named representative.

Sincerely,
Assistant Chief Counsel (Corporate)

By: Robert T. Hawkes
Robert T. Hawkes
Assistant to the Chief
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