

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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LEGEND:

Corporation =
Partnership =
Subsidiary =
X Percent =

Dear _____ :

This letter is in response to a letter dated April 11, 2008, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code (Code). Specifically, you requested a ruling that the deduction limitation of section 162(m) does not apply. The facts, as represented, are as follows.

Corporation owns approximately X percent of the common limited partnership interests in Partnership. Corporation elected to be taxed as a real estate investment trust (REIT) as defined under section 856 of the Code. Virtually all of Corporation's interests in properties and other assets are held through the Partnership. Partnership and its wholly owned entities hold substantially all of its properties and assets. Both Corporation and Partnership have common equity securities that are required to be registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act).

Corporation has employees who are covered employees (Covered Employees) within the meaning of section 162(m) of the Code. Certain Covered Employees of Corporation are also employees and senior executives of Partnership. The Covered Employees are compensated for the services they perform for both entities under a variety of arrangements. The Covered Employees provide only a small portion of their services as employees of Corporation and the vast majority of their time and effort is devoted to managing Partnership. Subsidiary is a subsidiary of Partnership, and it manages all payroll activities for Partnership and Corporation.

The total compensation of one or more of the Covered Employees will exceed \$ and will not be qualified performance-based compensation within the meaning of section 162(m) of the Code.

Section 162(a)(1) of the Code allows a deduction for all of 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 for any publicly held corporation, no deduction shall be allowed for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year exceeds \$1 million.

Section 162(m)(2) of the Code defines publicly held corporation to mean any corporation issuing any class of common equity securities required to be registered under section 12 of the Exchange Act. Section 1.162-27(c)(1)(i) of the Income Tax Regulations (Regulations) provides that whether a corporation is publicly held is determined based solely on whether, as of the last day of its taxable year, the corporation is subject to the reporting obligations of section 12 of the Exchange Act.

Under section 1.162-27(c)(1)(ii) of the Regulations, a publicly held corporation includes an affiliated group of corporations, as defined in section 1504 of the Code (determined without regard to section 1504(b), which lists exceptions to the definition). For purposes of section 162(m), an affiliated group of corporations does not include any subsidiary that is itself a publicly held corporation.

Section 162(m)(3) of the Code defines covered employee as any employee of the taxpayer if (A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such capacity, or (B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Exchange Act by reason of such employee being among the four highest compensated officers for the taxable year (other than the chief executive officer). Section 1.162-27(c)(2)(ii) of the Regulations generally provides that whether an individual is a covered employee for purposes of section 162(m) is determined pursuant to the executive compensation disclosure rules under the Exchange Act.

Section 1504(a) of the Code defines affiliated group to mean one or more chains of includible corporations connected through stock ownership with a common parent corporation if the common parent directly owns 80 percent of the total voting power of the stock and has a value equal to at least 80 percent of the total value of the stock of the corporation.

Based solely on the facts presented, we rule as follows:

1. The deduction limitation of section 162(m) of the Code does not apply to Partnership with respect to remuneration paid to a Covered Employee as compensation for services performed by the Covered Employee as an employee of Partnership.
2. The deduction limitation of section 162(m) of the Code does not apply to Corporation with respect to its distributive share of income or loss from Partnership that includes the compensation expense of the Covered Employees to the extent such compensation expense is attributable to services performed by the Covered Employees as employees of Partnership.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In this regard, note that we specifically express no opinion concerning the limited partnership agreement of Partnership, including any amendments thereto, or the allocation of the compensation between Partnership and Corporation.

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.

A copy of this letter must be attached to any income tax return to which it is relevant.

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

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,

Kenneth M. Griffin
Senior Technician Reviewer
Executive Compensation Branch
Office of Division Counsel /
Associate Chief Counsel /
Tax Exempt & Government Entities