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LEGEND

Taxpayer =
Amended Plan =

Plan =
Year =
Date =
Awards =

X =
Y =
Goal 1 =
Goal 2 =

Dear :

This letter responds to a request for a private letter ruling submitted on behalf of Taxpayer, regarding whether certain compensation paid under Taxpayer's Amended Plan is performance-based compensation within the meaning of section 162(m) of the Internal Revenue Code (Code).

Taxpayer established the Plan in Year, and the Plan was approved by Taxpayer's shareholders on Date. The Plan is designed to compensate officers and other key employees by providing them with an opportunity to purchase shares of Taxpayer's common stock and to benefit from the appreciation in value of that stock. The Plan provides compensation in the form of shares of Taxpayer common stock, options to buy shares of Taxpayer common stock, and units representing shares of Taxpayer common stock. Under the Plan's design, only compensation attributable to stock options may qualify as performance-based compensation within the meaning of section 162(m) of the Code.

Taxpayer amended the Plan so that certain compensation, in addition to stock options, can qualify as performance-based compensation under section 162(m) of the Code. Under the Amended Plan, Taxpayer's Compensation Committee (committee), which is composed of two or more outside directors within the meaning of section 162(m), may grant Awards to designated eligible participants (participants) during the first 90 days of the initial year of a X year period. With limited exceptions, in order to have their Awards converted into shares of Taxpayer common stock, participants must remain employed by Taxpayer for the full X year period, plus up to three months following such period while the committee confirms the amount payable, if any, under the Awards.

Under the Amended Plan, the committee has established two performance goals with respect to the Awards, Goal 1 and Goal 2. Both performance goals are determined in accordance with Generally Accepted Accounting Principles (GAAP). The period of service relating to both performance goals consists of only the final year of the X year period. During the first 90 days of the final year of the X year period, the committee will establish in writing a range of performance targets for the Goal 1 performance goal and a single target for the Goal 2 performance goal. The actual amount of an Award payable upon attainment of the Goal 1 performance goal will be a percentage of the Award, depending on which target within the specified range is obtained. If no target under the Goal 1 performance goal is obtained, Y percent of the Award may be payable if the Goal 2 performance goal is met. Taxpayer represents that the outcome of both performance goals, as well as the attainment of all applicable targets, will be substantially uncertain at the time they are established by the committee.

During the first 90 days immediately following the end of the X year period, and before any compensation is paid pursuant to an Award, the committee will certify in writing whether the performance goals, as well as the other material terms under the Amended Plan, have been met. If a goal is met, Awards will be converted into shares of Taxpayer common stock, based on the relevant goal. However, the committee retains discretion to reduce the number of shares of common stock paid pursuant to an Award, though in no case can the committee increase the amount of shares paid.

The Amended Plan provides an exception under which participants who terminate employment due to death, disability, or retirement during the X year period remain eligible to have their Awards converted into Taxpayer stock, provided that a performance goal relating to those Awards is met in the final year of the X year period. The Amended Plan requires compensation paid under this exception to be paid in accordance with the Amended Plan without regard to this exception, and only after the committee certifies whether the performance goals have been met.

Taxpayer represents that it will submit the Amended Plan, including all material terms, within the meaning of section 162(m) of the Code, to Taxpayer's shareholders for

approval by a majority of the vote in a separate shareholder vote before the payment of any compensation with respect to an Award.

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)(4) of the Code provides that applicable employee remuneration does not include any remuneration payable solely on account of the attainment of one or more performance goals, but only if (i) the performance goals are determined by a compensation committee of the board of directors of the taxpayer which is comprised solely of 2 or more outside directors; (ii) the material terms under which the remuneration is to be paid, including the performance goals, are disclosed to the shareholders and approved by a majority of the vote in a separate shareholder vote before the payment of such remuneration, and (iii) before any payment of such remuneration, the compensation committee referred to in clause (i) certifies that the performance goals and any other material terms were in fact satisfied.

Section 1.162-27(e)(2)(i) of the Income Tax Regulations (regulations) provides that qualified performance-based compensation must be paid solely on account of the attainment of one or more preestablished, objective performance goals. A performance goal is considered preestablished if it is established in writing by the compensation committee not later than 90 days after the commencement of the period of service to which the performance goal relates, provided that the outcome is substantially uncertain at the time the compensation committee establishes the goal. However, in no event will a performance goal be considered to be preestablished if it is established after 25 percent of the period of service (as scheduled in good faith at the time the goal is established) has elapsed.

Under section 1.162-27(e)(2)(iii)(A) of the regulations, the terms of an objective formula or standard must preclude discretion to increase the amount of compensation payable that would otherwise be due on attainment of a goal.

Under section 1.162-27(e)(2)(v) of the regulations, compensation does not satisfy the requirements of paragraph (e) if the facts and circumstances indicate that the employee would receive all or part of the compensation regardless of whether the performance goal is attained. Thus, if the payment of compensation under a grant or award is only nominally or partially contingent on attaining a performance goal, none of

the compensation payment under the grant or award will be considered performance-based. For example, if an employee is entitled to a bonus under either of two arrangements, where payment under a nonperformance-based arrangement is contingent upon the failure to attain the performance goals under an otherwise performance-based arrangement, then neither arrangement provides for compensation that satisfies the requirements of paragraph (e)(2).

Section 1.162-27(e)(4)(i) provides, in part, 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.

Section 1.162-27(e)(4)(vi) of the regulations provides that once the material terms of a performance goal are disclosed to and approved by shareholders, no additional disclosure or approval is required unless the compensation committee changes the material terms of the performance goal. If, however, the compensation committee has the authority to change the targets under a performance goal after shareholder approval of the goal, the material terms of the performance goal must be disclosed and reapproved by shareholders no later than the first shareholder meeting that occurs in the fifth year following the year in which shareholders previously approved the performance goal.

Based on the facts in Taxpayer's submission and the supplements thereto, and provided that all of the requirements of section 1.162-27(e)(4) of the regulations are met, including section 1.162-27(e)(4)(vi), we rule that the compensation paid as Awards under the Amended Plan, as described in the Taxpayer's submissions and using the performance goals specified above, is performance-based compensation within the meaning of section 162(m)(4)(C) of the Code and section 1.162-27(e).

The ruling contained in this letter is based upon information and representations submitted by 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 a ruling, it is subject to verification on examination.

Except as specifically ruled on above, no opinion is expressed as to the consequences of the transaction described above under any other provisions of the Code.

This ruling letter 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. Taxpayer should attach a copy of this ruling to any income tax return to which it is relevant.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representatives.

Sincerely yours,

KENNETH M. GRIFFIN
Senior Technician Reviewer
Executive Compensation Branch
Office of Division Counsel/Associate
Chief Counsel (Tax Exempt and
Government Entities)