

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-122237-21
Date: March 3, 2022

TY:

LEGEND:

Taxpayer =

Business =

Dear :

This responds to a letter ruling request dated October 26, 2021, submitted on behalf of Taxpayer. Taxpayer requests a letter ruling that it was engaged in a qualified trade or business as defined in section 1202(e)(3) as of the date of the ruling request.

FACTS

Taxpayer is organized as a C corporation and is a Business. Taxpayer is only involved in the retail sale of a limited number of drugs and does not manufacture them. The manufacturers of these drugs prefer entering into exclusive distribution arrangements with companies such as Taxpayer.

Employees of Taxpayer include several pharmacists who fill prescriptions received from physicians. Other employees coordinate the insurance coverage with respect to such prescription orders. Once the insurance process is complete and the prescription is filled by the pharmacist, Taxpayer mails the prescription to the patient's home. The non-pharmacist employees will also occasionally contact individuals receiving prescriptions to inquire as to any side effects of the prescriptions and to schedule refills.

Such non-pharmacist employees are not subject to state licensing requirements or classified as healthcare professionals by any applicable state, Federal or regulatory authority.

Pharmacists and other employees of Taxpayer have no contact or interaction with physicians, other than to receive prescriptions from them. With respect to patients, pharmacists interact with patients only if a patient has a question about a particular prescription. Employees are never involved in diagnosing any medical issues or recommending any treatment or drug to individuals. Their interaction with patients is limited to the filling and maintenance of prescriptions as ordered by a physician. Therefore, none of Taxpayer's employees diagnose, treat or manage any aspect of any patient's care. Taxpayer's revenues are strictly related to the sale of such drugs, and Taxpayer earns no revenues in connection with the medical care of patients.

Taxpayer represents that its shareholders are in the process of negotiating the sale of their stock in Taxpayer to an unrelated third party.

LAW

Section 1202(a)(1) provides that in the case of a taxpayer other than a corporation, 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 February 17, 2009, and on or before September 27, 2010, the exclusion is 75 percent.

Section 1202(a)(4) provides that in the case of qualified small business stock acquired after September 27, 2010, the exclusion is 100 percent.

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 subsection (e) and the corporation is a C corporation.

Section 1202(e) provides that the active business requirements are met by a corporation for any period if during such period at least 80 percent (by value) of the assets of such corporation are used by such corporation in the active conduct of one or more qualified trades or businesses, and such corporation is an eligible corporation.

Section 1202(e)(3)(A) 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 employee.

ANALYSIS

Section 1202(e)(3) 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. A question arises as to whether Taxpayer is (i) involved in 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.

Taxpayer's employees are not engaged in the provision of medical services. Other than the pharmacists, such employees are not certified healthcare providers and are not otherwise regulated under state or Federal law. Taxpayer's pharmacists fill prescriptions provided by health care professionals, and other employees help manage the insurance process and occasionally communicate with patients regarding prescription issues and timely refill requests. Any interaction with patients regarding their prescriptions is merely incidental to ensuring receipt of their required prescriptions or answering a patient's question about them. Taxpayer's employees do not provide any diagnostic services or medical care to either patients or physicians, and all revenues are generated by the sale of the drugs. Also, Taxpayer's principal asset is not the reputation or skill of one or more employees, but its exclusive pharmaceutical distribution rights.

We conclude that for the purposes of section 1202(e)(3), Taxpayer 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.

RULING

Based upon our analysis of the facts as represented, we conclude that Taxpayer was engaged in a qualified trade or business as defined in section 1202(e)(3) as of the date of the ruling request.

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 appropriate parties. 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.

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. Specifically, we express no opinion regarding whether conditions and provisions specified in other subsections of section 1202 have been satisfied or are applicable except as expressly provided herein.

This ruling is directed only to the taxpayer requesting it and may not be relied upon by shareholders of the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives. We are also sending a copy of this letter to the appropriate operating division director. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under section 6110 of the Code.

Sincerely,

Erika Reigle
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: