

Internal Revenue Service

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Date:
August 12, 2004

Taxpayer =
Date a =
Date b =
Date c =
Date d =

This is in response to a request for a ruling, dated April 14, 2004, under section 162(m) of the Internal Revenue Code. Specifically, Taxpayer has requested a ruling on the treatment of restricted stock units it has issued and may continue to issue following its initial public offering ("IPO") on date a.

Taxpayer was organized as a Delaware corporation on date b. On date c, Taxpayer adopted the Taxpayer Stock Incentive Plan ("Plan"). The Plan authorized the grant of various stock-based awards including stock options, stock appreciation rights, restricted stock and restricted stock units. Taxpayer also represents that it was not, prior to or at the time of the IPO, a member of an affiliated group that included a publicly held corporation within the meaning of section 162(m)(2) of the Internal Revenue Code and section 1.162-27(c)(1)(i) of the Income Tax Regulations.

The first meeting at which taxpayer's shareholders will elect directors will take place after the end of the third calendar year following the year in which the IPO occurred and is scheduled to take place on date d.

Taxpayer represents that the prospectus accompanying the IPO contained information concerning the Plan sufficient to satisfy all applicable securities laws then in effect.

Taxpayer represents that prior to the first meeting of the shareholders, there were no material modifications (within the meaning of section 1.162-27(h)(1)(iii)) of the Plan or

the undelivered restricted stock units, the Plan has not expired, and not all of the shares of common stock authorized for issuance under the Plan have been issued.

Section 162(a)(1) of the Code allows as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered.

Section 162(m)(1) of the Code provides that in the case of any publicly held corporation, no deduction is allowed for applicable employee remuneration with respect to any covered employee to the extent that the amount of the remuneration for the taxable year exceeds \$ 1,000,000.

Section 1.162-27(f)(1) of the regulations provides that, in the case of a corporation that was not a publicly held corporation and then becomes a publicly held corporation, the deduction limit does not apply to any remuneration paid pursuant to a compensation plan or agreement that existed during the period in which the corporation was not publicly held. However, in the case of such corporation that becomes publicly held in connection with an initial public offering, this relief applies only to the extent that the prospectus accompanying the initial public offering disclosed information concerning those plans or agreements that satisfied all applicable securities laws then in effect. In accordance with section 1.162-27(c)(1)(ii) of the regulations, a corporation that is a member of an affiliated group that includes a publicly held corporation is considered publicly held and, therefore, cannot rely on paragraph (f)(1).

Section 1.162-27(f)(2) of the regulations provides that paragraph (f)(1) may be relied upon until the earliest of one of the four following events: (i) the expiration of the plan or agreement; (ii) the material modification of the plan or agreement, within the meaning of section 1.162-27(h)(1)(iii) of the regulations; (iii) the issuance of all employer stock and other compensation that has been allocated under the plan; or (iv) the first meeting of the shareholders at which directors are to be elected that occurs after the close of the third calendar year in which the initial public offering occurs.

Section 1.162-27(f)(3) of the regulations provides that paragraph (f)(1) will apply to any compensation received pursuant to the exercise of a stock option or stock appreciation right, or the substantial vesting of restricted property, granted under a plan or agreement described in paragraph (f)(1) if the grant occurs on or before the earliest of the events specified in paragraph (f)(2).

A grant of a restricted stock unit is stock based compensation that is the economic equivalent of a grant of a restricted share of common stock.

Based on the forgoing, we rule as follows:

Company's delivery of shares of common stock (or cash payment equal to the fair market value of such shares) after the first meeting of the shareholders occurring on date d with respect to the restricted stock units granted prior to date d is remuneration that is not subject to the deduction disallowance rule of section 162(m)(1) of the Code, pursuant to the transitional relief provisions of section 1.162-27(f)(1) of the regulations.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. The taxpayer should attach a copy of this ruling to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's representative.

Sincerely yours,

ROBERT B. MISNER
Senior Technician Reviewer
Executive Compensation Branch
Office of the Division Counsel/
Associate
Chief Counsel (Tax Exempt and
Government Entities)