

Year 5 =

Dear :

This is in response to a letter dated May 24, 2004, and subsequent correspondence 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 shareholder approval of the material terms of the performance goal is not required in Year 5. The facts as represented by the Company are as follows:

Company is a publicly held corporation as defined in section 162(m)(2) of the Code. On Date 1, Company entered into an Agreement ("Agreement") with X Group to engage the management services of X Group, which provided the services of Y as Company's Chairman of the Board and Chief Executive Officer.

The initial term of the Agreement was from Date 1 until Date 2. The Agreement provides that the term of the Agreement will be extended for M if the Extension Goal described in the Agreement was met.

The Agreement provides for an annual salary and a bonus. The bonus is based on a Performance Goal described in the Agreement. The Performance Goal was submitted to the Company's shareholders in Year 1 and was approved by the shareholders. The Compensation Committee does not have authority to change the targets under the Performance Goal set out in the Agreement.

The business criterion on which the Performance Goal is based is different than the business criterion upon which the Extension Goal is based.

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)(4)(vi) of the Income Tax 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, 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 submitted, and provided the compensation committee does not change the material terms of the Performance Goal, we rule as follows:

Because the Compensation Committee does not have authority to change the targets under the Performance Goal, the Performance Goal does not have to be disclosed and reapproved by the shareholders.

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 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