Internal Revenue Service

Number: **201636003**
Release Date: 9/2/2016

Index Number: 1202.00-00

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:B05
PLR-102539-16

Date:
June 01, 2016

TY:

Legend

Taxpayers =
Date 1=
Name 1=
Date 2=
Name 2=
Date 3=
Name 3=
Date 4=
Corporation=
X=
Y=
Year 5=

Dear :

This letter responds to your request for a ruling under §§§ 1202(c), 1202(f) and 1202(h) of the Internal Revenue Code, dated December 15, 2015.

Taxpayer has represented the facts to be as follows:

The taxpayers originally incorporated as a C corporation on Date 1 as Name 1. On Date 2, the taxpayers amended their articles of incorporation solely to change the name of the corporation from Name 1 to Name 2.

Effective Date 3, the taxpayers converted Name 2 to Name 3 based upon the advice of an accountant. The company made a late entity classification election to treat Name 3 as an association taxed as a C corporation.

On Date 4, a Certificate of Conversion from an LLC to a corporation was filed, changing the name to Corporation and converting X in Name 3 owned by the taxpayers to Y in Corporation representing all the common stock in Corporation after conversion.

The taxpayers have not acquired additional shares nor have they redeemed any shares since inception.

In Year 5, the taxpayers sold all of their common stock in Corporation as part of a sale of 100% of the company stock to an unrelated party.

Section 1202(a) provides that, in the case of a taxpayer other than a corporation, gross income shall not include 50% of any gain from the sale or exchange of qualified small business stock held for more than 5 years.

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 the Revenue Reconciliation Act of 1993, if as of the date of the issuance, such corporation is a qualified small business, and except as provided in subsections (f) and (h), such stock is acquired by the taxpayer at its original issue (i) in exchange for money or other property (not including stock), or (ii) as compensation for services provided to such corporation.

Section 1202(f) provides that if any stock in a corporation is acquired solely through the conversion of other stock in such corporation which is qualified small business stock in the hands of the taxpayer (1) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer and (2) the stock so acquired shall be treated as having been held during the period during which the converted stock was held.

Section 1202(h) provides that in the case of a transaction described in § 351 or a reorganization described in § 368, if qualified small business stock is exchanged for other stock which would not qualify as qualified small business stock but for this subparagraph, such other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

Section 368(a)(1)(F) provides that the term “reorganization” means a mere change in identity, form or place of organization of one corporation, however effected.

While ownership of a corporation is normally tied to stock ownership, and under state law LLC owners hold a member interest and not formal stock, the term “stock” for federal tax purposes is not restricted to cases where formal stock certificates have been issued. Rather, it has been consistent Service position that for federal tax purposes stock ownership is a matter of economic substance, i.e., the right to which the owner has in management, profits, and ultimate assets of a corporation. The presence or

absence of pieces of paper called “stock” representing that ownership is immaterial. See Rev. Rul. 69-591, 1969-2 C.B. 172.

Therefore, based on the facts and representations submitted, we rule that the Corporation stock meets the definition of qualified small business stock under §§§ 1202(c), 1202(f) and 1202(h).

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, no opinion is expressed or implied concerning 1) the qualification of the Corporation under § 1202, 2) whether Corporation meets the active business requirements of § 1202(e), and 3) whether any conversion or name change since the time of the original issuance of Name 1 stock qualify as a § 368(a)(1)(F) reorganization.

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,

William Jackson
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: