Internal Revenue Service

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Department of the Treasury
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Person To Contact:
, ID No.
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Refer Reply To:
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PLR-114607-06

Date:
August 22, 2006

Legend

Corporation =

Director =

Subsidiary =

Trade Association =

Law Firm =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Year G =

Year H =

J =

$K =

$L =

Dear :

This letter responds to a letter dated January 31, 2006, submitted by your authorized representatives, requesting a ruling under section 162(m) of the Internal Revenue Code ("Code"). Specifically, a ruling is requested that the receipt of legal fees by Law Firm from Trade Association will not cause Director to fail to qualify as an "outside director" of Corporation under section 1.162-27(e)(3) of the Income Tax Regulations ("Regulations"). Corporation represents the following facts.

Corporation is a publicly-held corporation. Subsidiary is a wholly-owned subsidiary of Corporation. Director was elected to Corporation's Board of Directors on Date A. Director is not and has not been employed by, and does not and has not served as an officer of, Corporation at any time. Director has been a partner at Law Firm since Date B. Director's partnership interest in Law Firm represents less than 5 percent of the ownership interests in the partnership.

Trade Association represents the . Law Firm is one of several law firms that provide legal services to Trade Association. Subsidiary is one of J companies that are members of Trade Association. The members of Trade Association approve its annual budget. Trade Association's annual budget includes an item for anticipated legal fees. Trade Association is funded through dues paid by its members.

Law Firm has provided legal services to Trade Association since approximately Year G. Law Firm does not provide any services directly to Corporation, Subsidiary or any of their affiliates. Director is neither the engagement partner nor the primary attorney at Law Firm who provides services to Trade Association. Director has provided services to Trade Association in his capacity as a partner of Law Firm on only a limited number of discrete matters. Director's percentage interest and his compensation as a partner of Law Firm have no direct relationship to the amount received by Law Firm from Trade Association for legal services.

The law firms representing Trade Association are selected by Trade Association's executive vice president and approved by Trade Association's executive committee. The executive committee consists of the executive vice president and representatives of each of Trade Association's members. Trade Association is billed directly by each of the law firms and pays such bills directly from its accounts. There is no specific allocation of bills for legal services to any of Trade Association's members.

Annual legal fees paid by Trade Association to Law Firm vary from year to year, but approximated $K in Year H. For the period Date C to Date D, Trade Association's budget includes a retainer of $L per month payable to Law Firm.

The presidency of Trade Association is a rotating position, and it is filled by executives of Trade Association member companies. Effective Date E, the president and chief executive officer of Subsidiary was named president of Trade Association and made a member of Trade Association's executive committee. This individual also is president, chief operating officer and a director of Corporation and was previously vice president and secretary/treasurer of Trade Association. This individual's term as president of Trade Association expires on Date F. In addition, several employees of Corporation and Subsidiary serve on Trade Association standing committees, as do employees of other Trade Association member companies.

Section 162(a)(1) of the Code provides that a taxpayer may deduct all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries and other compensation for personal services actually rendered.

Section 162(m)(1) of the Code 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) of the Code excepts from this limitation certain "performance based compensation" payable solely on account of the attainment of one or more performance goals if, among other requirements, the performance goals are determined by a compensation committee of the board of directors comprised solely of two or more "outside directors."

Section 1.162-27(e)(3)(i) of the Regulations provides that a director is an "outside director" if the director (A) is not a current employee of the publicly held corporation; (B) is not a former employee of the publicly held corporation who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year; (C) has not been an officer of the publicly held corporation; and (D) does not receive remuneration from the publicly held corporation, either directly or indirectly, in any capacity other than as a director. For this purpose, remuneration includes any payment in exchange for goods or services.

Section 1.162-27(e)(3)(ii) of the Regulations provides that, for purposes of section 1.162-27(e)(3), remuneration is received, directly or indirectly, by a director in each of the following circumstances: (A) If remuneration is paid, directly or indirectly, to the director personally or to an entity in which the director has a beneficial ownership interest of greater than 50 percent. For this purpose, remuneration is considered paid when actually paid (and throughout the remainder of that taxable year of the corporation) and, if earlier, throughout the period when a contract or arrangement to pay remuneration is outstanding.

(B) If remuneration, other than de minimis remuneration, was paid by the publicly held corporation in its preceding tax year to an entity in which the director has a beneficial ownership of at least 5 percent, but not more than 50 percent. For this purpose, remuneration is considered paid when actually paid or, if earlier, when the publicly held company becomes liable to pay it.

(C) If remuneration, other than de minimis remuneration, was paid by the publicly held corporation in its preceding taxable year to an entity by which the director is employed or self-employed other than as a director. For this purpose, remuneration is considered paid when actually paid or, if earlier, when the publicly held corporation becomes liable to pay it.

Corporation represents that Director is not a current employee, former employee or officer of Corporation, Subsidiary or any affiliate thereof, and that Corporation does not pay remuneration, directly or indirectly, to Director other than in his capacity as a director on Corporation's board of directors.

Based on the information submitted, we rule that the receipt of legal fees by Law Firm from Trade Association will not cause Director to fail to qualify as an "outside director" of Corporation for purposes of section 1.162-27(e)(3) of the Regulations.

Except as specifically ruled on above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code. This ruling 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.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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