Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact: 199915053

Telephone Number:

Refer Reply To:
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Date:

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Legend

Company =
Foundation =
Taxpayer =
x =

We have received letters from your authorized representatives dated

, requesting a ruling that certain stock constitutes "qualified appreciated stock" within the meaning of §170(e)(5) of the Internal Revenue Code.

RULING REQUESTED

You ask for a ruling that shares of Company Class B stock contributed to Foundation are "qualified appreciated stock" within the meaning of § 170(e)(5) of the Code, allowing you to claim the full fair market value of the shares as a charitable contribution deduction.

FACTS

Taxpayer is a principal shareholder, along with others, of Company, a corporation. Foundation is a private grant-making charitable foundation established by Taxpayer as a nonprofit corporation to receive charitable gifts from Taxpayer and others. Concurrently with this request, Foundation is seeking a ruling from the Internal

Revenue Service that it is a private foundation described in § 509(a) of the Code and is not an entity described in § 170(b)(1)(E).

Company has two classes of voting common stock, Class A and Class B. Class A common stock is listed on the NASDAQ National Market, an established securities market. Class B common stock is not listed on the NASDAQ or on any other established securities market.

Company's restated certificate of incorporation explains the rights and privileges of holders of Class A and Class B shares of stock. Class B shares are convertible into Class A shares at any time on a share-for-share basis at the option of the holder. Class B shares, when transferred to anyone other than a specified class of transferees, convert automatically, on a share-for-share basis, to Class A shares. Holders of Class A shares are entitled to one vote per share, but holders of Class B shares are entitled to ten votes per share.

An agreement among certain holders of Company stock effectively provides that Class B stockholders may only sell or transfer Class B stock (or Class A stock that was converted from Class B stock) if the aggregate number of shares transferred in a calendar year by Taxpayer and Foundation does not exceed 10% of the aggregate number of shares of Class B stock owned by Taxpayer and Foundation on a specified date.

Taxpayer contributed x shares of Class B stock to Foundation, and the transfer of the shares was immediately recorded on Company books. Taxpayer signed an agreement, effective as of the day the contribution was made, that he would not sell any shares of Company common stock to the extent that such sale would restrict the ability of Foundation to sell or otherwise dispose of its shares of Company stock under Rule 144 of the rules and regulations of the Securities and Exchange Commission. At the time of Taxpayer's contribution to Foundation, Taxpayer and others were directors and officers of Foundation. Taxpayer had owned the contributed Class B shares for more than one year at the time of the contribution. The amount of the contributed Class B shares (when increased by the aggregate amount of all prior contributions of Company stock by Taxpayer and certain others) represented substantially less than 10% (in value) of Company's shares outstanding at the time of the contribution. Taxpayer had not contributed any other Company stock to Foundation or to any other private foundation prior to his contribution of the Class B shares.

LAW AND ANALYSIS

Section 170 of the Code permits a deduction for any charitable contribution payment of which is made within the taxable year. Section 1.170A-1(c)(1) of the Income Tax

Regulations provides that, if a charitable contribution is made in property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution, reduced as provided in § 170(e)(1) and § 1.170A-4(a) of the Regulations.

Section 170(e)(1)(B)(ii) of the Code provides that, in the case of a charitable contribution to or for the use of a private foundation (as defined in § 509(a)), other than a private foundation described in § 170(b)(1)(E), the amount of the charitable contribution of property otherwise taken into account under § 170 is reduced by the amount of gain that would have been long-term capital gain if the property had been sold at its fair market value (determined at the time of the contribution).

Section 170(e)(5) of the Code provides an exception to this reduction rule by providing that § 170(e)(1)(B)(ii) does not apply to any contribution of "qualified appreciated stock", which is defined in § 170(e)(5)(B)(i) as stock "for which (as of the date of the contribution) market quotations are readily available on an established securities market." At the time of Taxpayer's contribution, § 170(e)(5) was in effect as a temporary provision but has since been made permanent.

Section 170(e)(5) was added to the Code by the Tax Reform Act of 1984, Pub. L. No. 98-369. Acknowledging the "substantial role of nonoperating foundations in private philanthropy," Congress said that it believed "that deductibility at full fair market value for gifts of appreciated stock to private nonoperating foundations should be permitted in certain situations in which the potential for abuse, including overvaluations, is minimized." H.R. Rep. No. 432, 98th Cong., 2d Sess., pt. 2, at 1464 (1984). However, Congress specified that, for a donor to meet the requirement that the stock be stock for which market quotations are readily available on an established securities market, "it is not sufficient merely that market quotations for the stock are readily available (e.g., from established brokerage firms); rather, the market quotations must be readily available on an established securities market." Staff of the Joint Committee on Taxation, General Explanation of H.R. 4170, 98th Cong., 2d Sess. 668 (1984). Moreover, the legislative history provides that the nonreduced deduction provision does not apply to "contributions of bonds, notes, warrants, or options, whether or not market quotations for such property are readily available on an established market. Similarly, the nonreduced deduction provision does not apply to contributions of interests other than corporate stock, such as partnership interests." Id. At 669.

In this case, the contributed Class B shares do not meet the literal language of the statute, since Class B stock is not stock for which market quotations are readily available on an established securities market. There is no direct discussion in the legislative history of section 170(e)(5) of the Code about whether "qualified appreciated stock" includes stock that is convertible to stock for which market quotations are readily

available on an established securities market. However, as the above-quoted legislative history language indicates, there is clear evidence that Congress in enacting § 170(e)(5) did not intend the qualified appreciated stock exception to be applied wherever the value of the contributed property could be determined. For example, the legislative history states that, even where the price of contributed stock is "readily available" -- from a broker for example -- the exception does not apply if the stock is not regularly traded on an established securities market. Similarly, even if it is regularly traded, the exception does not apply to contributions of property other than corporate stock. The legislative history thus indicates that the provision is to be applied only to situations where price quotations for contributed stock are readily available on an established securities market. Since price quotations for Class B stock were not available on an established securities market at the time of the contribution, the contributed Class B shares do not constitute qualified appreciated stock for purposes of § 170(e)(5).

CONCLUSION

The contributed Class B shares are not "qualified appreciated stock" within the meaning of § 170(e)(5)(B) of the Code.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. Because this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

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. 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.

A copy of this letter must be attached to any income tax return to which it is relevant.

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,

Karin G. Gross
Senior Technician Reviewer
Branch 3
Income Tax & Accounting