

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:08

PLR-120748-22

Date:

July 24, 2023

TY:

Legend:

Taxpayer =

Company =

Date 1 =

Date 2 =

Year 1 =

A =

Dear _____ :

This is in response to a letter sent on your behalf by your representatives dated _____. In the letter, your representatives requested a ruling on your behalf that Company is engaged in a qualified trade or business as defined in section 1202(e)(3) of the Internal Revenue Code (Code) for purposes of qualifying for the exclusion of gain under section 1202(a)(1) and is not engaged in a trade or business involving the performance of services in the field of consulting within the meaning of section 1202(e)(3)(A).

FACTS

Company was formed in Year 1 and elected classification as an association to be taxed as a C corporation. It is owned by A individual shareholders, one of whom is Taxpayer. On Date 1, Company elected to be classified as an S corporation but Company had more than one class of stock in violation of section 1.361-1(l)1 of the Regulations. Thus, Taxpayer represents that its S corporation election was immediately invalid.

Company offers data migration and management services to businesses. It does not sell software or technical equipment as part of the services it provides. To understand its customers' needs, Company creates a transformation assessment plan. Its service delivery teams determine an optimized cloud and data transformation roadmap based on assessment outcomes. Company team members will integrate into the customer's team often on a full-time basis to orchestrate and troubleshoot the data migration and work to implement the data migration, as well as provide limited advice and counsel when working with a customer's team. Company also provides post-migration managed technical services, which include monitoring and resolving incidents.

The invoices provided to Company's clients for the services it performs represent billing for implementation services and embedded advice. Company does not separately bill for advice and counsel. Taxpayer represents that more than 80% of Company's assets are used in its data migration and management business.

Taxpayer sold all of its shares in Company on Date 2.

Law and Analysis

Section 1202(a)(1) of the Code 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)(1) provides that the term 'qualified small business stock' means any stock in a C corporation which is originally issued after the date of enactment in 1993 if as of the date of issuance, such corporation is a qualified small business and except as otherwise provided, such stock is acquired by the shareholder at its original issue in exchange for money or other property (not including stock) or as compensation for services.

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)(1) 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) provides that a qualified trade or business means any trade or business other than (A) 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; (B) any banking, insurance, financing, leasing, investing, or similar business; (C) any farming business (including the business of raising or harvesting trees); (D) any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A, and (E) any business of operating a hotel, motel, restaurant, or similar business.

Company's employees provide advice and counsel as part of the process of determining a client's data management needs but the advice and counsel is ancillary to and supports the sale of the implementation work Company's employees perform. Company does not separately bill for advice and counsel, but only for its final product of implementing data management solutions. Therefore, Company does not engage a trade or business involving the performance of services in the field of consulting.

CONCLUSION

We conclude that for the purposes of section 1202(e)(3), Company is engaged in a qualified trade or business as defined in section 1202(e)(3) and is not engaged in a trade or business involving the performance of services in the field of consulting within the meaning of section 1202(e)(3)(A).

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of any aspect of any transaction or item discussed or referenced in this ruling including whether the other statutory and regulatory prerequisites for exclusion of capital gain under section 1202 were satisfied. Specifically, no opinion is expressed or implied concerning whether the Company made an invalid S corporation election on Date 1. However, this ruling is conditioned upon Taxpayer's representation that the S corporation election on Date 1 was invalid.

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

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

A copy of this letter must be attached to any income tax return to which it is relevant. 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 the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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.

Sincerely,

Erika C. Reigle
Senior Technician Reviewer, Branch 8
(Income Tax and Accounting)

cc: