

Internal Revenue Service

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Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:ITA:B04
PLR-125444-16
Date:
January 23, 2017

LEGEND

Company =

Date 1 =

Date 2 =

Date 3 =

B =

X =

Z =

Year 1 =

Dear _____ :

This is in reply to your request for a ruling that gain from the sale of your stock in Company qualifies for the partial exclusion of gain under § 1202(a)(1) of the Internal Revenue Code because Company is a qualified trade or business as defined in § 1202(e)(3) and Company was not engaged in a “trade or business involving the performance of services in the fields of health ...” within the meaning of § 1202(e)(3)(A).

FACTS

You owned stock in Company and filed a joint tax return. One of you was a founder of Company and served as its chairman and CEO since its formation. You purchased stock in Company on Date 1 and Date 2.

Company, a C corporation, was incorporated in Year 1 to develop a tool to provide more complete and timely information to healthcare providers. Specifically, Company uses proprietary X and other technologies for the precise detection of B. You represent that Company is the only person that can legally perform X testing and that its expertise is limited to its patented X testing.

Company analyzes the results of X testing and then prepares laboratory reports for healthcare providers. Company's clients are doctors and other healthcare providers. You represent that the information the Company provides in a typical laboratory report only includes a summary of z detected and z tested for and not detected. Company's laboratory reports do not diagnose or recommend treatment. You represent that Company does not discuss diagnosis or treatment with any healthcare provider, and is not informed by the healthcare provider as to the healthcare provider's diagnosis or treatment. Company's sole function is to provide healthcare providers with a copy of its laboratory report. Company receives compensation for reporting results of tests to healthcare providers, which is based on each test performed.

Company accepts orders for tests only from health care professionals. Patients cannot order tests from Company. Although Company in rare instances may provide a copy of a test to a patient, it does not explain its laboratory reports to patients. Instead, Company directs patients to contact their healthcare provider if they have any questions. The only other contact Company has with a patient is in billing situations. Company will bill a patient directly if the patient is self-insured, uninsured, or if the insurance company pays the patient directly.

You represent that the laboratory director is required to be an M.D., D.O. or a Ph. D. as required by the laboratory personnel requirement of 42 C.F.R. § 493.1441 et. seq. The lab director reviews results for quality control and quality assurance. You represent that to the best of your knowledge, other than the laboratory director, Company's laboratory personnel are not subject to state licensing requirements or classified as healthcare professionals by any applicable state or federal law or regulatory authority. You also represent that laboratory director never has direct contact with patients and that none of the Company's personnel diagnose, treat or manage any aspect of any patient's care.

You represent that Company's employees, who are well educated, receive up to a year of training to perform the X testing. However, you represent that the skills employees bring with them when Company hires them are almost useless when performing the X tests and that the skills they acquire at Company are not useful to other employers.

Company maintains a research division to develop additional uses for its proprietary technology. Company has also developed additional uses for its X testing. For example, it tests for z in food and agricultural products.

On Date 3, 100 percent of Company stock was acquired in a taxable transaction.

LAW

Section 1202(a) provides, in general, that gross income does not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years. Section 1202(a)(3) provides that in the case of qualified small business stock acquired after the date of enactment of § 1202(a)(3) and on or before the date of enactment of the Creating Small Business Jobs Act of 2010, § 1202(a)(1) shall be applied by substituting “75 percent” for “50 percent” and § 1202(a)(2) shall not apply.

Section 1202(c)(2) provides that stock in a corporation is not treated as qualified small business stock unless during substantially all of the taxpayer’s holding period for such stock, the corporation meets the active business requirements of § 1202(e) and the corporation is a C corporation.

Section 1202(e)(3) generally provides that a qualified trade or business means any trade or business other than a trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees.

ANALYSIS

Company provides laboratory reports to health care professionals. However, Company’s laboratory reports do not discuss diagnosis or treatment. Company neither discusses with, nor is informed by, healthcare providers about the diagnosis or treatment of a healthcare provider’s patients. Company’s sole function is to provide healthcare providers with a copy of its laboratory report.

Company neither takes orders from nor explains laboratory tests to patients. Company’s direct contact with patients is billing patients whose insurer does not pay all of the costs of a laboratory test.

In addition, you represent that the skills employees bring to Company are not useful in performing X tests and that skills they develop at Company are not useful to other employers.

Further, none of Company's revenue is earned in connection with patients' medical care. Other than the laboratory director, Company's laboratory technicians are not subject to state licensing requirements or classified as healthcare professionals by any applicable state or federal law or regulatory authority.

Although Company's laboratory reports provide valuable information to healthcare providers, Company does not provide health care professionals with diagnosis or treatment recommendations for treating a healthcare professional's patients nor is Company aware of the health care provider's diagnosis or treatment of the healthcare provider's patients. In addition, the skills that Company's employees have are unique to the work they perform for Company and are not useful to other employers.

Thus, based on the facts and representations submitted, we conclude that for purposes of § 1202(e)(3), Company is not in a trade or business (i) involving the performance of services in the field of health or (ii) where the principal asset of the trade or business is the reputation or skill of one or more of its employees.

CONCLUSION

Based on the facts submitted, Company is engaged in a qualified trade or business under § 1202(e)(3).

CAVEATS

Except as expressly provided, in the immediately preceding paragraph, we do not express or imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter under any provision of law including § 1202.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations that you submitted under penalties of perjury. 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.

You must attach a copy of this letter to any income tax return to which it is relevant. Alternatively, if you file your returns electronically, you may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)