INTERNAL REVENUE SERVICE
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Partnership =

A =

B =

C =

u =

v =

w =

x =

y =

z =

This is in reply to a request for rulings concerning the application of section 162(m) of the Internal Revenue Code, and the regulations thereunder, to certain compensation plans of Partnership, A, B, and C before and after a proposed transaction that will result in Partnership's activities being conducted by a corporation.

Partnership is a limited partnership whose units are publicly traded on the New York Stock Exchange. Its common equity securities are required to be registered under section 12 of

the Securities Exchange Act of 1934. Partnership represents that because of a qualifying exception under the Code, it is taxed as a partnership for federal income tax purposes.

A is a limited partnership and the sole general partner of Partnership. A initially has u percent of Partnership's profits and capital. A's share of Partnership's profits increases from u percent to v percent as Partnership achieves certain economic benchmarks.

B is a corporation with only one class of issued and outstanding stock. Partnership owns w percent of the stock of B and the remaining x percent is owned by A.

C is limited partnership. Partnership owns a y percent limited partner interest in C and A owns a z percent general partner interest in C.

Partnership intends to engage in a conversion transaction whereby its activities will be conducted by a real estate investment trust (REIT) that is organized as a corporation and various subsidiary entities. Partnership, A, B, and C have previously entered or will enter into various compensation plans for executives who, upon the proposed conversion are to be treated as covered employees within the meaning of section 162(m) of the Code. It is represented that the plans constitute unfunded nonqualified incentive and/or deferred compensation plans and provide for amounts to vest after years of service as well as the achievement of certain pre-established performance goals. It is further represented that none of the plans qualify for the performance-based exception of section 162(m)(4)(C) of the Code. It is anticipated that the conversion will be consummated prior to final payouts under the plans. Finally, it is represented that information concerning the plans will be disclosed as required, in the prospectus, registration statement and/or other documents to be filed with the Securities and Exchange Commission consistent with all applicable laws in effect at the time of the conversion.

Section 162(m) 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)(2) of the Code defines "publicly held corporation" to mean any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934. Under section 1.162-27(c)(1)(ii) of the Income Tax Regulations, a publicly held corporation includes an affiliated group of corporations, as defined in section 1504 (determined without regard to section 1504(b), which lists exceptions to the definition). For purposes of section 162(m), an affiliated group of corporations does not include any subsidiary that is itself a publicly held corporation.

Section 1504 (a) of the Code defines the term "affiliated group" to mean 1 or more chains of includible corporations connected through stock ownership with a common parent corporation

if the common parent directly owns 80 percent of the total voting power of the stock and has a value equal to at least 80 percent of the total value of the stock of the corporation.

Section 1.162-27(f)(1) of the regulations provides that, in the case of a corporation that was not a publicly held corporation and then becomes a publicly held corporation, the deduction limit does not apply to any remuneration paid pursuant to a compensation plan or agreement that existed during the period in which the corporation was not publicly held. However, in the case of such a corporation that becomes publicly held in connection with an initial public offering, this relief applies only to the extent that the prospectus accompanying the initial public offering disclosed information concerning those plans or agreements that satisfied all applicable securities laws then in effect. In accordance with section 1.162-27(c)(1)(ii) of the regulations, a corporation that is a member of an affiliated group that includes a publicly held corporation is considered publicly held and, therefore, cannot rely on paragraph (f)(1).

Section 1.162-27(f)(2) of the regulations provides that paragraph (f)(1) may be relied upon until the earliest of one of the four following events: (i) the expiration of the plan or agreement; (ii) the material modification of the plan or agreement, within the meaning of section 1.162-27(h)(1)(iii) of the regulations; (iii) the issuance of all employer stock and other compensation that has been allocated under the plan; or (iv) the first meeting of the shareholders at which directors are to be elected that occurs after the close of the third calendar year in which the initial public offering occurs or, in the case of a privately held corporation that becomes publicly held without an initial public offering, the first calendar year following the calendar year in which the corporation becomes publicly held.

Based solely on the facts presented, Partnership, A, and C are not corporations for federal income tax purposes and B is not a publicly held corporation. Any remuneration paid under a compensation plan or agreement during the period these entities are not publicly held corporations would be exempted from the deduction limitation provided in section 162(m). The REIT will be a publicly held corporation, but the conditions for relief in section 1.162-27(f)(1) of the regulations will be satisfied. Therefore, we rule that:

1. Prior to the conversion, Partnership, A, B and C are not subject to the deduction limitation of section 162(m) of the Code because they are not publicly held corporations within the meaning of section 162(m).

2. In accordance with section 1.162-27(f) of the regulations, the deduction limit of section 162(m) will not apply to any remuneration paid pursuant to any of the plans in existence prior to the conversion. This relief is provided until the earliest of one of the events listed in section 1.162-27(f)(2) of the regulations occurs.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provisions of the Code.

Sincerely yours,

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MARK SCHWIMMER
Chief, Branch 4
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(Employee Benefits and
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Enclosure:
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