

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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Date:
March 27, 2017

Legend

Taxpayer =
Employee =
Year 1 =
Date A =
Date B =

Dear :

This letter is in response to a letter dated December 1, 2016, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code (Code). Specifically, Taxpayer requested a ruling that Employee, Taxpayer's former chief executive officer, is not a "covered employee" for Taxpayer's Year 1 taxable year, and accordingly, that no compensation paid to Employee with respect to Taxpayer's Year 1 taxable year is subject to the deduction limitation of section 162(m). The facts, as represented, are as follows.

Taxpayer is a publicly held corporation. Employee served as Taxpayer's chief executive officer from Date A to Date B of Year 1. As of the close of the Year 1 taxable year, Employee was neither the chief executive officer of Taxpayer nor an individual acting in such capacity.

Pursuant to the executive compensation disclosure rules under the Securities Exchange Act of 1934 (Securities Exchange Act), Taxpayer listed Employee in its Year 1 Summary Compensation Table solely because Employee served as Taxpayer's chief executive officer for a portion of Taxpayer's Year 1 taxable year, as required by the disclosure rules.

Section 162(a)(1) of the Code 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) of the Code 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 million.

Section 162(m)(2) of the Code 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.

Section 162(m)(3) of the Code defines covered employee as any employee of the taxpayer if (A) 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 (B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act by reason of such employee being among the four highest compensated officers for the taxable year (other than the chief executive officer).

Section 1.162-27(c)(2)(ii) of the Income Tax Regulations generally provides that whether an individual is a covered employee for purposes of section 162(m) is determined pursuant to the executive compensation disclosure rules under the Securities Exchange Act. The Securities and Exchange Commission's rules relating to executive compensation disclosure under the Securities Exchange Act are contained in Item 402 of Regulation S-K, 17 CFR 229.402. These rules require disclosure of compensation awarded to, earned by, or paid to certain executive officers.

On September 8, 2006, a final rule amending the Securities and Exchange Commission's executive compensation disclosure rules was published in the Federal Register (71 FR 53158). Among other things, the amended disclosure rules altered the composition of the group of executives who are covered by the disclosure rules. Like the pre-amendment disclosure rules, the amended disclosure rules refer to these executives as "named executive officers." Under the amended disclosure rules, named executive officers consist of, in relevant part, (i) all individuals serving as the registrant's principal executive officer or acting in a similar capacity during the last completed fiscal year, regardless of compensation level; (ii) all individuals serving as the registrant's principal financial officer or acting in a similar capacity during the last completed fiscal year, regardless of compensation level; (iii) the registrant's three most highly compensated executive officers other than the principal executive officer and the principal financial officer who were serving as executive officers at the end of the last

completed fiscal year; and (iv) up to two additional individuals for whom disclosure would have been provided but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year. Prior to amendment, the disclosure rules provided that named executive officers consisted of, in relevant part, (i) all individuals serving as the registrant's chief executive officer or acting in a similar capacity during the last completed fiscal year, regardless of compensation level; and (ii) the registrant's four most highly compensated executive officers other than the chief executive officer who were serving as executive officers at the end of the last completed fiscal year. Companies were required to comply with the amended disclosure rules for fiscal years ending on or after December 15, 2006.

Notice 2007-49, 2007-1 C.B. 1429, provides that the IRS will interpret the term "covered employee" for purposes of section 162(m) to mean any employee of the taxpayer if, as of the close of the taxable year, such employee is the principal executive officer (within the meaning of the amended disclosure rules) of the taxpayer or an individual acting in such a capacity, or if the total compensation of such employee for that taxable year is required to be reported to shareholders under the Securities Exchange Act by reason of such employee being among the three highest compensated officers for the taxable year (other than the principal executive officer or the principal financial officer). The Notice also provides that the term covered employee for purposes of section 162(m) does not include those individuals for whom disclosure is required under the Securities Exchange Act on account of the individual being the taxpayer's principal financial officer (within the meaning of the amended disclosure rules) or an individual acting in such a capacity.

Therefore, based solely on the facts presented, we rule as follows:

For purposes of section 162(m) of the Code, Employee is not a "covered employee" for Taxpayer's Year 1 taxable year, because, as of the close of the taxable year, Employee was not the principal executive officer (within the meaning of the amended disclosure rules) of Taxpayer or an individual acting in such a capacity, and the total compensation of Employee for Taxpayer's Year 1 taxable year was not required to be reported to shareholders under the Securities Exchange Act by reason of Employee being among the three highest compensated officers for the Year 1 taxable year.

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.

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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,

Thomas D. Scholz
Senior Counsel, Executive Compensation
(Employee Benefits)
(Tax Exempt & Government Entities)

Enclosures:
Copy of letter
Copy for section 6110 purposes