INTERNAL REVENUE SERVICE

Index Number: 368.00-00

Number: **199909033**
Release Date: 3/5/1999

CC:DOM:CORP:1-PLR-112302-98

December 4, 1998

Attn:

Company =

BHC-1 =

BHC-2 =

Bank =

Target =

Merger Co. =

State W =

State X =

State Y =

State Z =

w =

x =

y =

z =

Date B =

Date C =

Dear :

This letter responds to your request for rulings dated June 4, 1998, concerning the federal income tax consequences of a proposed transaction. Additional information was submitted on August 5, 1998, September 17, 1998, October 28, 1998, November 4, 1998, November 17, 1998, and December 3, 1998. .

The information submitted for our consideration indicates that Company was incorporated under the laws of State Z. Company's stock is widely held and traded on the New York Stock Exchange. Company is the common parent of an affiliated group of corporations that file a Federal consolidated tax return. A significant number of Company's subsidiaries are banks within the meaning of § 585(a)(2) of the Code.

BHC-1 is a bank holding company organized and existing under the laws of State Z. BHC-1 is a wholly owned subsidiary of Company. BHC-2 is a bank holding company organized and existing under the laws of State Y. BHC-2 is a wholly owned subsidiary of BHC-1. Bank is a national banking association. BHC-2 owns w percent of the stock of Bank. The remaining x percent of Bank's stock is owned by two other wholly owned direct subsidiaries of Company. Merger Co. is a wholly owned subsidiary of Company. Merger Co. did not conduct any business prior to the acquisition of Target and was organized solely to facilitate the acquisition of Target. Target is a national banking association.

On Date B, Target adopted a plan of reorganization under which, on Date C, Merger Co. merged with Target under the charter of Target and in accordance with the provisions of 12 U.S.C. 215 (hereinafter referred to as the "First Merger"). Target survived the First Merger as a wholly owned subsidiary of Company. Target shareholders received shares of Company common stock in exchange for their shares of Target stock. No fractional shares of Company stock were issued in the First Merger. Cash was issued in lieu of fractional shares of Company common stock. Other than the cash for fractional shares, no consideration other than Company common stock was used to acquire the stock of Target in the First Merger. Following the First Merger, Company's basis in the Target stock was equal to the sum of Company's basis in Merger Co. and the net basis of Target's property.

The consummation of the First Merger was subject to regulatory approval by the Federal Reserve Board ("FRB"), as the transaction involved the acquisition of a bank by a bank holding company. It was also subject to the approval of the Comptroller of the

Currency ("OCC") as it involved a business combination resulting in a national bank. Company received approval from both the FRB and the OCC to consummate the First Merger.

For OCC purposes, a business combination means a merger or consolidation between a national bank and one or more depository institutions in which the resulting institution is a national bank; the acquisition by a national bank of all, or substantially all, of the assets of another depository institution; or the assumption by a national bank of deposit liabilities of another depository institution. In determining whether to approve the First Merger, the OCC considered such factors as the effect of the transaction upon competition, the financial and managerial resources and the future prospects of the merging and resulting institutions, the performance of the applicants in helping to meet the credit needs of the relevant communities, and the convenience and needs of the community served. The scope of the OCC investigation with respect to these items is determined at the sole discretion of the OCC. The information submitted with Company's application for the First Merger pertained to Company and Target.

For what are represented to be valid business purposes, the following transaction is proposed:

(1) Company will contribute Target to BHC-1 and immediately thereafter, BHC-1 will contribute Target to BHC-2 ("the Contributions").

(2) Target and Bank will apply to the OCC for approval of the business combination of Target and Bank. Upon the approval of the OCC, Target will merge with and into Bank (the "Second Merger") with Bank surviving the merger. After the merger the Target's bank branches (i.e., its banking operations) will be operated under the Bank's charter.

The consummation of the Second Merger is subject to regulatory approval by the OCC as the business combination of Target and Bank will result in a national bank. The information to be submitted to the OCC with the application for the Second Merger will be limited to information with respect to Target and Bank. In determining whether to approve the application for the Second Merger, the OCC will not conduct an inquiry into the effect of the combination of Target and Bank on competition since the combination is one between affiliates, and therefore the combination will have no effect on competition. However, the OCC will weigh safety and soundness factors and will normally not approve a combination if the result will be a bank with inadequate capital, unsatisfactory management, or poor earnings prospects.

The Contributions and the Second Merger were not considered as part of the application to either the FRB or the OCC to obtain regulatory approval for the First Merger. The Second Merger was not a part of the merger agreement resulting in the First Merger. Since the effective date of the First Merger, Target has been operating as a stand-alone bank under the Target name. A stand-alone bank is a bank that has its own charter (i.e., it is a separate legal entity) rather than a bank branch. If the OCC

does not approve the Second Merger, Target will continue to operate as a stand-alone bank, under its own charter. Company currently operates a number of stand-alone banks including y stand-alone banks in State W and z stand-alone banks in State X. Company also operates stand-alone banks in over a dozen other states.

The following representations have been made in connection with the proposed transaction:

(a) To the best knowledge of the taxpayer and the taxpayer's representatives, the First Merger qualifies as a reorganization for federal income tax purposes pursuant to §§ 368(a)(1)(A) and (a)(2)(E) of the Code provided that the Contributions do not prevent the First Merger from satisfying the continuity of interest requirement of § 1.368-1(b).

(b) To the best knowledge of the taxpayer and the taxpayer's representatives, the First Merger qualifies as a reorganization for federal income tax purposes pursuant to §§ 368(a)(1)(A) and (a)(2)(E) of the Code provided that the Second Merger does not prevent the First Merger from satisfying the continuity of interest requirement of § 1.368-1(b) or the "substantially all" requirement of § 368(a)(2)(E)(i).

(c) To the best knowledge of the taxpayer and the taxpayer's representatives, the Contributions qualify as transfers under § 351.

(d) To the best knowledge of the taxpayer and the taxpayer's representatives, the Second Merger qualifies as a reorganization under § 368(a)(1)(A) provided the First Merger doesn't prevent the Second Merger from satisfying the continuity of interest requirement of § 1.368-1(b).

(e) Company and members of Company's consolidated group will determine the basis of the Target stock under § 1.358-6(f)(2)(i), (c)(2)(i), and (c)(1) for all federal income tax purposes. Company and members of Company's consolidated group will not determine their basis in the stock of Target under § 1.358-6(f)(2)(ii).

Based on the information submitted and the representations set forth above, we rule as follows under § 3.01(24) of Rev. Proc. 98-3, I.R.B. 1998-1, which deals with subissues under § 368(a)(1)(A)):

(1) The Contributions will not prevent the First Merger from satisfying the continuity of interest requirement of § 1.368-1(b).

(2) The Second Merger will not prevent the First Merger from satisfying the continuity of interest requirement of § 1.368-1(b) or the "substantially all" requirement of § 368(a)(2)(E)(i).

(3) The First Merger will not prevent the Second Merger from satisfying the continuity of interest requirement of § 1.368-1(b).

This ruling expresses no opinion about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or of any effects resulting from, the transaction that are not specifically covered by the above rulings. In particular, we express no opinion as to whether the Contributions qualify as transactions under § 351, and other than what is stated in the above rulings, we express no opinion as to whether the First Merger or Second Merger qualifies as a reorganization under § 368(a)(1)(A).

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

A copy of this letter should be attached to the applicable federal income tax returns of the taxpayers.

Sincerely,

Assistant Chief Counsel (Corporate)

By _____
Mark S. Jennings, Senior Technician Reviewer, Branch 1