

Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-158429-05

Date:

January 26, 2006

Corporation =

Director =

Subsidiary =

Date X =

Date Y =

Date Z =

Building =

Landlord =

m =

n =

Management Company =

Broker =

Dear :

This is in response to a letter dated November 15, 2005, submitted by your authorized representatives, requesting a ruling under section 162(m) of the Internal Revenue Code. Specifically, a ruling is requested that Director qualifies as an "outside director" because he does not receive remuneration from Corporation, either directly or indirectly, in any capacity, other than as a director for purposes section 1.162-27(e)(3)(i)(D) of the Income Tax Regulations. The facts, as represented by Corporation are as follows.

Corporation is a publicly held company. Subsidiary is a wholly-owned subsidiary of Corporation. Director has served as a member of the Board of Directors of Corporation since Date Z. He is not currently a member of the Board of Director's compensation committee.

On Date Y, Subsidiary entered into a lease to rent office space in Building. Building is owned by Landlord, which is a partnership owned by investors unrelated to Corporation or Subsidiary. Subsidiary currently rents m% of the rentable space in Building. Subsidiary may increase its share of rentable space to n%.

Director indirectly owns and controls Management Company. On Date X, Landlord entered into a management agreement with Management Company to manage Building. Pursuant to the management agreement, Landlord is obligated to pay the Management Company a management fee based on a percentage of monthly collections from Building and to reimburse Management Company for certain expenses incurred in managing Building. The management agreement is between Management Company and Landlord. No tenant of Building is a party to the management agreement.

Under its lease with Landlord, Subsidiary makes monthly rental payments to Landlord. This includes a base rent plus a pro rata share (currently m%) of the operating expenses incurred by Landlord in operating and maintaining Building. These operating expenses include the management fee and expense reimbursements that Landlord is obligated to pay Management Company.

Subsidiary makes rental payments by wire transfer to a bank account owned by Landlord and maintained by Management Company, as Landlord's agent. The management agreement authorizes the Management Company to withdraw funds from this account to pay operating expenses, including its management fee and expense reimbursements owed to it.

Director also indirectly owns and controls Broker, a real estate brokerage firm that serves as broker to Landlord with respect to Building, pursuant to the terms of a brokerage agreement between Landlord and Broker. No tenant of Building is a party to the brokerage agreement. Landlord has paid Broker commissions for procuring leases between Landlord and various tenants, including Subsidiary. Broker will receive an

additional commission from Landlord if Subsidiary renews its lease or expands its rental space in Building. Subsidiary's payments to Landlord under its lease do not include any amounts related to these commissions.

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)(ii) provides that, for purposes of section 1.162-27(e)(3), remuneration is received, directly or indirectly, by a director in each of the following circumstances: (A) If remuneration is paid, directly or indirectly, to the director personally or to an entity in which the director has a beneficial ownership interest of greater than 50 percent. For this purpose, remuneration is considered paid when actually paid (and throughout the remainder of that taxable year of the corporation) and, if earlier, throughout the period when a contract or arrangement to pay remuneration is outstanding.

(B) If remuneration, other than de minimis remuneration, was paid by the publicly held corporation in its preceding tax year to an entity in which the director has a beneficial ownership of at least 5 percent but not more than 50 percent. For this purpose, remuneration is considered paid when actually paid or, if earlier, when the publicly held company becomes liable to pay it.

(C) If remuneration, other than de minimis remuneration, was paid by the publicly held corporation in its preceding taxable year to an entity by which the director is

employed or self-employed other than as a director. For this purpose, remuneration is considered paid when actually paid or, if earlier, when the publicly held corporation becomes liable to pay it.

It has been represented that Director is not a current employee, former employee or officer of Corporation, Subsidiary, or any affiliate thereof and that Corporation does not pay remuneration, directly or indirectly, to Director other than in his capacity as a director on Corporation's Board of Directors.

Based on the information submitted, we rule as follows:

(1) Director does not receive remuneration directly or indirectly from Corporation or Subsidiary in any capacity other than as a director for Corporation for purposes of section 1.162-27(e)(3)(i)(D) as a result of the arrangement described above among Subsidiary, Landlord, Management Company, and Broker;

(2) Remuneration is not paid directly or indirectly by Corporation to Director personally or to an entity in which he has a beneficial ownership interest of greater than 50 percent within the meaning of section 1.162-27(e)(3)(ii)(A); and

(3) Director qualifies as an "outside director" for purposes of section 1.162-27(e)(3).

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. 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, copies of this letter are being sent to your authorized representatives.

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