

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:TEGE:EB:EC

PLR-118213-05

Date:

August 5, 2005

Corporation =

Director =

Period 1 =

Partnership =

X =

Period 2 =

Dear :

This is in response to a letter dated March 31, 2005, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code. Specifically, a ruling is requested that Director qualifies as an "outside director" for purposes section 1.162-27(e)(3) of the Income Tax Regulations. The facts, as represented by Corporation are as follows.

During Period 1, Director was a senior partner of Partnership. His duties included X. On Date 1, Partnership was converted into Corporation. In the conversion Director received common stock of Corporation in exchange for his partnership interest.

Director has been nominated to serve as a member of the Board of Directors. Director previously served as a member of the Board of Directors of Corporation during Period 2.

It has been represented that Director is not and has not been employed by Corporation. In addition, Director does not and has not served as an officer of Corporation at any time since its inception on Date 1. Director does not receive any compensation from Corporation for his prior services to Partnership, other than benefits accrued under certain tax qualified retirement plans during his service with Partnership.

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

Section 162(m)(1) provides that a publicly held corporation shall not be allowed a deduction for remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year exceeds \$1,000,000.

Section 162(m)(4)(C) excepts from this limitation certain "performance based compensation" payable solely on account of the attainment of one or more performance goals if, among other requirements, the performance goals are determined by a compensation committee of the board of directors comprised solely of two or more "outside directors."

Section 1.162-27(e)(3)(i) of the regulations provides that a director is an "outside director" if the director (A) is not a current employee of the publicly held corporation; (B) is not a former employee of the publicly held corporation who receives compensation for prior services (other than benefits under a tax qualified retirement plan) during the taxable year; (C) has not been an officer of the publicly held corporation; and (D) does not receive remuneration from the publicly held corporation, either directly or indirectly, in any capacity other than as a director. For this purpose, remuneration includes any payment in exchange for goods or services.

Section 1.162-27(e)(3)(vi) provides that whether a director is an employee or a former officer is determined on the basis of the facts at the time that the individual is serving as a director on the compensation committee. Thus, a director is not precluded from being an outside director solely because the director is a former officer of a corporation that previously was an affiliated corporation of the publicly held corporation.

Based on the information submitted, we rule that Director qualifies as an "outside director" of Corporation for purposes of section 1.162-27(e)(3) of the regulations.

Except as specifically ruled on above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion was requested and none is given regarding Director's service as a member of the Board of Directors of Corporation during Period 2.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized 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)

Enclosure:
Copy for 6110 purposes