

**Internal Revenue Service**

Number: **200607002**

Release Date: 2/17/2006

Index Number: 162.36-06

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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CC:TEGE:EB:EC

PLR-126223-05

Date:

November 14, 2005

Company =

Bonus Plan =

Performance Period =

Dear :

This is in response to a letter dated May 10, 2005, submitted on behalf of Company by its authorized representatives, requesting a ruling under section 162(m) of the Internal Revenue Code. Specifically, a ruling is requested that Company is not required to disclose to its shareholders a maximum dollar amount of compensation payable for purposes of satisfying the shareholder disclosure requirements under section 1.162-27(e)(4)(i) of the Income Tax Regulations. The facts as represented by Company are as follows:

Company is a "publicly-held corporation" within the meaning of section 162(m). Company's Bonus Plan provides that eligible executive officers are entitled to a bonus for a Performance Period based on the achievement of certain performance goals. The bonus amount is a percentage of the executive officer's base salary in effect at the beginning of the Performance Period. The amount of compensation payable that is due upon attainment of the performance goal is based, in whole or in part, on a percentage of salary or base pay. The dollar amount of the salary or base pay is fixed at the time the performance goal is established.

The Compensation Committee has the sole discretion to reduce or eliminate the bonus amount payable to any executive officer.

Section 162(a)(1) of the Code 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)(1) provides that the deduction limit of section 162(m) does not apply to qualified performance-based compensation. Qualified performance-based compensation is compensation that meets the requirements of sections 1.162-27(e)(2) through (e)(5) (the performance goal requirement, the outside director requirement, the shareholder approval requirement, and the compensation committee certification requirement). Section 1.162-27(e)(2)(i) provides, in part, that qualified performance-based compensation must be paid solely on account of the attainment of one or more preestablished, objective goals.

Section 1.162-27(e)(2)(iii)(A) provides that the terms of an objective formula or standard must preclude discretion to increase the amount of compensation payable that would otherwise be due upon attainment of the goal.

Section 1.162-27(e)(2)(iii)(A) further provides that if the terms of an objective formula or standard fail to preclude discretion to increase the amount of compensation merely because the amount of compensation to be paid upon the attainment of the performance goal is based, in whole or in part, on a percentage of salary or base pay and the dollar amount of the salary or base pay is not fixed at the time the performance goal is established, then the objective formula or standard will not be considered discretionary for purposes of the performance goal requirement if the maximum dollar amount to be paid is fixed at that time.

Section 1.162-27(e)(4)(i) provides that the material terms of the performance goal under which the compensation is to be paid must be disclosed to and subsequently approved by the shareholders of the publicly held corporation before the compensation is paid. The material terms include, in pertinent part, either the maximum amount of compensation that could be paid to any employee or the formula used to calculate the amount of compensation to be paid to the employee if the performance goal is attained (except that, in the case of a formula based, in whole or in part, on a percentage of salary or base pay, the maximum dollar amount that could be paid to the employee must be disclosed).

In the case of a nondiscretionary plan, the reference to “maximum dollar amount” in the parenthetical language of section 1.162-27(e)(4)(i) is satisfied by either disclosing a specific dollar amount (e.g., \$x dollars) or by disclosing the measuring point of the salary or base pay (e.g., x percentage of salary as of date y) . In the case of a plan that would otherwise be discretionary, the “maximum dollar amount” is only satisfied by providing a specific dollar amount.

Company meets the requirements of section 1.162-27(e)(2)(iii)(A) because the amount of compensation to be paid upon attainment of the performance goal is based upon a percentage of salary that is fixed at the time the performance goal is established. Thus, their objective formula or standard is not discretionary.

Company also meets the requirements of section 1.162-27(e)(4)(i) because Company disclosed to its shareholders both the formula used to calculate the amount of compensation to be paid to the employee if the performance goal is attained and that the maximum dollar amount of compensation that could be paid to the employee if the performance goal is attained is based, in whole or in part, on the employee’s base salary at the beginning of the Performance Period.

Based on the facts as represented, we rule that Company has disclosed the maximum dollar amount and is not required to disclose a specific dollar amount.

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 representative.

Sincerely yours,

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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