

Internal Revenue Service

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In Re:

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CC:ITA:B06
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Date:
November 09, 2005

LEGEND:

Taxpayer =

Dear :

This is in response to your letter dated June 30, 2005, requesting a ruling that Taxpayer, a full-service business valuation firm, is not a qualified personal service corporation (QPSC) under § 448 of the Internal Revenue Code and the regulations thereunder.

Taxpayer, a C corporation, provides opinions of valuation, or appraisals, for closely-held interests in a wide variety of industries and for many purposes, including transactions in minority and controlling interests, estate and gift tax planning and filing, limited partnerships, LLCs, corporate recapitalizations, restricted stock, ESOPs/ERISA, sale/merger transactions, litigation, intangible assets, bankruptcy, matrimonial dissolution, fairness opinions, purchase price allocations, plus many more, for use by business owners and their advisors. The process for valuing holdings involves gathering data, performing research and data analysis, drafting the report, determining the valuation conclusion, compiling the valuation report, and finalizing and delivering the report to the client. Taxpayer's engagement customarily ends at the delivery of the valuation report.

Providing determinations of value, including the preparation of valuation reports, represents at least 95 percent of the work performed by Taxpayer. Taxpayer's clients usually pay a flat fee for each appraisal performed. Most of Taxpayer's clients are professionals, such as attorneys, accountants, and financial institutions. These professionals use the conclusions contained in valuation reports to advise their own clients on business and legal matters. On occasion, Taxpayer provides expert testimony concerning the assessments made in a valuation report delivered to a client. A few of the senior-level employees perform some consulting work, such as critiquing a valuation report prepared by another firm. Taxpayer has approximately employees

nationwide, consisting of professional valuation analysts, sales people, and support staff.

Section 448(a)(1) provides that, in the case of a C corporation, taxable income shall not be computed under the cash receipts and disbursements method of accounting (cash method).

Section 448(b)(2) provides that section 448(a)(1) shall not apply to qualified personal service corporations.

Section 448(d)(2) defines the term "qualified personal service corporation" to mean any corporation (A) substantially all the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and (B) substantially all the stock of which (by value) meets certain employee-ownership requirements.

Section 1.448-1T(e)(3) of the Income Tax Regulations provides that the term "qualified personal service corporation" means any corporation that meets the function test of § 1.448-1T(e)(4), and the ownership test of § 1.448-1T(e)(5).

Section 1.448-1T(e)(4)(i) provides that in general a corporation meets the function test if substantially all the corporation's activities for a taxable year involve the performance of services in one or more of eight fields, including consulting. Substantially all of the activities of a corporation are involved in the performance of services in a qualifying field only if 95 percent or more of the time spent by employees of the corporation, serving in their capacity as such, is devoted to the performance of services in a qualifying field. For purposes of determining whether this 95 percent test is satisfied, the performance of any activity incident to the actual performance of services in a qualifying field is considered the performance of services in that field. Activities incident to the performance of services in a qualifying field include the supervision of employees engaged in directly providing services to clients, and the performance of administrative and support services incident to such activities.

Section 1.448-1T(e)(4)(iv)(A) defines the performance of services in the field of consulting as the provision of advice and counsel, but not including sales or brokerage, or economically similar services. The determination of whether services are sales or brokerage services, or economically similar services, shall be based on all the facts and circumstances of the taxpayer's business. Such facts and circumstances include, for example, the manner in which the taxpayer is compensated for the services provided (that is, whether the compensation for the services is contingent upon the consummation of the transaction that the services were intended to effect).

Section 1.448-1T(e)(4)(iv)(B) provides examples to illustrate the provisions of § 1.448-1T(e)(4)(iv)(A). The examples do not address all types of services that may or may not qualify as consulting. The determination of whether activities not specifically

addressed in the examples qualify as consulting shall be made by comparing the service activities in question to the types of service activities discussed in the examples.

None of the examples in § 1.448-1T(e)(4)(iv)(B) specifically discuss providing assessments of value to clients. Moreover, to the extent the taxpayer in each exemplification provides advice and counsel to their clients, not one of the examples describes an analogous situation to Taxpayer's. Nonetheless, the most relevant illustration to this case is Example (10). In this example, the taxpayer is in the business of selling insurance, annuities, and other similar insurance products to various individual and business clients. The taxpayer will study the particular client's financial situation and make recommendations to the client regarding the desirability of various insurance products. The client will then purchase these various insurance products through the taxpayer. The taxpayer's compensation for its services is typically based on the purchases made by the clients. The taxpayer is not considered to be engaged in the performance of services in the field of consulting. The taxpayer is engaged in the performance of brokerage or sales services. Relevant to this determination is the fact that the compensation of the taxpayer for its services is contingent upon the consummation of the transaction the services were intended to effect (that is, the purchase of insurance products by its clients).

Similar to the taxpayer depicted in Example (10), Taxpayer, at the direction of its clients, composes and delivers a written product that represents the culmination of the services provided (that is, the ascertainment of value). Giving opinions of valuation, which result in the preparation of appraisal reports, constitutes at least 95 percent of the work performed by Taxpayer. Taxpayer's clients, mainly other professionals, use the conclusions reached in valuation reports to advise their own clients. Taxpayer's process for performing appraisals involves gathering data, conducting research and data analysis, drafting the report, determining the valuation conclusion, compiling a valuation report, and finalizing and delivering the report to the client. Taxpayer's engagement customarily ends at the delivery of the valuation report. Taxpayer usually charges a flat fee to make a determination of value. However, unlike the taxpayer detailed in Example (10), Taxpayer does not make recommendations to its clients regarding business or legal matters nor does Taxpayer render advice and counsel to its clients.

While Taxpayer does provide a service (that is, ascertaining value), Taxpayer is not considered to be engaged in the performance of services in the field of consulting. Since Taxpayer has not met the requirements of the function test under § 448(d)(2), the determination of whether Taxpayer meets the ownership requirements is unnecessary. Accordingly, Taxpayer is not a QPSC under § 448 and the regulations thereunder.

Except as specifically provided otherwise, no opinion is expressed on the federal tax consequences of any particular transaction. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that this ruling may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

JEFFERY G. MITCHELL
Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure:

Copy for 6110 purposes

CC: