

Additionally, Company provided executive search services, which consisted of placing permanent professionals in executive positions with its clients. Company's clients provided the specifications for the desired executives and Company searched for candidates based on the client-provided criteria and specifications. Clients engaged Company for a total fee equal to a percentage of the executive's actual first year compensation, with Company entitled to a portion of the fee upon signing of the agreement prior to performance of search services.

Company's clients often engaged a third-party consulting firm to provide analysis, counsel, and business development plans. Following such consultations, clients would engage Company to provide professionals to implement the plan or fulfill other business needs. Company did not participate in the analysis, counsel, or business development plans developed for the clients. Company's role was to provide the professionals identified in the plan or to fill other business needs identified by the clients.

Although Company processed the payroll of a professional who fulfilled the staffing needs of a client, the client was the professional's employer for state law purposes and federal income tax purposes. Further, the client was responsible for the direction, supervision, and quality review of a professional's work product, as well as providing all resources, workstations and other tools to the professional. Additionally, the client was responsible for monitoring and controlling the engagement.

On Date 1, Taxpayer represents that an unrelated third-party buyer acquired all shares in Company, including Taxpayer's shares, via a transaction that was treated as a stock sale.

Taxpayer represents that more than 80% of Company's assets were used in its staffing business.

LAW

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, in relevant part, 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.

ANALYSIS

Company operated a temporary staffing business that focused on placing experienced professionals with its clients. Company's clients engaged Company to provide professionals to implement business plans or fulfill other business needs. Once professionals were provided to clients, the clients were considered the employers of the professionals. The clients were responsible for the supervision of assigned professionals, and the provision of all resources, workstations, and other tools to assigned professionals.

Company billed clients at an agreed upon rate for the time the temporary professionals spent on clients' projects. Company also billed for engagement oversight and project communication services provided by its own employees. For permanent executives placed with clients, Company billed a total fee equal to a percentage of the executive's actual first year compensation, with Company entitled to a portion of the total fee upon signing of the agreement prior to performance of search services.

Therefore, with respect to its temporary staffing business, Company was not engaged in a trade or business (i) involving the performance of services in the field of consulting or (ii) where the principal asset of the trade or business was the reputation or skill of one or more of its employees.

CONCLUSION

We conclude that based on the facts and representations submitted, with respect to its temporary staffing business, Company was engaged in a qualified trade or business as defined in section 1202(e)(3) and was not engaged in a trade or business involving the performance of services in the field of consulting or where the principal asset of the trade or business was the reputation or skill of one or more of its employees.

CAVEATS

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 § 1202 were satisfied. Specifically, this ruling expresses no opinion as to whether more than 80% of Company's assets were used in a qualifying trade or business, nor the period of time for which Company was engaged in a qualifying trade or business.

The ruling is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by appropriate parties. This office has not verified any of the material submitted in support of the request for a ruling. However, as part of the examination process, the IRS may verify the information, representations, and other data submitted.

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.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of the letter is enclosed showing the deletions proposed to be made when it is disclosed under § 6110.

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 representatives. 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 Taxpayer.

Sincerely,

Angella L. Warren
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: