

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Telephone Number:

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Date:
August 10, 2021

Company =
Taxpayer =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Year 1 =
Year 2 =
Year 3 =

Dear :

This letter responds to your request for a ruling that Company is a qualified trade or business as defined in § 1202(e)(3) of the Internal Revenue Code (Code) for purposes of qualifying for the exclusion of gain under § 1202(a).

FACTS

Taxpayer has represented that the facts are as follows.

Taxpayer founded and incorporated Company, a C corporation, on Date 1 to develop and commercialize software to assist medical providers in providing medical treatment to individual patients. The goal of the software is to make medical treatment more effective by optimizing the patient's use of medical treatment or medication. For example,

The software is a tool utilized by a medical provider and patients. The medical provider makes all medical decisions.

Taxpayer represents that the Company does not practice medicine, has no patients, and is not licensed to issue prescriptions. The taxpayer also represents that the Company does not perform medical or laboratory tests and does not diagnose or recommend patient treatment. The Company seeks potential customers

Taxpayer was a Consultant for Company from Year 1 to Year 2 during which time he acquired shares of Company stock as compensation for services rendered. Taxpayer received shares in connection with a consulting agreement with Company on Date 2. Taxpayer received additional shares for services provided to Company on Date 3 and Date 4. Taxpayer sold some of the shares in Company on Date 5 and Date 6. Taxpayer previously sold shares of Company in Year 3 and reported the transaction on the Year 3 tax return.

LAW

Section 1202(a) provides 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(a)(4) provides that in the case of qualified small business stock acquired after the date of the enactment of the Creating Small Business Act of 2010, § 1202(a)(1) shall be applied by substituting "100 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)(1) provides that a corporation meets the active business requirement for purposes of section 1202(c)(2) if at least 80 percent of the assets of the corporation are used by the corporation in the active conduct of one or more qualified trades or businesses.

Section 1202(e)(3) 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, athletics, financial services, brokerage services, consulting, or any other trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees.

Section 1202(e)(3) further provides that the term qualified trade or business does not include businesses in which the principle activity involves providing services in the fields of finance, insurance, banking, investing, leasing, farming, mining, or running a hotel, motel, restaurant or similar businesses.

ANALYSIS

Section 1202(e) excludes businesses from being a qualified trade or business if they offer value to customers primarily in the form of certain specified services, or in the form of individual expertise. Company is a technology company which develops software for medical providers and patients to utilize as a tool in optimizing the patient's treatment. Company's software allows patients to

The software and reports do not diagnose or recommend treatment. These aspects of Company's software illustrate that Company is not in the business of providing health services but rather creating an asset to be utilized by their customers in the healthcare industry.

Furthermore, Company is not a business that provides value to customers primarily in the form of individual expertise. Company is not licensed to issue prescriptions and perform medical tests. Company is not aware of and does not discuss the diagnoses or treatment by healthcare providers. The healthcare providers make all medical decisions. As such, it is the customers of Company who use their expertise to provide services in the healthcare industry. Company's sole function is to provide tools in the form of software, applications, and reports to create value for healthcare providers and their

patients. Company is not a business whose principal asset is the reputation or skill of one or more employees.

Although the software and applications developed by Company are allied or associated with the healthcare industry, we conclude that for the purposes of § 1202(e)(3), Company is not in the trade or business of performing services in the field of health or 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 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 under any provision of law. In particular, this ruling is limited to concluding that Company is a qualified trade or business as defined in § 1202(e)(3) and reaches no conclusion as to whether Taxpayer has satisfied the other requirements to qualify for the exclusion of gain under § 1202(a).

A copy of this ruling must be attached to Taxpayer's federal tax returns for the tax years affected. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer, accompanied by a penalty of perjury statements executed by an appropriate party. However, as part of an examination process, the Service may verify the factual information, representations, and other data submitted.

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.

Pursuant to the Form 2848, Power of Attorney and Declaration of Representation, on file, we are sending a copy of this letter to Taxpayer's authorized representative.

This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to the taxpayer.

Sincerely,

Ronald J. Goldstein
Senior Technician Reviewer, Branch 4
(Income Tax & Accounting)

cc: