OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE
Case ID: PLR-116967-98

TO: District Director

Chief, Examination

FROM: Lewis K Brickates
Assistant to the Branch Chief, Branch 2

SUBJECT: Notification of Withdrawal of Ruling Request in PLR-116967-98

DATE OF CONFERENCE OF RIGHT: February 9, 1999

LEGEND:

Target = [redacted]

Acquiring = [redacted]

District A = [redacted]

District B = [redacted]

Date Z = [redacted]

x = [redacted]

This letter is to notify your office that Target and Acquiring (collectively referred to as the "taxpayer") requested a private letter ruling on August 28, 1998. After considering all of the materials submitted, the applicable authorities and upon meeting with the taxpayer at a conference of right, the National Office informed the taxpayer that our position was adverse to their requested rulings. Upon being notified by the National Office of its adverse

position, the taxpayer withdrew its ruling request. The transaction, which is described below, was consummated on Date Z.

Because the taxpayer's reporting of the transaction may likely reflect the rulings it requested, and that such position is contrary to that of the National Office, we are forwarding these materials to you in accordance with § 8.07(2)(b) of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 34. The information contained in this memorandum is not necessarily intended to dictate any treatment of this issue. Rather, we are forwarding a copy of the withdrawal letter and a discussion of the issues in the event that your office wishes to raise the issues presented in the PLR request in connection with any future examination of the taxpayer's federal tax returns.

In the transaction, Target merged with and into a subsidiary of Acquiring in a transaction represented to qualify under §§ 368(a)(1)(A) and 368(a)(2)(D) of the Internal Revenue Code. As a result of the merger, Target shareholders received x shares of Acquiring for each share of Target they owned.

Generally, Acquiring's ruling request concerned whether the transaction constituted a reverse acquisition under § 1.1502-75(d)(3) of the Income Tax Regulations. Specifically, Acquiring requested rulings as to whether (1) employee restricted stock ("Restricted Stock") and (2) Acquiring shares owned by its subsidiary members ("Affiliate Stock") are taken into account for purposes of determining whether the transaction was a reverse acquisition. Additionally, Acquiring requested a third ruling that if the Restricted Stock and/or the Affiliate Stock is taken into account, the transaction will not constitute a reverse acquisition. Consequently, Target's group would terminate on Date Z, and it would file its final federal tax return with District A. The Acquiring group would remain in existence, and it would continue to file its federal tax returns with District B.

On January 11, 1999, our office contacted Acquiring's representative concerning the pending ruling request and informed him that the National Office was tentatively adverse to issuing the requested rulings. On February 9, 1999, a conference of right was held with the taxpayer. Following that meeting, the taxpayer requested a supplemental conference. The National Office obliged the taxpayer's request, and a conference was held on March 10, 1999. On March 12, 1999, after considering all of the material submitted, our office informed Acquiring's representative that the National Office was adverse to their requested rulings. Subsequently, the taxpayer withdrew its ruling request.

As stated above, Acquiring requested a ruling that the Restricted Stock be taken into account for purposes of the reverse acquisition rules under § 1.1502-75(d)(3). Based on an assistance received from CC:EBEO, it was concluded that as long as the Restricted Stock granted to the employees has not vested, the issuing company is treated as owning the stock. The Restricted Stock is therefore not treated as outstanding stock, but rather as treasury

stock which is authorized but not issued. As a result, the Restricted Stock is not taken into account for purposes of § 1.1502-75(d)(3).

The Affiliate Stock also should not be taken into account for purposes of § 1.1502-75(d)(3). Although the Affiliate Stock is an asset to the subsidiary that owns the stock, counting it for purposes of the reverse acquisition rules in this case results in double counting. The double counting occurs because the value, if any, inherent in the Affiliate Stock is reflected in the fair market value of the publicly traded stock.

Based on the stock ownership information submitted by the taxpayer and the conclusions reached with respect to the Restricted Stock and the Affiliate Stock, the transaction constituted a reverse acquisition under § 1.1502-75(d)(3). Thus the Acquiring group terminated at the end of Date Z, and it would file its final federal tax return with District B. The Target group would not terminate, and it would continue to file its federal tax returns with District A.

If you need further assistance regarding this matter, please contact our office at 202-622-7770.

Sincerely Yours,
Assistant Chief Counsel (Corporate)

By _____
Lewis K Brickates
Assistant to the Branch Chief, Branch 2