

**Internal Revenue Service**

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January 11, 2001

Acquiring =  
Target =  
State A =  
State B =  
Limited Partnership =  
X =  
Y =

This letter responds to your September 8, 2000 request for rulings on certain federal income tax consequences of a proposed transaction. The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer accompanied by a penalty of perjury statement executed by an appropriate party. Verification of these facts and representations may be required as part of the audit process.

**Summary of Facts**

Acquiring and Target (the "Funds") are organized under the laws of State A, and each has elected to be taxed as a regulated investment company ("RIC") under §§ 851-855 of the Internal Revenue Code. Each Fund invests primarily in long-term municipal obligations issued by or on behalf of State B.

Limited Partnership, of which X is the sole limited partner and Y the sole general partner, manages the investment portfolio of, and provides administrative services to, each Fund.

The Board of Directors of each Fund has approved a plan of reorganization for what are represented to be valid business reasons. The plan consists of the following steps (the "Transaction"):

(i) Target will transfer all of its assets and liabilities to Acquiring solely in exchange for newly issued Acquiring voting common and voting preferred stock (the "Transfer").

(ii) Target will distribute to its shareholders, on a pro rata basis, all of the Acquiring stock received in the exchange.

(iii) A distribution agent will aggregate any fractional shares, sell them in the open market, and remit the proceeds to the shareholders who would have received the fractional shares.

(iv) Target will dissolve in accordance with the laws of State A.

(v) Acquiring may sell up to 66 percent of the assets received in the Transaction to unrelated purchasers and will reinvest any proceeds consistent with its investment objectives and policies.

### **Representations**

The taxpayers have made the following representations regarding the Transaction:

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

(b) Acquiring will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target immediately before the Transaction. For purposes of this representation, amounts paid by Target to dissenters, amounts used by Target to pay its reorganization expenses, amounts paid by Target to shareholders who receive cash or other property, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately before the transfer will be included as assets of Target held immediately before the Transaction.

(c) Acquiring has no plan or intention to reacquire any of its stock issued in the Transaction.

(d) After the Transaction, Acquiring will use the assets acquired from Target, except that some of these assets may be sold or otherwise disposed of in the ordinary

course of Acquiring's business. Any proceeds from sales or other dispositions will be invested in accordance with Acquiring's investment objectives. Acquiring has no plan or intention to sell or dispose of any of the assets of Target acquired in the Transaction, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C).

(e) Target will distribute to its shareholders the stock of Acquiring it receives pursuant to the plan of reorganization.

(f) The liabilities of Target assumed (as determined under § 357(d)) by Acquiring were incurred by Target in the ordinary course of its business.

(g) Following the Transaction, Acquiring will continue the historic business of Target or use a significant portion of Target's historic business assets in the continuing business.

(h) Acquiring, Target, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the Transaction.

(i) There is no intercorporate indebtedness existing between Target and Acquiring that was issued, acquired, or will be settled at a discount.

(j) Acquiring and Target each meets the requirements of a regulated investment company as defined in § 368(a)(2)(F).

(k) The fair market value of the assets of Target transferred to Acquiring will equal or exceed the liabilities assumed (as determined under § 357(d)) by Acquiring.

(l) Cash is being distributed to the shareholders of Target in lieu of fractional shares of Acquiring solely to save Acquiring the expense and inconvenience of issuing and transferring fractional shares and does not represent separately bargained for consideration in the Transaction. The total cash consideration to be paid to the Target shareholders instead of issuing fractional shares of Acquiring stock will not exceed one percent of the total consideration to be issued in the Transaction to the Target shareholders in exchange for their shares of Target stock. The fractional share interests of each shareholder of Target 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.

(m) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(n) Target and Acquiring each has elected to be taxed as a RIC under § 851 and, for all of their taxable periods (including Target's last short taxable period ending on the date of the Transaction), has qualified for the special tax treatment afforded RICs under

the Code. After the Transaction, Acquiring intends to continue qualifying as a RIC.

(o) There is no plan or intention for Acquiring (the issuing corporation as defined in § 1.368-1(b) of the Income Tax Regulations), or any person related (as defined in § 1.368-1(e)(3)) to Acquiring, to acquire, during the five-year period beginning on the date of the Transaction, with consideration other than Acquiring stock, Acquiring stock furnished in exchange for a proprietary interest in Target in the Transaction, either directly or through any transaction, agreement, or arrangement with any other person, except for cash distributed to the Target common shareholders in lieu of fractional shares of Acquiring common stock.

(p) During the five-year period ending on the date of the Transaction, (i) neither Acquiring, nor any person related (as defined in § 1.368-1(e)(3)) to Acquiring, will have acquired Target stock with consideration other than Acquiring stock, (ii) neither Target, nor any person related (as defined in § 1.368-1(e)(3) without regard to § 1.368-1(e)(3)(i)(A)) to Target, will have acquired Target stock with consideration other than Acquiring stock or Target stock, and (iii) no distributions will have been made with respect to Target stock (other than ordinary, regular, normal dividend distributions made pursuant to Target's historic dividend paying practice), either directly or through any transaction, agreement, or arrangement with any other person, except for (a) cash paid to dissenters and (b) distributions described in §§ 852 and 4982, as required for Target's tax treatment as a RIC.

(q) The aggregate value of the acquisitions, redemptions, and distributions described in paragraphs (o) and (p) above will not exceed 50 percent of the value (without giving effect to the acquisitions, redemptions, and distributions) of the proprietary interest in Target on the effective date of the Transaction.

### **Rulings**

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

(1) The acquisition by Acquiring of substantially all of the assets of Target in exchange solely for voting stock of Acquiring and Acquiring's assumption of Target's liabilities, followed by the distribution by Target to its shareholders of Acquiring voting stock and any remaining assets, in complete liquidation, will qualify as a reorganization under § 368(a)(1)(C). Target and Acquiring each will be a "party to a reorganization" under § 368(b).

(2) Target will recognize no gain or loss on the transfer of substantially all of its assets to Acquiring in exchange for voting stock of Acquiring and Acquiring's assumption of Target's liabilities or on the distribution of Acquiring stock to the Target shareholders (§§ 361(a) and (c) and 357(a)).

(3) Acquiring will recognize no gain or loss on the receipt of the assets of Target in exchange for voting stock of Acquiring (§ 1032(a)).

(4) Acquiring's basis in each Target asset will equal the basis of that asset in the hands of Target immediately before the Transaction (§ 362(b)).

(5) Acquiring's holding period for each Target asset will include the period during which the asset was held by Target (§ 1223(2)).

(6) No Target shareholder will recognize gain or loss on the receipt of voting stock of Acquiring solely in exchange for Target stock (including fractional shares to which the shareholder may be entitled) (§ 354(a)(1)).

(7) The basis of the Acquiring stock received by each Target shareholder will equal the basis of the Target stock surrendered in exchange therefor (§ 358(a)(1)).

(8) The holding period of the Acquiring stock received by each Target shareholder in exchange for Target stock (including fractional shares to which the shareholder may be entitled) will include the period that the shareholder held the Target stock exchanged therefor, provided that the shareholder held such stock as a capital asset on the date of the exchange (§ 1223(1)).

(9) The payment of cash to a Target shareholder in lieu of fractional shares of Acquiring stock will be treated as though the fractional shares were distributed as part of the Transaction and then redeemed by Acquiring. The cash payment will be treated as a distribution in full payment for the fractional shares deemed redeemed under § 302(a), with the result that the Target shareholder will have short-term or long-term capital gain or loss to the extent that the cash received differs from the basis allocable to the fractional shares (Rev. Rul. 66-365, 1966-2 C.B. 116; Rev. Proc. 77-41, 1977-2 C.B. 574).

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

### **Caveats and Administrative Items**

No opinion is expressed about the tax treatment of the Transaction 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 opinion is expressed regarding whether Acquiring or Target qualifies as a RIC under Subchapter M, Part 1 of the Code.

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

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

Under the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,  
Assistant Chief Counsel (Corporate)  
By: Wayne T. Murray  
Senior Technician/Reviewer  
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