



The Plan provides that the maximum number of shares (after taking into account certain adjustments relating to variations in share capital) that may be issued under the Plan is b shares. The Plan also describes the categories of employees who are eligible to participate in the Plan. The Plan provides certain limitations on awards including that no grant will be considered an ISO to the extent the \$100,000 limitation described in section 422(d) of the Code is exceeded, and special rules for shareholders who own more than 10% of the total combined voting power of stock. Under the Plan, awards may not be sold, transferred, pledged, assigned, encumbered, or otherwise alienated by the participant to whom the award is made, and such award may only be exercised by such participant.

The Plan will be operated by means of a payroll deduction mechanism. Under this system, there is a one-month enrollment period. Participants at enrollment are permitted to elect how much will be deducted per month in after-tax dollars from their paychecks, up to an annual maximum not to exceed \$a per participant.

The first business day after the end of the one-month enrollment period is the grant date for participants. Participants then accumulate after-tax dollars in accordance with their elections on a paycheck-by-paycheck basis during a one-year savings period. The exercise price is set on the grant date, without a discount. The purchase price is set at the closing price of Z shares on the exchange on the date of grant. The option exercise is made at the end of the one-year savings period.

Participants have the right to sell their shares at any time after purchase. Although there are no restrictions on a participant's right to sell purchased shares, the Plan requires that purchased shares be held in an employee nominee account operated by a bank for a one-year period after purchase (or until sold by the participant, if earlier). For purposes of administrative convenience, during the period shares are held in an employee nominee account, the participant forfeits any voting rights with respect to such shares. Fractional shares may be held in such account; however, on any transfer of shares to a participant's own brokerage account, any such fractional shares are forfeited.

At the annual shareholder meeting of Z, Z will ask its shareholders to approve (i) the maximum aggregate number of shares that may be issued under the Plan (i.e., b shares, after taking into account adjustments), and (ii) the eligible employees under the Plan (i.e., salaried regular status employees, non-union hourly employees as may be designated by X, as the administrator of the Plan, or its permitted delegate, and employees represented by collective bargaining agreement, if their collective bargaining agreement provides for participation in the Plan). The proxy card will include a check-the-box mechanism for voting for or against approval of the Plan. Approval, within 12 months before or after the date the Plan is adopted will require a majority of the votes cast at the annual shareholder meeting of Z, at which a quorum representing a majority of all outstanding voting stock will be present and voting in person or by proxy on the Plan.

Section 421(a) of the Code provides that, if a share of stock is transferred to an individual in a transfer in respect of which the requirements of section 422(a) are met, (i) no income results to the individual at the time of the transfer of the share to the individual on exercise of the option; (ii) no deduction under section 162 is allowable at any time to the employer corporation or its parent or subsidiary corporations with respect to the share transferred; and (iii) no amount other than the price paid under the option is considered as received by such corporations for the share transferred.

Section 422(a) of the Code provides that section 421 applies to the transfer of stock to an individual pursuant to the exercise of an ISO if (i) no disposition of the stock is made by the employee within two years from the date of the grant of the option or within one year from the date the stock is transferred to the individual; and (ii) at all times during the period beginning on the date the option is granted and ending three months before the date of its exercise, the optionee was an employee of either the corporation granting the option, a parent or subsidiary of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming an option in a transaction to which section 424(a) applies.

Section 422(b) defines an incentive stock option as an option granted to an individual for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(1) the option is granted pursuant to a plan which includes the maximum aggregate number of shares which may be issued under options and the employees (or class of employees) eligible to receive options, and which is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(2) such option is granted within 10 years from the date such plan is adopted, or the date such plan is approved by the stockholders, whichever is earlier;

(3) such option by its terms is not exercisable after the expiration of 10 years from the date the option is granted;

(4) the option price is not less than the fair market value of the stock at the time such option is granted;

(5) such option by its terms is not transferable by such individual otherwise than by the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(6) such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the employer corporation or its parent or subsidiary corporation.

Section 1.422-2(a)(2) of the Income Tax Regulations defines an ISO to include, among other things, an option granted pursuant to a plan that meets the requirements described in section 1.422-2(b). Under section 1.422-2(b)(2)(i), the plan must be

approved by the stockholders of the corporation granting the ISO within 12 months before or after the date such plan is adopted. Ordinarily, a plan is adopted when it is approved by the granting corporation's board of directors, and the date of the board's action is the reference point for determining whether stockholder approval occurs within the 12-month period.

In section 1.422-2(b)(6), Example 1(iii), of the regulations, S Corporation is a subsidiary of P Corporation, a publicly traded corporation. On January 1, 2006, S adopts a plan under which ISOs for S stock are granted to S employees. The plan is approved by the stockholders of S (in this case, P) on March 1, 2006. On January 1, 2008, S changes the plan to provide that ISOs for P stock will be granted to S employees under the plan. Because there is a change in the stock available for grant under the plan, the change is considered the adoption of a new plan that must be approved by the stockholders of P within 12 months before or after January 1, 2008.

Section 1.422-3 of the regulations provides that if State law does not prescribe a method and degree of stockholder approval in such cases an ISO must be approved (a) by a majority of votes cast at a duly held stockholders' meeting at which a quorum representing a majority of all outstanding voting stock is, either in person or by proxy, present and voting on the plan; or (b) by a method and degree that would be treated as adequate under applicable State law in the case of an action requiring stockholder approval (i.e., an action on which stockholders would be entitled to vote if the action were taken at a duly held stockholders' meeting).

The Plan, as submitted, includes the terms described in section 422(b). Additionally, the maximum aggregate number of shares that may be issued under the plan and the employees eligible to participate in the Plan will be approved by the shareholders. The approval procedures require that the shareholders of Z approve the Plan and the approval procedures comply with the requirements of section 1.422-2(b) and 1.422-3 of the regulations. Assuming the approval is obtained within 12 months before or after the date of the Plan's adoption, the shareholder approval requirements of section 422(b)(1) are satisfied.

Based solely on the information submitted, we rule as follows:

1. The Plan qualifies under section 422 of the Code as an incentive stock option plan; and
2. The Plan's shareholder approval procedures satisfy the shareholder approval requirements of section 422(b)(1) 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, this ruling does not address whether the administration of the plan or subsequent changes to the plan or to the terms of an

option affect the plan's status as an incentive stock option plan or the option as an incentive stock option as defined in section 422 of the Code. Additionally, this ruling does not address the compensation inclusion, compensation deduction, or employment tax and withholding consequences that may occur on a disqualifying disposition.

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.

Sincerely,

Robert Misner  
Senior Technician Reviewer  
Executive Compensation Branch  
Office of the Division Counsel/Chief Counsel (Tax  
Exempt and Government Entities)