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Taxpayer =

This is in reply to a request for a ruling concerning the deduction limitation of section 162(m) of the Internal Revenue Code and its application to Taxpayer with respect to remuneration paid to certain individuals who resign their positions as officers of Taxpayer. The facts, as represented by Taxpayer, are as follows.

Taxpayer is a publicly-held corporation and a calendar year taxpayer. Several of Taxpayer's corporate officers either have or intend to resign their positions as officers and all of their duties as such. These individuals may continue to perform services as Taxpayer employees for the remainder of the year of resignation and possibly in future years, but it not their or Taxpayer's intent that these individuals resume their duties as officers at any time in the foreseeable future. These officers, however, may be listed pursuant to the executive compensation disclosure rules under the Securities Exchange Act as chief executive officer or one of the highest compensated officers of Taxpayer for the year of resignation.

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 162(m)(3) of the Code defines "covered employee" to mean 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 Securities Exchange Act

of 1934 by reason of such employee being among the 4 highest compensated officers for the taxable year (other than the chief executive officer).

Section 1.162-27(c)(2) of the Income Tax Regulations provides the general rule for who is a covered employee. Under the regulations, a covered employee means any individual who, on the last day of the taxable year, is (A) the chief executive officer of the corporation or is acting in such capacity; or (B) among the four highest compensated officers (other than the chief executive officer). Whether an individual is the chief executive officer or one of the four highest compensated officers is determined pursuant to the executive compensation disclosure rules under the Exchange Act.

In the notice of proposed rulemaking containing the proposed regulations under section 162(m), the preamble contains the following language concerning the identification of "covered employee":

The regulations clarify which employees are "covered employees" for purposes of section 162(m). The legislative history to section 162(m) provides that "covered employees" are defined by reference to the SEC rules governing executive compensation disclosure under the Exchange Act. Under the regulations, an individual generally is a "covered employee" if the individual's compensation is reported on the "summary compensation table" under the SEC's executive compensation disclosure rules, as set forth in Item 402 of Regulation S-K, 17 CFR 229.402, under the Exchange Act. However, the regulations specifically provide that, in order to be a "covered employee" for section 162(m) purposes, an individual must be employed as an executive officer on the last day of the taxable year. Thus, only those employees who appear on the "summary compensation table" and who are also employed on the last day of the taxable year are "covered employees."

Therefore, based on the facts as outlined above, officers of Taxpayer who resign their positions before the last day of the taxable year with no intent to resume their duties as officers at any time in the foreseeable future will not be covered employees for that year and no compensation paid to them with respect to that year will be subject to the section 162(m) deduction limitation.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provisions of the Code.

Sincerely yours,

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Enclosure:

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