DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
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OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL --

FROM: ASSOCIATE CHIEF COUNSEL (PASSTHROUGHS AND SPECIAL INDUSTRIES) CC:PSI

SUBJECT: RESEARCH AND EXPERIMENTAL EXPENDITURES

This Chief Counsel Advice responds to your memorandum dated April 16, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Taxpayer:
EIN:
A:
B:
C:
Technology:

Private Placement Memorandum:

Purchase Agreement:

License Agreement:

Development Agreement:

Manufacturing and Marketing Agreement:

Placement Agent:
Date 1:
Date 2:
Date 3:
Date 4:
Date 5:
Date 6:
Date 7:
Date 8:
Date 9:
Date 10:
Date 11:
Date 12:
Date 13:
Date 14:
Year 1:
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ISSUE

Whether the expenditures paid by Taxpayer to A for research and development are "research and experimental expenditures" incurred in connection with Taxpayer's trade or business under I.R.C. § 174.

CONCLUSION

The expenditures paid by Taxpayer to A for research and development are not research and experimental expenditures under section 174 because Taxpayer did not have a realistic prospect of engaging in a trade or business with the Technology.

FACTS

Background

A develops and markets

A developed a design for the Technology, and received a U.S. patent for it on Date 4.

In Year 1, A listed its two major strategies as:

In Year 2, A completed construction on an approximately s manufacturing facility for the production of for use with the Technology.

On Date 1, A formed B, and financed it through a private placement of units consisting of a callable share of B, a warrant to purchase shares of A common stock, and a callable warrant to purchase shares of A stock only exercisable under certain circumstances. A held an option to purchase all of the callable shares of B after Date 2, at prices beginning at t per share on Date 3 and reaching a high of u on Date 8.

B was formed for the purpose of accelerating the development of the Technology. Soon after B's formation, B entered into three agreements with A governing the licensing of certain technology owned by A, the development and management of the technology, and the manufacturing of any products.

At the end of Year 2, A exercised its option, and repurchased all of the outstanding shares of B by issuing shares of A common stock.

Creation of the Taxpayer

Taxpayer, a corporation, was formed on Date 5 for the purpose of developing and . It is our understanding, however, that Taxpayer has identified its business purpose as funding the development of the Technology. For further discussion, see below "Private Placement Memorandum."

Private Placement Memorandum

The Private Placement Memorandum identified and explained the risk factors, capitalization, use of proceeds from the private placement, the Technology, and the business of Taxpayer. Specifically, Taxpayer identified its purpose as funding the development of the Technology because products resulting from Taxpayer's development programs were not expected to be commercially available any earlier than Year 5, if at all. The Private Placement Memorandum also stated that substantially all of the net proceeds from the offering would be paid by Taxpayer to A under the Development Agreement.

In a section captioned "Risk Factors," the Private Placement Memorandum stated that Taxpayer would be heavily dependent on A because it would not have any of its own employees, facilities and other resources of A. These resources were listed as development, licensing, administration, manufacturing and marketing employees and facilities. Additionally, the Private Placement Memorandum generally noted that A had the sole discretion to determine the allocation of A's development, licensing, administration, manufacturing and marketing employees and facilities, and stated that A's own project development may compete for time and resources thus delaying the development, manufacture and marketing of Taxpayer's technology.

The risk factors also included the possibility that Taxpayer might need additional funds, and provided no assurance that the purchase option would be exercised. The Private Placement Memorandum stated that if a licensee was not found, it was unlikely that Taxpayer would have sufficient funds to enable it to market the Technology.

Additionally, the "Risk Factors" portion of the Private Placement Memorandum stated that the terms of the License Agreement, Development Agreement, Manufacturing and Marketing Agreement, and the Purchase Agreement were negotiated by A and the Placement Agent. The Private Placement Memorandum also noted that these terms may have been different had they been negotiated at arm's length.

Finally, Taxpayer was not expected to have its own management and would be heavily dependent on A's management. Thus, many of the officers and directors of Taxpayer were also officers or directors of A.

The Private Placement

On or about Date 6, Taxpayer and A held a private placement of units consisting of a callable share of Taxpayer's common stock and a warrant to purchase shares of A's stock. The units cost v each. The callable shares were subject to an option held by A to purchase all of the callable shares of Taxpayer's common stock at prices ranging from w per share on Date 11 to x per share on Date 13, depending on when the option was exercised. A could satisfy the option price with cash, A's common stock, or a combination of cash and A's common stock. The net proceeds from this private placement were expected to be exhausted by the end of the first quarter of Year 5, and Taxpayer used substantially all of the proceeds of the private placement to pay A the management fee required pursuant to the Development Agreement. As part of the private placement, A contributed y.

On Date 7, Taxpayer also entered into various agreements, including a Purchase Agreement, a License Agreement, a Development Agreement, and a Manufacturing and Marketing Agreement. In general, these four agreements delineated the rights and obligations between Taxpayer, A and B.

The Agreements

Purchase Agreement

The Purchase Agreement, in relevant part, granted to A an exclusive, irrevocable option to purchase all of the issued and outstanding shares of Taxpayer's common stock. The purchase option could be exercised only as to all of the issued and outstanding shares of the common stock of Taxpayer, and the exercise price ranged from w to x depending on when the purchase option was exercised. A could exercise the option by issuing its own common stock, cash, or a combination thereof.

If A exercised the purchase option, the License, Development, and Manufacturing and Marketing Agreements terminated. Taxpayer retained all rights, title, and interest in any of the developed Technology upon the expiration or termination of the purchase option. However, if A did not exercise the purchase option and Taxpayer did not find a sublicensee to conduct additional research and development, Taxpayer had to raise sufficient funds to complete the development of the Technology and market any resulting products. Additionally, Taxpayer was restricted from distributing dividends until after the expiration of the purchase option.

The purchase option would terminate if it was not exercised, or on the option closing date. Additionally, the purchase option would terminate if Taxpayer received notice from A that A failed to make the payment of the exercise price or A reorganized or filed for bankruptcy.

License Agreement

In the License Agreement with A and B, Taxpayer was granted a royalty-bearing, perpetual and exclusive license (subject to rights already held by others) to use the Technology . In return, Taxpayer agreed to pay A and B a royalty of r percent of net sales of products during the life of the applicable patents or for a period of years in countries without patents. Simultaneously, Taxpayer granted A an exclusive, worldwide royalty-free license to develop the Technology and an exclusive, worldwide license to use the Technology to make, use, sell, supply and import products into the United States.

The License Agreement would continue in full force unless it was terminated by mutual agreement, Taxpayer's breach of a material obligation, Taxpayer's filing for bankruptcy, written notice of default by Taxpayer, or A's exercise of the option to purchase Taxpayer's stock. In the event of bankruptcy or breach of material obligation, A and B both had the right to terminate the License Agreement. A alone could terminate the License Agreement by exercise of the purchase option. If the License Agreement terminated because of one of the above, A generally would reacquire rights to all Technology licensed to Taxpayer.

Development Agreement

Under the Development Agreement, Taxpayer contracted with A for A to undertake, as the exclusive agent of Taxpayer, development of the Technology . A had the sole power and authority under the agreement to file regulatory applications and permits in A's name. Additionally, Taxpayer agreed to pay A for costs, including direct charges from A and outside costs, incurred in the development.[1]

The Development Agreement also provided that A would act as Taxpayer's exclusive agent for the manufacture and sale of Taxpayer's products. Taxpayer

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[1]

was to pay all costs relating to the manufacture and sale of Taxpayer's products charged to it by A. Taxpayer retained the right to any developed technology upon the expiration or termination (other than by exercise) of the purchase option, or upon the termination of the Development Agreement by Taxpayer.

The Development Agreement would continue in full force and effect until the earlier of the date at least thirty days after the date when A exercised the purchase option, or the date the purchase option expired or terminated (other than by exercise).

The Development Agreement could terminate by mutual agreement between Taxpayer and A. A could terminate the Development Agreement by exercising the purchase option, or A could terminate in the event of Taxpayer's breach of material obligation, or Taxpayer's bankruptcy. Finally, Taxpayer could terminate the Development Agreement by giving written notice to A in the event of default.

Manufacturing and Marketing Agreement

Under the Manufacturing and Marketing Agreement, Taxpayer gave A an exclusive license to manufacture, promote, and sell Taxpayer's products in the U.S. A agreed to pay Taxpayer a royalty on A's net sales of Taxpayer's products.

The Manufacturing and Marketing Agreement would continue in full force and effect until after the purchase option expired or terminated (other than by exercise), or A exercised the purchase option. The Manufacturing and Marketing Agreement could also terminate by mutual agreement between the parties. Additionally, A alone could terminate the agreement if Taxpayer breached a material obligation, or if voluntary or involuntary bankruptcy proceedings commenced against Taxpayer. Taxpayer could alone terminate the agreement by giving written notice of default.

Exercise of the Purchase Agreement

On Date 9, A notified Taxpayer's shareholders that it intended to exercise the purchase option. On Date 10, A exercised its purchase option through the merger of a newly-created, wholly-owned subsidiary of A with Taxpayer, with Taxpayer being the surviving corporation. A then purchased Taxpayer's common stock at w per share using shares of A's common stock and cash for fractional shares. A stated in its Form 10-K for the year ended Date 11 that "due to additional development, testing, and regulatory approvals required, the commercial viability of the technology acquired in these acquisitions had not yet been established."

On Date 12, Taxpayer merged into A.

For the Year 2 and Year 3 taxable years, Taxpayer treated its payments to A as section 174 research and experimentation expenditures. Upon examination, Taxpayer's expenditures were determined to be not in connection with Taxpayer's trade or business and were disallowed as research and experimentation expenditures.

LAW

Section 174(a) generally provides that a taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with the taxpayer's trade or business as expenses which are not chargeable to capital account. The expenditures so treated are allowed as a deduction.

Section 174(e) provides that section 174 applies to a research or experimental expenditure only to the extent that the amount is reasonable under the circumstances.

Treas. Reg. § 1.174-2(a)(1) provides that the term "research or experimental expenditures," as used in section 174, means expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense. The term generally includes all such costs incident to the development or improvement of a product.

Treas. Reg. § 1.174-2(a)(6) provides that section 174 applies to a research or experimental expenditure only to the extent that the amount of the expenditure is reasonable under the circumstances. Generally, the amount of an expenditure for research or experimental activities is reasonable if the amount would ordinarily be paid for like activities by like enterprises under like circumstances.

Treas. Reg. § 1.174-2(a)(8) provides that section 174 applies not only to costs paid or incurred by the taxpayer for research or experimentation undertaken directly by him but also to expenditures paid or incurred for research or experimentation carried on in his behalf by another person or organization (such as a research institute, foundation, engineering company, or similar contractor).

A number of cases have delineated the scope of the trade or business requirement under section 174. In Snow v. Commissioner, 416 U.S. 500 (1974), the Supreme Court held that the taxpayer, a limited partner in a partnership formed to develop a special purpose incinerator, could deduct experimental expenditures under section 174 even though no sales of the product occurred in the disputed year. The Court noted that the purpose of section 174 was to equalize the tax benefits between ongoing companies and small and growing businesses and thus construed the term "in connection with his trade or business" in section 174 more liberally than the concept of “ordinary and necessary” in section 162. The Court reasoned, therefore, that the current production or sale of a product was not necessary for a deduction under section 174.

Snow established that a taxpayer need not currently be engaged in selling or producing a product to qualify for a section 174 deduction. In Green v. Commissioner, 83 T.C. 667 (1984), the Tax Court addressed the issue of whether a limited partnership was entitled to a deduction for research and experimental expenditures under section 174 for the acquisition, development, and licensing of inventions. The partnership entered into four separate agreements for research and development. As a result of these agreements, the partnership’s trade or business activities were limited and the Court concluded that the partnership was merely a vehicle for injecting risk capital into the development and commercialization of the inventions. Noting that Snow did not eliminate the trade or business requirement altogether, the Court held that the taxpayer must still be engaged in a trade or business at some time, and the taxpayer’s activities in connection with the product must be sufficiently substantial and regular to constitute a trade or business for section 174 purposes. This determination is made through a factual examination of each case.

Since Green, the courts of appeal have consistently held that while the probability of a firm’s going into its own business will satisfy section 174, the mere possibility of doing so will not. In order for a taxpayer to demonstrate a sufficient prospect of entering into a business, there must be an objective intent (such as a profit motive) and the capability to enter into business. See LDL Research & Development II, Ltd. v. Commissioner, 124 F.3d 1338, 1346 (10th Cir. 1997) (reasoning that unless the partnership assumes a realistic expectation of owning the resulting technology for commercial purposes, the taxpayer’s research expenditures will be made in connection with another party’s trade or business and will not be deductible); Zink v. United States, 929 F.2d 1015, 1021 (5th Cir. 1991) (noting that taxpayers must show they were involved in the trade or business in a substantial and regular enough way to meet the trade or business requirement); Diamond v. Commissioner, 930 F.2d 372, 375 (4th Cir. 1991) (finding that the issue was not whether it is possible, but whether when looking at economic reality the partnership possessed the capability in the years under review to enter into a trade or business); Spellman v. Commissioner, 845 F.2d 148, 149 (7th Cir. 1988) (discussing the realistic prospect standard for determining the probability of a taxpayer exploiting a new product in a trade or business); Levin v. Commissioner, 832 F.2d 403, 407 (7th Cir. 1987) (reasoning that there is a need to look to actual expectations of the parties at the time of the agreement and the firm’s probability of going into business).

In Kantor v. Commissioner, 998 F.2d 1514 (9th Cir. 1993), the court of appeals addressed the issue of whether research expenditures made by a partnership to develop new technology were incurred in connection with its trade or business. The taxpayer invested in a limited partnership whose purpose was to develop and exploit adaptations of an existing computer program. The partnership entered into two separate agreements with a research firm. In the first agreement, the partnership contracted out the research and development to the firm; in the second agreement it granted the firm an opportunity to obtain for a nominal sum the exclusive right to market the technology. The taxpayer argued that these agreements did not preclude the taxpayer from engaging in a trade or business. In addition, the taxpayer argued that it actually engaged in the trade or business of developing and marketing the technology through the activities of its general partner. However, the court rejected these arguments by reasoning that the mere possibility of a firm going into business will not satisfy the section 174 requirement of a trade or business. The general partner's activities in the business were indicative merely of an active investor and were purely ministerial. The key factors the court looked at were the nominally priced option to purchase the exclusive marketing license and the fact that the partnership rendered itself virtually incapable of becoming anything more than an investor. Additionally, the court found that it was unlikely that the partnership would have had the resources to market the software if the option price was not exercised because the private placement memorandum indicated that the partnership would spend ninety percent of the funds raised on research activities. Thus, if the firm did not exercise its option, the partnership would lack the necessary funds to market and license the program directly to consumers.

In Spellman v. Commissioner, 845 F.2d 148 (7th Cir. 1988), the court of appeals considered whether the taxpayer had a realistic prospect for developing a new product and exploiting it in its business. The taxpayer was a limited partner in a partnership that was, in turn, a limited partner in another partnership (Sci-Med). The agreement creating Sci-Med provided that Sci-Med would enter into a research and development agreement with Teva Pharmaceutical Industries (Teva) for Teva to develop new medicines. Under the agreement, Teva would have the exclusive rights to make, sell, and license the new medications. In addition, Teva was given an option to purchase Sci-Med's rights to byproducts of the research. The taxpayer argued that the rights would not vest in Teva until the products were actually developed, and until then the rights remained with Sci-Med. However, the court found that Sci-Med could only be viewed as an investor and not an entrepreneur because Sci-Med contracted out the research and development, as well as the production and marketing. Additionally, although Sci-Med had a prospect of recovering royalties and byproducts rather than selling or licensing their development to another firm, this was a remote possibility because Sci-Med presented no evidence that it would ever acquire a staff, experience, or anything else necessary to enter into the business. Finally, the court focused on the $20,000 exercise price for Teva's option. If the byproducts were worth more than the exercise price, Teva was sure to exercise it, and Sci-Med would be left without a product to sell. However, if the rights turned out to be worth less than the exercise price, Sci-Med would have to invest its own money to market rights that were worth only a nominal amount and the cost of this would probably exceed the value of the byproduct rights.

In Scoggins v. Commissioner, 46 F.3d 950 (9th Cir. 1995), the Ninth Circuit addressed the issue of whether research expenditures made by a partnership formed in order to develop new technology with respect to an epitaxial reactor were incurred in the taxpayer's trade or business. The taxpayers were the sole partners in the partnership and formed a corporation in which they held the majority interest. The partnership contracted with the corporation for the corporation to perform the research to develop the new technology, the partnership retaining ownership of any technology developed. Additionally, the partnership gave the corporation a non-exclusive license to market the technology for a fifteen-month period together with an option to acquire the technology for $5 million after the license expired. The court framed the issue in terms of whether the partnership had a realistic prospect of engaging in a trade or business. The court reasoned that there was a realistic prospect of the partnership engaging in a trade or business despite a lack of facilities or employees because both partners had the technical expertise to market the technology and had previous experience marketing similar technology. Additionally, the partners were actively involved in the development of the technology by directing and guiding the research undertaken by the corporation. Finally, the court distinguished this active partnership from one composed primarily of investors who know little or nothing about new technology. Thus, the court held that the partnership's contractual arrangement and activities indicated both an objective intent and the capability to enter such business. But see I-Tech R&D Limited Partnership v. Commissioner, T.C. Memo. 2001-10 (denying a section 174 deduction where the taxpayer neither invented nor developed any of the discovered technology, and maintained no control over the research and development of the product).

In Harris v. Commissioner, 16 F.3d 75 (5th Cir. 1994), the court of appeals addressed the issue of whether the taxpayer was undertaking its own business or that of another. In Harris, a limited partnership was formed to sell limited partnership interests to the public to raise capital for continuing research and development. The partnership executed a research and development agreement under which the partnership contracted out all of the research work to a newly formed corporation. The partnership also executed a technology transfer agreement whereby the corporation received an option to obtain a perpetual exclusive license for the resulting technology. If it exercised the option, the corporation would have to pay substantial royalties to the partnership. However, it was highly probable that the corporation would renegotiate the licensing option to provide for lower royalty payments. The court reasoned that nearly all cases involve a profit motive; dispositive, however, is whether the entity actually incurring the research expenses "actually managed and actually controlled the use or marketing of the research results." Harris, 16 F.3d at 80. In Harris, the partnership had no remaining funds to engage in marketing efforts, and no expertise in the industry. The court held that the partnership was merely a passive investment vehicle and there was not a realistic prospect of engaging in a trade or business because the underlying economic realities suggested it was unlikely that the partnership would develop and exploit the technology through manufacturing a product or licensing the technology.

In Levin v. Commissioner, 832 F.2d 403 (7th Cir. 1987), the court addressed the issue of whether the taxpayer was engaged in its own business or that of another. In Levin, a mechanical engineer and a tax lawyer formed partnerships to indirectly acquire funds for the expansion of the engineer's machinery business. On paper, the partnerships possessed substantial privileges, but the court looked to the actual expectations of the parties at the time the partnerships were formed and whether the partnerships reasonably anticipated availing themselves of the privileges they possessed on paper. The partnerships were controlled by the engineer's machinery business and had no independent expertise in the machinery business. The court reasoned that while every investor may have the potential to be a manufacturer, determinative is the firm's probability of going into the manufacturing business. The court held that the partnerships were formed to invest money into the partner's existing business, and thus were simply investors in the business of another.

ANALYSIS

The issue in this request for Field Service Advice is whether expenditures paid by Taxpayer to A for research and development are "research and experimental expenditures" incurred in connection with Taxpayer's trade or business under section 174. Integral to this inquiry is the question of whether Taxpayer had a realistic prospect of entering into the trade or business of research and development in the years in question. Taxpayer must have been more than a passive investor. To distinguish between a taxpayer who was merely a passive investor and a taxpayer who had a realistic prospect of eventually engaging in a trade or business in connection with research and development expenditures, the following factors are relevant, including: (1) the intent of the parties to the agreements; (2) the amount of capital retained by the taxpayer during the conduct of the research activity; (3) the exercise of control by the taxpayer over the person or entity performing the research; (4) the business activity of the taxpayer during the years in question; and (5) the experience of the taxpayer and others involved in the research. See, e.g., Scoggins v. Commissioner, 46 F.3d 950 (9th Cir. 1995); Diamond v. Commissioner, 930 F.2d 372 (4th Cir. 1991); Levin v. Commissioner, 832 F.2d 403 (7th Cir. 1987).

Realistic Prospect

In Green v. Commissioner, 83 T.C. 667 (1984), the Tax Court stated that for section 174 to apply, the taxpayer must be engaged in a trade or business at some time. As noted in Green, this involves both the objective intent and capability of entering the business. This is a factual determination that requires a close examination of the facts and circumstances of each transaction, particularly as they existed in the transaction's formative years.

Under the facts of this case, Taxpayer did not have control of the research that had been contracted out to A. It did not direct the research and development and maintained only the rights to any resulting technology. Taxpayer was under the direction of A because A's officers and executives also served as officers and directors of Taxpayer. Additionally, Taxpayer did not have research facilities or employees. Under the terms of the various agreements, Taxpayer was prohibited from retaining experienced employees from A or B. Finally, although Taxpayer retained the right to the underlying technology, A also retained an option to purchase all of Taxpayer's common stock. Although Taxpayer argues that this is inherently different from an option to buy the underlying technology, we fail to see the difference because under the facts of this case A would control Taxpayer through one hundred percent stock ownership. The License Agreement also would terminate upon exercise of the purchase option leaving Taxpayer with only a small amount of developed technology to exploit.

In a letter to Respondent's counsel dated Date 14, Taxpayer's counsel suggests that Taxpayer must be contractually precluded from entering a trade or business for there not to be a realistic prospect of it entering into a trade or business. However, this reasoning fails because a determination of whether there is a realistic prospect of entering into a trade or business with respect to new technology is not limited to the four corners of the operative documents and must necessarily include a consideration of extrinsic facts and circumstances. Thus, Taxpayer need not be contractually precluded from entering into a trade or business in this case. We must look to what Taxpayer's rights were realistically and to Taxpayer's intent to exercise those rights.

In reality, although Taxpayer had the rights to any underlying technology that was developed, the Technology had not been fully developed. Also Taxpayer did not have the facilities or experienced and trained employees to develop the Technology. Furthermore, even if Taxpayer could raise more money to continue the research and development of the Technology, it would do so at a substantial cost because it lacked the facilities to conduct the research, development, and production of the Technology.

Significant Exercise Price

One important factor that cannot be ignored is if the exercise price of the purchase option is significant. In this case, the exercise price could be viewed as significant because it was arguably for a substantial amount, increasing quarterly over a period of years. This amount, whether exercised at the beginning of the period A could exercise its purchase option or at the end, ranged from w per share in Year 4 to x per share in Year 6 and would total at least z.

Again, however, the main question is whether Taxpayer had a realistic prospect of engaging in a trade or business in the years in question. The fact that the purchase option price could be considered to be high is an important consideration but should not detract from the principal inquiry. As stated earlier, it is highly unlikely that Taxpayer had a realistic prospect of engaging in a trade or business during the years in question because of Taxpayer's lack of infrastructure, financing (if the purchase option was not exercised), and control over the research and development of the Technology under the agreements in effect at the time.

Engaging in the Business of Another

Taxpayer also may be seen as engaging in the business of another entity, in this case, A. See Levin v. Commissioner, 832 F.2d 403 (7th Cir. 1987). This is because Taxpayer maintained the same corporate office as A and had the same officers and directors. Moreover, Taxpayer depended on A for its research and production facilities.

Additionally, Taxpayer could not have been anything more than a mere investor because Taxpayer was controlled by A through the same officers and directors. A conducted the research and development of the products, and Taxpayer merely licensed the rights to the Technology in exchange for royalties. Taxpayer also did not direct or control the research and development and merely owned the resulting technology.

Finally, Taxpayer was merged with A after the exercise of the purchase option. We may not look to this as evidence of whether Taxpayer could engage in a trade or business. However, the court may look to see if subsequent events are consistent with the court's judgment of the facts. See Levin, 832 F.2d at 406 n.3.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

[redacted]

[redacted]

[redacted]

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call if you have any further questions.

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