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Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EB:EC
PLR-163283-05

Date:
May 31, 2006

Company =

Executive =

Date 1 =

x =

Date 2 =

Date 3 =

Dear :

This is in reply to a letter dated December 14, 2005, submitted on behalf of Company by its authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code. Specifically, a ruling is requested that the material terms of the performance goal in the Continuation Agreement are not required to be disclosed to and reapproved by Company's shareholders. The facts, as represented by Company, are as follows.

On Date 1, Company and Executive entered into an Agreement ("Date 1 Agreement") pursuant to which Company agreed to employ Executive for a period of x years and provide him with certain compensation, including performance-based compensation. Under the Date 1 Agreement, performance-based compensation, in the form of a cash bonus, is determined pursuant to a set formula.

The Date 1 Agreement was modified on Date 2 ("Date 2 Modification"). Both the Date 1 Agreement and the Date 2 Modification were disclosed to and approved by Company's shareholders. Under the Date 1 Agreement and the Date 2 Modification, the Compensation Committee did not have authority to change the targets under the performance goal.

On Date 3, which was prior to the expiration of the employment term in the Date 1 Agreement, Company and Executive entered into an Agreement to extend the employment term in the Date 1 Agreement ("Continuation Agreement"). The Continuation Agreement provides for the payment of performance-based compensation pursuant to the same formula provided in the Date 2 Modification. The Continuation Agreement does not change the material terms of the performance goal, and it does not give the Compensation Committee authority to change the targets under the performance goal.

Company represents that other than the issue for which a ruling is requested, it has satisfied all the requirements of section 162(m) of the Code and section 1.162-27(e) of the Income Tax Regulations.

Section 162(a)(1) allows a deduction for all of the ordinary and necessary business 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 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 attaining one or more performance goals, as determined by a compensation committee comprised solely of two or more outside directors, if the material terms under which the compensation is paid, including the performance goals, have been approved by the shareholder of the publicly held corporation.

Section 1.162-27(e)(4)(vi) of the regulations provides that once the material terms of a performance goal are disclosed to and approved by shareholders, no additional disclosure or approval is required unless the compensation committee changes the material terms of the performance goal. If, however, the compensation committee has the authority to change the targets under a performance goal after shareholder approval of the goal, the material terms of the performance goal must be disclosed and reapproved by shareholders no later than the first shareholder meeting that occurs in the fifth year following the year in which shareholders previously approved the performance goal.

Based on the facts submitted, and provided the compensation committee does not change the material terms of the performance goal, we rule as follows:

The material terms of the performance goal in the Continuation Agreement are not required to be disclosed and reapproved by Company's shareholders.

Except as expressly provided herein, no opinion is expressed or implied concerning the Federal 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.

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

Sincerely yours,

Kenneth M. Griffin
Assistant Branch Chief
Executive Compensation Branch
Office of the Division Counsel/Associate Chief
Counsel (Tax Exempt and Government
Entities)

Enclosure:

Copy for 6110 purposes