

INTERNAL REVENUE SERVICE

Number: **200046009**

Release Date: 11/17/2000

Index No.: 423.00-00

CC:TEGE:EB:EC/PLR-105582-00

August 3, 2000.

Legend:

Company =

Plan =

X Business =

This is in reply to a letter dated March 2, 2000, which was submitted on Company's behalf by its authorized representatives, in which rulings are requested that sections 2(i) and 11 of the Plan will not prevent the Plan from qualifying as an "employee stock purchase plan," as defined in section 423(b) of the Internal Revenue Code.

The facts submitted are that the Plan is intended to constitute an "employee stock purchase plan," in which employees of Company or of a Designated Subsidiary corporation will participate. For purposes of the Plan, section 2(i) defines "Employee" as "any regular full-time or part-time employee of the Company or a Designated Subsidiary customarily employed to work at least 17.5 hours per week." Offering Periods under the Plan will run for approximately 12 months, will begin on the first trading day on or after July 1 of each calendar year, and (except as specified below) will end on the last trading day in June of the subsequent calendar year. Any person who is an Employee as of the April 30 preceding the first day of an Offering Period will be eligible to participate in the Plan with respect to that Offering Period.

Under Section 11(a) of the Plan, a participating employee who, during an Offering Period, ceases to be an employee of Company (or of a Designated Subsidiary) for any reason is deemed to have elected to withdraw from the Plan, and the remaining payroll deductions credited to the employee's account during the Offering Period will be

returned to the participant (or to specified other persons if the termination of employment is caused by the participant's death). There are two exceptions.

The first exception, found in section 11(b), is that, if a participant involuntarily ceases to be employed by Company or a Designated Subsidiary (as defined in Section (2)(t) of the Plan and section 424(f) of the Code) *within* the last three months of an Offering Period *solely* due to a Corporate Change, the participant will be deemed to have elected to cease making additional payroll deductions for the purchase of shares as of the date of the Corporate Change. In such cases, all remaining payroll deductions credited to the participant's account for the Offering Period will remain subject to the usual terms of the Plan (unless the participant elects to withdraw).

The second exception, found in section 11(c), is that, if a participant involuntarily ceases to be employed by Company or a Designated Subsidiary *prior* to the last three months of an Offering Period *solely* due to a Corporate Change, then the Offering Period applicable to the participant will be shortened, and a New Exercise Date will be established. For all such participants, the New Exercise Date will be the last business day prior to the date of the Corporate Change (unless the participant elects to withdraw). Company represents that all employees whose employment involuntarily terminates solely due to the same Corporate Change will terminate their employment with Company's corporate group (Company; any "parent corporation" of Company, as defined in section 424(e) of the Code; and any "subsidiary corporation" of Company, as defined in section 424(f)) no later than the date of that Corporate Change.

For purposes of the Plan, "Corporate Change" is defined as "the sale or other transfer of the stock of the applicable Designated Subsidiary such that it no longer qualifies as a Designated Subsidiary, or the sale, transfer or closure of a [X Business] or other business or location to which a participant's employment was primarily related such that the referenced assets or location is no longer held or operated by the Company or a Designated Subsidiary."

In pertinent portion, section 421(a) of the Code provides that, if a share of stock is transferred to an individual in a transfer in which the requirements of section 423(a) are met, no income shall result to the individual at the time of the transfer, no deduction under section 162 shall be allowable at any time to the employer corporation with respect to the share transferred, and no amount other than the price paid under the option shall be considered as received by the employer corporation for the share transferred.

Under section 421(b), if the transfer of a share of stock to an individual pursuant to his or her exercise of an option would otherwise meet the requirements of section 423(a) except that there is a failure to meet any of the holding period requirements of section 423(a)(1), then any increase in the income of such individual or deduction from

the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, is treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred.

Section 423(a) of the Code provides that section 421 will apply to the transfer of a share of stock to an individual pursuant to the exercise of an option granted under an employee stock purchase plan if (1) no disposition of the stock is made by the individual within two years after the date of grant of the option nor within one year after the transfer of such share to him or her, and (2) at all times during the period beginning with the date that the option is granted and ending 3 months before the date of its exercise, the optionee remains an employee of the granting corporation, a parent or subsidiary corporation of such corporation, or a corporation (or parent or subsidiary corporation of such corporation) issuing or assuming a stock option in a transaction to which section 424(a) applies.

For purposes of these determinations, section 424(f) of the Code defines "subsidiary corporation" as any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

Section 423(b) of the Code defines an "employee stock purchase plan" as a plan that meets the requirements set forth in paragraphs (1) through (9) of that section. Section 423(b)(4) provides that, under the terms of the plan, options must be granted to all employees of any corporation whose employees are granted options by reason of their employment by such corporation, except that the following classes of employees may be excluded: employees who have been employed for less than two years; employees whose customary employment is 20 hours or less per week; employees whose customary employment is for not more than five months in any calendar year; and highly-compensated employees (within the meaning of section 414(q)). In pertinent portion, section 423(b)(5) of the Code provides that, under the terms of the plan, all employees granted options must have the same rights and privileges.

Accordingly, based on the above facts and Company's representations, we rule as follows:

(1) The Plan's exclusion from eligibility to participate of any employee who works less than 17.5 hours per week as of the April 30 prior to the beginning of the Offering Period (section 2(i) of the Plan) will not violate the participation requirement of section 423(b)(4).

(2) The Plan's provisions regarding a participant's ability to exercise an option after his or her employing corporation ceases to be a Designated Subsidiary solely due to a Corporate Change (sections 11(b) and (c) of the Plan) do not violate the equal rights and privileges requirement of section 423(b)(5).

Except as ruled above, we express no opinion regarding the federal tax consequences of the above transaction under any provision of the Internal Revenue Code. In this regard, please note that, except as ruled above, we specifically express no opinion on the question of whether the Plan otherwise qualifies as an "employee stock purchase plan," as that term is defined in section 423(b) of the Code.

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.

A copy of this letter should be attached to Company's federal income tax return for the year in which the Plan is implemented, and a copy is enclosed for that purpose. Also, in accordance with your power of attorney, a copy is being sent to your authorized representative.

Sincerely yours,

ROBERT B. MISNER
Assistant Chief,
Executive Compensation Branch
Office of the Division Counsel /
Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosures: 2
Copy of this letter
Copy for section 6610 purposes