Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

Telephone Number:

Refer Reply To:
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Date:
January 14, 2004

Corporation X =

Corporation Y =

Director =
State X =
State Y =
Year a =
Year b =
Year c =
Year d =

Dear :

This responds to your letter dated June 10, 2003, requesting a ruling under section 162(m) of the Internal Revenue Code ("Code"). Specifically, a ruling is requested that Director qualifies as an "outside director" for purposes section 1.162-27(e)(3) of the Income Tax Regulations ("regulations"). The facts, as represented by Corporation X, are as follows.

Corporation Y, a State Y corporation, was incorporated in Year a. Director served as secretary of Corporation Y from Year a to Year c. As secretary, Director

attended meetings of Corporation Y's board of directors and, on two occasions in Year a and Year b, Director chaired the board meetings because the president of Corporation Y was unable to attend. Director served as a member of the board of directors of Corporation Y from Year a to Year d.

In Year d, Corporation Y merged into Corporation X, a State X corporation. Corporation X survived the merger. Corporation X was a newly formed subsidiary of Corporation Y at the time the merger occurred.

Director currently serves on the board of directors of Corporation X. Director receives no remuneration from Corporation X except in his capacity as a director.

Section 162(m)(1) of the Code generally provides a limit of $1 million on the deduction for compensation paid during any taxable year for the Chief Executive Officer and the other four highest compensated officers of any publicly held corporation.

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)(vi) of the regulations provides that whether a director is an employee or a former officer is determined on the basis of the facts at the time that the individual is serving as a director on the compensation committee. Thus, a director is not precluded from being an outside director solely because the director is a former officer of a corporation that previously was an affiliated corporation of the publicly held corporation. For example, a director of a parent corporation of an affiliated group is not precluded from being an outside director solely because that director is a former officer of an affiliated subsidiary that was spun off or liquidated.

Based on the information submitted, we rule that: Director qualifies as an "outside director" of Corporation X for purposes of section 1.162-27(e)(3) of the regulations.

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.

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.

Sincerely,

Kenneth M. Griffin
Assistant Chief
Executive Compensation Branch
Office of Division Counsel/Associate

Chief Counsel (Tax Exempt and
Government Entities)

Enclosure:
Copy for section 6110 purposes