

Internal Revenue Service

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Department of the Treasury

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PLR-140709-09

Date:

January 04, 2010

LEGEND

Taxpayer =

CompetitorA =

Acquiring-1 =

Acquiring-2 =

StateA =

BusinessA =

YEAR-1 =

YEAR-2 =

YEAR-3 =

YEAR-4 =

YEAR-5 =

DateA =

DateB =

DateC =

DateD =

a =

b =

First Taxpayer
Officer =

Second Taxpayer
Officer =

Dear :

This letter responds to a letter dated September 8, 2009, submitted on behalf of Taxpayer, requesting the Internal Revenue Service (“Service”) to rule as to the effect of § 382(c) of the Internal Revenue Code with respect to certain matters. Additional information was received in subsequent correspondence dated November 12 and 30, 2009. The material information submitted is summarized below.

SUMMARY OF FACTS

Taxpayer, a StateA corporation organized in YEAR-1, was engaged in BusinessA. Events involving Taxpayer relevant to the present ruling are listed below.

RELEVANT EVENTS:

YEAR-1 to YEAR-3, Business Development. In this period, Taxpayer developed a new technique and method for one aspect of BusinessA; applied for and/or received patents for this new technology; created a product based on this new technology; and brought this product to the commercial market.

YEAR-2, Ownership Change. On DateA, Taxpayer underwent an “Ownership Change” within the meaning of § 382(g). The § 382(c) 2-year period regarding continued business enterprise (the “COBE Period”) that began on DateA ended on DateB.

YEAR-3 and Previously, Competition. CompetitorA (an established company in the same line of business as Taxpayer) undertook vigorous action to compete with Taxpayer's commercial marketing of its product.

YEAR-3, Asset Sale. On DateC, which was within the 2-year COBE Period, as a result of the competition from CompetitorA, Taxpayer sold the part of its business dealing with the commercial marketing of its product to Acquiring-1 for \$ a. Taxpayer retained: all or part of its research department; its patents and patent applications; and law suits or potential law suits against CompetitorA for patent infringement and antitrust violations.

YEAR-4, Later Sale. Subsequent to Date-3 (after the end of the COBE Period) Taxpayer sold research and development activities to Acquiring-2 for potential future payments.

YEAR-5 and Previously, Patents and Litigation. Taxpayer used First Taxpayer Officer and/or Second Taxpayer Officer together with outside counsel to deal with the Patent Office with regard to Taxpayer's patents and/or patent applications and to direct and/or assist with the negotiations and the patent infringement and antitrust litigation against CompetitorA.

YEAR-5, Settlement Payment. In Year-5, Taxpayer received a payment of \$ b ("Settlement Payment") from CompetitorA in settlement of the patent infringement and antitrust lawsuits and for the right to the future use of Taxpayer's patents. This \$ b Settlement Payment was substantially more than the \$ a previously received by Taxpayer for the part of its business sold in the Asset Sale.

REPRESENTATIONS

Taxpayer and its officers have made the following representations in connection with this matter:

(a) During the portion of the COBE Period that still remained after the DateC Asset Sale (the period from DateC to DateB), Taxpayer engaged in: continued research and development activities; negotiations for the YEAR-4 Later Sale; acquiring or perfecting patents; strategic planning regarding the ongoing litigation with CompetitorA; and preparing for and pursuing negotiations with and litigation against CompetitorA as to antitrust violations and patent infringement.

(b) The § 382 pre-change losses (the losses prior to the DateA ownership change) first became usable by Taxpayer as a result of the Settlement Payment received by Taxpayer in YEAR-5. Prior to the Settlement Payment, Taxpayer never had income that these pre-change losses would have offset.

(c) Taxpayer's Federal income tax return for the taxable year that included the YEAR-5 Settlement Payment ("Taxable Year1") was filed on or about DateD which was subsequent to the time that Taxpayer submitted the present ruling request to this office.

(d) The period of limitations on assessment under § 6501(a) of the Code has not expired for TaxableYear1 or for any taxable years that would be affected by the rulings below in the present ruling letter.

RULINGS

Based solely on the information and affidavits submitted and on the representations made, we rule as follows:

(1) Taxpayer's activity subsequent to the Asset Sale in developing and perfecting new technology; in applying for and/or perfecting patents; and negotiating with and litigating against CompetitorA with regard to its business and patents and with regard to the patent infringement and antitrust lawsuits constitute the use of "historic business assets" by Taxpayer. Section 1.368-1(d)(3)(ii) of the Income Tax Regulations.

(2) The "historic business assets" specified in ruling (1) above with regard to which Taxpayer received the \$ b Settlement Payment constitute a "significant portion" of Taxpayer's pre-Asset Sale historic business assets.

(3) Taxpayer's use of its "historic business assets" from DateC until the DateB end of the 2-year COBE Period constitutes a continued business use by Taxpayer of a significant portion of its historic business assets sufficient to meet the continuity of business enterprise requirement (§ 1.368-1(d)) and, accordingly, the DateC Asset Sale does not bring into effect the § 382(c) carryforward limitation.

CAVEAT

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this ruling letter. In particular, other than as expressly stated in the rulings above regarding the § 382(c) effect of the Asset Sale, we express no opinion: with respect to any other § 382 matter; or as to the existence or amount of any net operating losses; or as to whether any such losses are available to offset income.

For purposes of granting this relief, we relied upon certain information, representations, and affidavits submitted by Taxpayer, First Taxpayer Officer, and Second Taxpayer Officer. This office has not verified any of the material submitted in support of the request for rulings.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer(s) who requested 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. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-140709-09) of this letter ruling.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Douglas C. Bates

Douglas C. Bates
Assistant to the Branch Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)