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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
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Person To Contact:

Telephone Number:

Refer Reply To:  
**CC:TEGE:EB:EC**  
**PLR-119232-06**

Date:  
August 14, 2006

In Re:

Legend

Code =  
Stock =  
Taxpayer =

Dear \_\_\_\_\_ :

This letter is in response to a request for a ruling dated April 5, 2006, and subsequent correspondence, submitted by Taxpayer's authorized representative concerning the proposed terms of future stock option grants under the Taxpayer's Stock Plan. The options are not intended to qualify as incentive stock options under section 422 of the Code. The proposed terms will allow the option holder to transfer the vested portion of an option to an unrelated third party buyer in exchange for a cash payment. Taxpayer's authorized representative is requesting a ruling that the ability to transfer the options will not cause the options to be taxable at grant under section 1.83-7(a).

Section 83(a) of the Code provides that if, in connection with the performance of services, property is transferred to any person other than the person for whom the services are performed, the excess of the fair market value of the property (determined without regard to any restriction other than a restriction which by its terms will never lapse) over the amount, if any, paid for the property, will be included in the gross income of the person who performed the services. This inclusion will take place in the first taxable year in which the rights of the person having the beneficial interest are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable.

Section 1.83-7(a) of the regulations provides that if there is granted to an employee (or beneficiary) in connection with the performance of services, an option to which section 421 does not apply, section 83(a) shall apply to the grant if the option has a readily ascertainable fair market value at the time the option is granted.

Section 1.83-7(a) provides that section 83 will not apply to the transfer of an option without a readily ascertainable fair market value.

Section 1.83-7(b) of the regulations provides that options are considered to have a readily ascertainable fair market value if they are actively traded on an established market. When an option is not actively traded on an established market, it does not have a readily ascertainable fair market value unless its fair market value can otherwise be measured with reasonable accuracy. An option is not considered to have a readily

ascertainable fair market value unless the taxpayer can show that all of the following conditions exist:

1. The option is transferable by the optionee;
2. The option is exercisable immediately in full by the optionee;
3. The option or the property subject to the option is not subject to any restriction or condition (other than a lien or other condition to secure the payment of the purchase price) which has a significant effect upon the fair market value on the option; and
4. The fair market value of the option privilege is readily ascertainable.

If section 83(a) does not apply at the time an option is granted because the option does not have a readily ascertainable fair market value, then section 83(a) will not apply until the option is exercised or otherwise disposed of, even if the fair market value of the option becomes readily ascertainable before then. If the option is exercised, sections 83(a) and 83(b) apply to the transfer of property pursuant to such exercise. If the options are sold or otherwise disposed of in an arms length transaction, sections 83(a) and 83(b) apply to the transfer of money or other property received in the same manner as sections 83(a) and 83(b) would have applied to the transfer of property pursuant to an exercise of the option. Section 1.83-7(a).

Under the facts described above, the nonstatutory stock options will not have a readily ascertainable fair market value on the date of grant.

In accordance with the foregoing, we rule as follows: The ability to transfer the stock options at and after vesting will not cause the options to be taxable at grant under section 1.83-7(a) because the options will not have a readily ascertainable fair market value on the date of grant.

No opinion is expressed or implied concerning the tax consequences of the proposed transactions under any other provision of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed concerning the application of section 409A of the Code to the proposed transactions.

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.

Sincerely,

William C. Schmidt  
Senior Counsel, Executive Compensation  
(Employee Benefits)  
(Tax Exempt & Government Entities)