

**Internal Revenue Service**

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Person To Contact:

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PLR-146263-05

Date:

December 14, 2005

Corporation =

Partnership =

X% =

Y% =

A% =

B% =

Dear :

This letter is in response to the letter dated September 1, 2005, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code. Specifically, you requested a ruling that the deduction limitation of section 162(m) does not apply. The facts, as represented, are as follows.

Corporation owns approximately an X% general partnership interest (as common unit ownership) in Partnership. Corporation also owns Y% of the preferred units of Partnership. Corporation elected to be taxed as a real estate investment trust (REIT) as defined under section 856 of the Code.

The compensation of Corporation's chief executive officer and four other of the highest compensated officers (the Executive Officers) is required to be reported on the Corporation's summary compensation table under the executive disclosure rules issued

by the Securities Exchange Commission (SEC) under the Securities Exchange Act of 1934. Accordingly, the Executive Officers are covered employees with respect to Corporation for purposes of section 162(m).

The Executive Officers of Corporation are also employees and officers of Partnership. The Executive Officers receive base salary and participate in various bonus and executive compensation plans based on their services as employees with respect to both entities. However, the Executive Officers provide only a small portion of their services as employees of Corporation. Accordingly, the employment contracts entered into by and among the individual Executive Officers, Corporation, and Partnership provide that A% of the Executive Officers' compensation is for services as employees of the Corporation and B% of their compensation is for services as employees of the Partnership. This allocation is subject to adjustment from time to time as appropriate to reflect the services performed by the Executive Officers. Partnership reports the Executive Officers' compensation on Form W-2 and withholds all applicable federal and state taxes.

It is expected that the total compensation of one or more the Executive Officers for services performed as an employee of Partnership will be in excess of \$1 million and will not be qualified performance-based compensation within the meaning of section 162(m).

Section 162(a)(1) allows a deduction for all of 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) provides that for any publicly held corporation, no deduction shall be allowed for applicable employee 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)(2) defines publicly held corporation to mean any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934. Under section 1.162-27(c)(1)(ii) of the Income Tax Regulations, a publicly held corporation includes an affiliated group of corporations, as defined in section 1504 (determined without regard to section 1504(b), which lists exceptions to the definition). For purposes of section 162(m), an affiliated group of corporations does not include any subsidiary that is itself a publicly held corporation.

Section 1504(a) defines affiliated group to mean 1 or more chains of includible corporations connected through stock ownership with a common parent corporation if the common parent directly owns 80 percent of the total voting power of the stock and has a value equal to at least 80 percent of the total value of the stock of the corporation.

Section 162(m)(3) defines a covered employee as any employee of the taxpayer if, as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such capacity, or the total compensation of such employee for the taxable year is required to be reported to shareholders under the Exchange Act by reason of such employee being among the four highest compensated officers for the taxable year (other than the chief executive officer).

Based solely on the facts presented, we rule as follows:

1. The deduction limitation of section 162(m) does not apply to the Partnership with respect to remuneration paid to an Executive Officer as compensation for services performed by the Executive Officer as an employee of the Partnership.
2. The deduction limitation of section 162(m) does not apply to the Corporation with respect to its distributive share of income or loss from the Partnership that includes compensation expense of Executive Officers to the extent such compensation expense is attributable to services performed by the Executive Officers as employees of the Partnership.

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. In this regard, note that we specifically express no opinion concerning the allocation of the compensation between Partnership and Corporation.

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.

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William C. Schmidt  
Senior Counsel, Executive Compensation Branch  
Office of the Division Counsel/Associate Chief  
Counsel (Tax Exempt & Government Entities)