



use specialized equipment and software and follow specific Company procedures to conduct x. At the conclusion of x, Company prepares a report for a customer's physician. Further, customers cannot request x directly from Company, and Company cannot diagnose customers or provide medical advice to customers.

Company's employees exercise no independent judgment, as all employee actions are guided by proprietary procedures that Company has developed. Employees receive training on Company's equipment, software, and other proprietary procedures. Company has no education or experience requirements for new hires. Any skills or certifications that employees acquire at Company are not transferrable to other employers.

In addition, Company contracts with several physicians to serve as medical directors. As medical directors, the physicians help develop Company's policies and proprietary protocols, review quality assurance data, and review incoming orders to ensure that Company can accommodate requested tests. The medical directors do not interact with customers, and they provide no diagnoses, medical advice, or treatment on Company's behalf.

#### APPLICABLE 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 engages in x and provides physicians with a report of the results generated by x. Company's sole function is to conduct x and provide a report to its customers' physicians. Company does not treat or diagnose any customer, nor can Company provide medical advice.

Company employees exercise no independent judgment in conducting x, and follow specific Company procedures in conducting x. Although Company contracts with medical physicians to serve as Company medical directors, the physicians' roles are to help develop Company policies and procedures, review quality assurance data, and review incoming orders to ensure that Company can accommodate the requested x. In their capacity as medical directors, the physicians do not interact with customers, and they provide no diagnoses, medical advice or treatment on Company's behalf.

### CONCLUSION

We conclude that based on the facts and representations submitted, with respect to x, 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 fields of health nor engaged in any trade or business where the principal asset of the trade or business is the reputation or skill of one or more of its employees.

### CAVEATS

Except as expressly provided herein, we do not express or imply any opinion 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.

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.

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.

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.

Sincerely,

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

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