

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **201911002**

Release Date: 3/15/2019

Index Number: 423.00-00

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:TEGE:EB:EC

PLR-119721-18

Date:

December 12, 2018

Legend

Taxpayer =

Plan =

Third Party =

Dear :

This letter is in response to a letter dated June 19, 2018, submitted by your authorized representative, requesting a ruling under section 423 of the Internal Revenue Code (Code). Taxpayer is requesting a ruling that certain Plan provisions will not prevent the Plan from meeting the requirements of Section 423(b) of the Code.

Taxpayer expects to adopt the Plan, a stock option plan that is intended to meet the requirements of an employee stock purchase plan under section 423(b) of the Code. Pursuant to the terms of the Plan, a Plan participant may purchase Taxpayer shares at the end of the offering period for an amount equal to 85% of the fair market value of the Taxpayer stock at either the first or last day of the offering period, whichever is less. The exercise price will be paid through salary reduction amounts and/or the proceeds of a loan from Taxpayer or a Third Party, unrelated to Taxpayer. Taxpayer intends to include the following provisions in the Plan and related enrollment documents:

- A Plan participant may obtain a loan (Loan) from Taxpayer or Third Party to purchase shares pursuant to the Plan, unless the Loan is prohibited by section 402 of Pub. L. 107-204 (commonly referred to as the Sarbanes-Oxley Act of 2002). Taxpayer represents that the Loan is a bona fide loan and that the terms of the loan . A Plan participant who obtains a Loan

- A Plan participant who chooses to obtain a Loan

. A Plan participant may choose to finance the purchase of the shares using either a salary reduction election or a Loan, or a combination of both. Prior to the beginning of the offering period,

purchase the stock, which will be deposited in the participant's brokerage account. The Third Party

. If requested by the participant

the participant's brokerage account.

- A Plan participant may withdraw from an offering period at any time, but no later than ten days before the last trading day of the offering period. will terminate upon a participant's withdrawal from an offering period.
- A Plan participant who chooses to obtain a Loan

Specifically, Taxpayer is requesting a ruling that offering the Loan (on the conditions described above) to Plan participants will not prevent the Plan from meeting the requirements under section 423(b) of the Code, and specifically sections 423(b)(5) and 423(b)(6) of the Code. Furthermore, Taxpayer is requesting a ruling that the terms of will not prevent an option granted under the Plan from qualifying as a statutory option as defined in §1.421-1(b)(1) of the Income Tax Regulations (Regulations), which provides, in part, that the term statutory option means an option granted under an employee stock purchase plan under section 423(b) of the Code.

Section 421(a) of the Code provides, in part, 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 shall be allowable to the employer corporation at any time with respect to the share transferred, and no

amount other than the price paid under the option shall be considered as received by the issuing corporation for the share transferred.

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 if no disposition of the stock is made by the employee within 2 years after the date the option is granted nor within 1 year after the exercise of such option, and at all times during the period beginning with the date of the granting of the option and ending 3 months before the date of exercising the option, the individual to whom the option was granted remains an employee of the granting corporation, a parent or subsidiary corporation of such corporation, or a corporation (or a parent or subsidiary corporation of such corporation) issuing or assuming a stock option to which section 424(a) applies.

Section 423(b) of the Code provides that the term “employee stock purchase plan” means a plan which meets the requirements in sections 423(b)(1) through 423(b)(9).

Section 423(b)(5) of the Code provides that, under the terms of the plan, all employees granted options shall have the same rights and privileges, except that the amount of stock which may be purchased by any employee under an option may bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees, the plan may provide that no employee may purchase more than a maximum amount of stock fixed under the plan, and the rules of section 83(i) shall apply in determining which employees have a right to make an election under such section.

Section 423(b)(6) of the Code provides that, under the terms of the plan, the option price is not less than the lesser of (A) an amount equal to 85 percent of the fair market value of the stock at the time such option is granted, or (B) an amount which under the terms of the option may not be less than 85 percent of the fair market value of the stock at the time such option is exercised.

Section 1.423-2(f)(1) of the Regulations provides that an employee stock purchase plan or offering must, by its terms, provide that all employees granted options under the plan or offering shall have the same rights and privileges. Thus, the provisions applying to one option under an offering (such as the provisions relating to the method of payment for the stock and the determination of the purchase price per share) must apply to all other options under the offering in the same manner. If all the options granted under a plan or offering do not, by their terms, give the respective optionees the same rights and privileges, none of the options will be treated as having been granted under an employee stock purchase plan for purposes of section 421.

Section 1.423-2(g)(1) of the Regulations provides that an employee stock purchase plan or offering must, by its terms, provide that the option price will not be less than the lesser of (i) an amount equal to 85 percent of the fair market value of the stock at the

time the option is granted, or (ii) an amount that under the terms of the option may not be less than 85 percent of the fair market value of the stock at the time the option is exercised.

Section 1.421-1(b)(1) of the Regulations provides that the term statutory option, for purposes of §§ 1.421-1 through 1.424-1 of the Regulations, means an option granted under an employee stock purchase plan, as defined in §1.423-2 of the Regulations.

In relevant part §1.421-1(b)(2) of the Regulations provides that an option qualifies as a statutory option only if the option is not transferable (other than by will or by the laws of descent and distribution) by the individual to whom the option was granted, and is exercisable, during the lifetime of such individual, only by such individual. Furthermore, a pledge of the stock purchasable under an option as security for a loan that is used to pay the option price does not cause the option to violate the nontransferability requirement.

Therefore, based solely on the facts presented, we rule as follows:

1. A Plan participant's ability to use Loan proceeds to purchase shares pursuant to the Plan will not prevent the Plan from meeting the requirements under section 423(b) of the Code.
2. The inability of a Plan participant to obtain a Loan to purchase shares pursuant to the Plan due to the applicability of 402 of Pub. L. 107-204 (commonly referred to as the Sarbanes-Oxley Act of 2002) will not prevent the Plan from meeting the requirements of section 423(b)(5).
3. The requirement that a Plan participant
will not
prevent the Plan from meeting the requirements of section 423(b)(5).
4. A Plan participant's use of Loan proceeds to purchase shares pursuant to the Plan will not prevent the Plan from meeting the requirements of section 423(b)(6).
5. The requirement

will not prevent an option granted under the Plan from qualifying as a statutory option as defined in §1.421-1(b)(1) of the Regulations, which provides, in part, that the term statutory option means an option granted under an employee stock purchase plan under section 423(b) of the Code.

6. The terms _____ will not prevent an option granted under the Plan from qualifying as a statutory option as defined in §1.421-1(b)(1) of the Regulations, which provides, in part, that the term statutory option means an option granted under an employee stock purchase plan under section 423(b) of the Code.

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. Specifically, no opinion is expressed or implied concerning (i) the tax consequences of any other provision of the Plan, (ii) whether the Plan qualifies as an employee stock purchase plan within the meaning of section 423(b) of the Code, and (iii) the tax consequences of the Loan.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.

Sincerely,

Thomas D. Scholz
Senior Counsel, Executive Compensation
(Employee Benefits)
(Tax Exempt & Government Entities)

Enclosures:
Copy of letter
Copy for section 6110 purposes