

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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April 14, 2000

Tax Exempt 1 =

Parent Corp =

Parent Corp Sub 1 =

Parent Corp Sub 2 =

Tax Exempt 2 =

Target =

Target Sub 1 =

Target Sub 2 =

Tax Exempt Sub 1 =

Liquidating 1 =

Tax Exempt Sub 2 =

Acquiring 2 =

Merger Sub 1 =

Merger Sub 2 =

Liquidating 2 =

Tax Exempt Sub 3 =

Tax Exempt 3 =

New =

Business A =

State X =

Date X =

Date Y =

Year A =

Year B =

State A =

State B =

State C =

X Stock =

Y Stock =

WW =

WWW =

Z =

ZZ =

ZZZ =

Dear :

This is in reply to a letter dated October 6, 1999, in which rulings are requested with regard to a completed transaction involving the above taxpayers. Additional information was submitted in letters dated November 24, 1999 and March 21, 2000. The information submitted is summarized below.

Tax Exempt 1, Tax Exempt 2 and Tax Exempt 3 were tax exempt entities under section 501(c)(3) of the Internal Revenue Code, each of which, in its capacity as the sole corporate member of one or more exempt subsidiary affiliates (or through contract with other sole corporate members of such affiliates) oversaw and coordinated the activities of a business A system with facilities in a number of states. The communities they serve cross several state lines. The Business A provided by the entities is

available to all potential users and is not restricted to residents of any specific geographic locality. Some exempt subsidiary affiliates own the stock of one or more of for profit corporations that engage in activities complimentary to such Business A or provide support services for such Business A but are substantially unrelated to the tax exempt purpose of the tax exempt entity owning it. Some of these for profit subsidiaries had net operating loss carryovers at the time of the mergers described below. In addition, Tax Exempt 1 owned all of the X stock of Parent Corp, the common parent of a for profit loss group of affiliated corporations. Parent Corp also currently has Y stock outstanding which is held by exempt subsidiary affiliates of New. Parent Corp owned Parent Corp Sub 1 and Parent Corp Sub 2. Tax Exempt 2 owned all of the stock of Target, a for profit corporation which in turned owned 72% of the stock of Target Sub 1 and Target Sub 2. The remaining stock is owned 21% by Tax Exempt Sub 2 and 7% by Tax Exempt Sub 3, whose sole member was Tax Exempt Sub 2. Tax Exempt 2 was the sole corporate member of Tax Exempt Sub1 and Tax Exempt Sub 2, both second tier tax exempt entities. Tax Exempt Sub 1 owned all of the stock of Liquidating 1. Tax Exempt Sub 2 owned all of the stock of a number of for profit corporate subsidiaries: Liquidating 2, Acquiring 2, and Merger Sub 1 and 2.

The following consolidation of the businesses of the Tax Exempts 1, 2 and 3 was consummated in order to better coordinate and improve the provision of Business A services by reducing duplication of resources, increasing efficiencies, decreasing costs to consumers, and other means.

On or about Date X, pursuant to State X laws, Tax Exempt 1 was merged into Tax Exempt 3, which then changed its name to New. As a result of the merger, New acquired the X stock of Parent Corp formerly held by Tax Exempt 1 and became the sole corporate member of the exempt entities that were formerly subsidiary affiliates of Tax Exempt 1. Tax Exempt 2 transferred its corporate membership interests in all of its exempt subsidiary affiliates to New, which also became the sole corporate member of Tax Exempt 2, which remained in existence to satisfy certain outstanding bond obligations. On Date Y, Tax Exempt 2 merged into New. New also became the sole corporate member of several of the exempt subsidiary affiliates, a capacity in which Tax Exempt 3 had previously served by contract with other exempt organizations that were the sole corporate members. Following the merger, New, in its capacity as the sole corporate member of the various exempt subsidiary affiliates, oversees and coordinates the Business A activities carried on directly or indirectly by them. While each exempt subsidiary affiliate continues to have its own management and board of directors that exercises day to day control over its business affairs, New has the power to exercise general oversight authority, including the power to appoint and remove directors.

Under the terms of the consolidation agreement, the corporate members ("Members") of New are individuals selected by Z. The Members oversee the governance of the affairs of New by electing and removing members of the Board of WW, a body which functions in the same manner as a board of directors. Honorary ZZ

cannot select Members but may participate in the annual meetings of WWW and participate in the distribution of assets upon dissolution of New in the same manner as the Z.

Tax Exempt 1 was governed State A law, which grants a nonprofit corporation the general power to dispose of all or any part of its property except that it prohibits a nonprofit from making distributions of income or profits to its members unless it is in conformity with the transferring corporations' nonprofit purpose. Upon dissolution, the remaining assets must be distributed to corporate members unless the bylaws provide otherwise. Prior to the merger, Tax Exempt 1's charter provided that upon dissolution, the remaining assets were to be distributed by the Board in accordance with ZZZ to one or more nonprofit organizations.

Tax Exempt 2 was governed by State B law, which grants the nonprofit the general power to dispose of all or any part of its property in furtherance of the purposes stated in its articles of incorporation or bylaws. Upon dissolution, the assets of the nonprofit are to be distributed in accordance with the articles of incorporation or bylaws and a plan of dissolution. Prior to the merger, Tax Exempt 2's charter had no specific provisions regarding distributions upon dissolution but prohibits in general distributions to members unless it furthers the exempt purpose of Tax Exempt 2.

Tax Exempt 3 was governed by State C law, which grants a nonprofit the general power to transfer any or all of its assets without restriction, except that it prohibits distributions to persons or entities that are not nonprofit corporations. Upon dissolution, the nonprofit must first dispose of assets in accordance with the bylaws. Remaining assets may be distributed to any nonprofit. Prior to the merger, Tax Exempt 3's charter provided that in the event of dissolution within 5 years of a contribution by a corporate member, such corporate member would have been entitled to the right of first refusal on the assets contributed by it, provided it is a nonprofit. All remaining assets after paying creditors were to be distributed to nonprofits.

After the merger, New is governed by State C law and by agreement, in the event of dissolution, the net assets of New shall be distributed to all Zs which contribute assets to New either at the time of its formation or anytime thereafter pursuant to a plan which considers the value of each Z's contribution. Any remaining assets are to be distributed to other nonprofit corporations that share a similar mission and philosophy.

The governing instruments of each exempt subsidiary affiliate in the New system require that upon dissolution, its net assets are to be transferred to its sole corporate member or a successor qualified under section 501(c)(3). Subsequent to the transaction, New is designated as the sole corporate member in the articles of incorporation of all such exempt subsidiary affiliates.

In years subsequent to the mergers of the Tax Exempts 1, 2, and 3, the following

additional transactions were consummated:

- (i) In Year A, Parent Corp distributed all of the stock of Parent Corp Sub 1 and Parent Corp Sub 2 to New. Parent Corp Sub 1 and Parent Corp Sub 2 subsequently converted to tax exempt status (see (iv) below).
- (ii) Also in Year A, Merger Sub 1 and Merger Sub 2 merged into Acquiring 2.
- (iii) Also in Year A, Liquidating 2 liquidated into Tax Exempt Sub 2.
- (iv) In year B, Parent Corp Sub 1 and Parent Corp Sub 2 converted to tax exempt status.
- (v) Also in Year B, Liquidating 1 dissolved.
- (vi) Also in Year B, Target, Tax Exempt Sub 2 and 3 transferred their stock of Target Sub 1 and Target Sub 2 to New. Target Sub 1 and Target Sub 2 were subsequently merged into New and Target was sold to an unrelated purchaser.

Based upon the information provided, the following is held:

The merger of Tax Exempt 1 with Tax Exempt 3 followed by the merger of Tax Exempt 2 with the surviving entity (together with the changes in the corporate membership and governing instruments of the various tax exempt entities pursuant thereto) does not result in an ownership change within the meaning of section 382(g) of Parent Corp or any other loss corporation owned by an exempt subsidiary affiliate of the former Tax Exempt 1 or Tax Exempt 2, or Tax Exempt 3 systems.

No opinion is rendered with respect to the federal income tax treatment of the transaction as described under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings.

In particular, no rulings were requested and no opinion is rendered with respect to the application of sections 337(d) or 355 to the additional transactions described in (i) through (vi) above. The taxpayer acknowledges that the federal income tax consequences of these subsequent transactions may be examined and determined by the appropriate District Director's office on audit of the federal tax returns filed by the entities in which these steps are reported.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling letter have not yet been adopted. Therefore, the service may modify or revoke this letter if temporary or final regulations as adopted are inconsistent with any

conclusions herein. See section 12.04(4) of Revenue Procedure 2000-1, 2000-1 I.R.B. 4, 46. However, when the criteria in section 12.05 are satisfied, the Service will not revoke or retroactively modify a ruling except in rare or unusual circumstances.

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.

You should attach a copy of this letter to the federal income tax returns of the taxpayers involved for the taxable year in which the transactions covered by this ruling letter is consummated.

Pursuant to the power of attorney on file in this office, we have sent a copy of this letter to the taxpayer.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: Charles Whedbee

Charles Whedbee  
Senior Technical Reviewer  
Branch 5