

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
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Date:
March 29, 2021

TY:

Taxpayer =
Date 1 =
Class of Products =
Types of Products =
Form of Product =
Products =
Specialists =

Dear _____ :

This letter responds to your request for a ruling that gain from the sale of stock in Taxpayer qualifies for the partial exclusion of gain under § 1202(a)(1) of the Internal Revenue Code because Taxpayer is a qualified trade or business as defined in §1202(e)(3) and Taxpayer was not engaged in a “trade or business involving the performance of services in the fields of health...” within the meaning of § 1202(e)(3)(A).

FACTS

Taxpayer, a domestic C corporation, is in the business of manufacturing Class of Products as prescribed by third-party health care providers. Specialists employed by the Taxpayer work on prescriptions referred by health care providers to evaluate, measure, design, fabricate, manufacture, adjust, fit, and service Types of Products for the referred individuals. Taxpayer's revenue is generated by the sale of these products. The sales generally consist of reimbursements from insurance companies, hospital systems, and patients.

Taxpayer's business operations include a corporate office, a fabrication facility, and lab locations.

Taxpayer sold all shares of its stock to another corporation on Date 1.

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

Taxpayer provides value to its customers primarily in the form of a tangible product such as Class of Products. Taxpayer manufactures these products for individuals as prescribed by health care providers who are not employed by Taxpayer. While Taxpayer may directly interact with referred individuals and their respective diagnoses, the interaction is incidental in ensuring these individuals receive a Form of Product as provided by their prescription. Taxpayer's business is more analogous to the business of custom manufacturing than to offering services based on individual expertise.

Although the Products produced by Taxpayer are associated with the health industry, we conclude that for the purposes of § 1202(e)(3), Taxpayer is not in the 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.

CONCLUSION

Based on the facts and representations submitted, the Taxpayer 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 including § 1202.

A copy of this ruling must be attached to Taxpayer's federal tax returns for the tax year 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.

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.

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 your 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 the taxpayer.

Sincerely,

Angella L. Warren
Branch Chief, Branch 4
(Income Tax & Accounting)

cc: