



Tax Reduction Letter

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TAM 9309004

November 23, 1992

ISSUE

Whether X, a corporation whose employees perform emergency medical ambulance services, is a qualified personal service corporation under *section 448(d)(2) of the Internal Revenue Code*, that is eligible to compute its taxable income under the cash receipts and disbursements method of accounting.

FACTS

X is a domestic C corporation whose employees perform emergency medical ambulance services in two state counties pursuant to contracts with the counties. X employs a large ambulance field force of emergency medical technicians of which approximately 70 percent have advanced training ("Advanced Technicians") and 30 percent have lesser training ("Technicians"). Unless the Technicians perform services in the field of health, X does not qualify as a qualified personal service corporation within the meaning of *section 448(d)(2) of the Code*.

Although Advanced Technicians must meet considerably greater professional educational requirements than Technicians, both types of employees are classified as certified health care professionals by the state and are subject to stringent on-going educational requirements. The primary distinction between the two types of employees in function of duties is that Technicians are not certified to administer electric shock to start fibrillation or to puncture skin for intravenous injections. Both types of employees handle among other duties, the immobilization and splinting of patients, administration of oxygen by nasal and oral airway insertion, treatment of burns, and aspiration of patients including insertion of suction catheters. Thus, virtually all of the medical services rendered in ambulance transport can be handled by either type of employee.

Approximately 80 percent of X's ambulance calls are emergency in nature. However, even the 20 percent non-emergency calls are handled as a potential emergency because non-emergency calls are physician directed for important medical reasons. If a physician determines that a patient does not require professional medical assistance in transit, a different commercial carrier will provide the transportation.

Significantly, on all manned hospital ambulance transports, Technicians are in direct radio contact with hospital emergency room physicians and receive advice and instructions, as needed.

Finally, the licensing and certification of Technicians is found in the state health and safety code and not the state business and profession code. Thus, X, whose employees perform services as Advanced Technicians and Technicians, is not considered a state professional corporation.

APPLICABLE LAW

Section 448(d)(2) of the Code defines the term "qualified personal service corporation" as any corporation: (A) substantially all of the activities of which involve the performance of services within the field of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting; and (B) substantially all of the stock of which (by value) is held directly or indirectly by (i) employees, (ii) retired employees, (iii) the estate of an employee, or (iv) any other party who acquired the stock as a result of the death of an employee.

Section 11(b)(2) of the Code provides that the amount of tax imposed on the taxable income of a qualified personal service corporation (as defined in *section 448(d)(2)*) shall be equal to 34 percent of the taxable income.

Section 1.448-1T(e)(3) of the temporary Income Tax Regulations provides that the term qualified personal service corporation means any corporation that meets (i) the function test of paragraph (e)(4) of this section, and (ii) the ownership test of paragraph (e)(5) of this section.

Section 1.448-1T(e)(4)(i) of the temporary regulations provides that substantially all of the activities of a corporation are involved in the performance of services in any qualifying field, such as health, if 95 percent or more of the time spent by employees of the corporation, serving in their capacity as such, is devoted to the performance of services in a qualifying field. For purposes of determining whether this 95 percent test is satisfied, the performance of any activity incident to the actual performance of services in a qualifying field is considered the performance of services in that field. Activities incident to the performance of services in a qualifying field include support services incident to such activities.

Section 1.448-1T(e)(4)(ii) of the temporary regulations defines services performed within the field of health as the provision of medical services by physicians, nurses, dentists, and other similar health-care professionals. The performance of services in the field of health does not include the provision of services not directly related to a medical field, even though the services may purportedly relate to the health of the service recipient. For example, the performance of services within the field of health does not include the operation of health clubs or health spas that provide physical exercise or conditioning to their customers.

Section 1.448-1T(e)(5)(i) of the temporary regulations provides that a corporation meets the ownership test, if at all times during the taxable year, substantially all of the corporation's stock, by value, is held, directly or indirectly, by (i) employees, (ii) retired employees, (iii) the estate of an employee, or (iv) any other party who acquired the stock as a result of the death of an employee. For purposes of this paragraph (e)(5), the term "substantially all" means an amount equal to or greater than 95 percent.

RATIONALE

The examining agent contends that the Technicians do not perform services in the field of health. Therefore, the examining agent concludes that X is not a qualified personal service corporation as defined in *section 448(d)(2) of the Code* because less than 95 percent of the time spent by its employees, is devoted to the performance of services in the field of health. The provision in state law that prohibits a corporation that employs Technicians from being a state personal service corporation under the state business and profession code is cited in support of this position. In contrast, X contends the activities of its employees are devoted to performing health services or are incident to the actual performance of health services.

In order to be considered a qualified personal service corporation under *section 448(d)(2) of the Code*, section 1.448-1T(e)(3) of the temporary regulations provides that a taxpayer must meet two tests, the "function test" as set forth in paragraph (e)(4) of section 1.448-1T, and the

"ownership test" of paragraph (e)(5) of section 1.448-1T. In the case at hand, the examining agent argues that X is not a qualified personal service corporation because it has not met the elements of the function test. The examining agent concedes that the elements of the ownership test have been met.

The first test, the "function test," requires that substantially all of the corporation's activities must be devoted to the field of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting. See section 1.448-1T(e)(4)(i) of the temporary regulations. In order to meet the function test, the taxpayer must meet three criteria.

First, the taxpayer must provide medical services. Specifically, section 1.448-1T(e)(4)(ii) of the temporary regulations provides that services within the field of health includes the provision of medical services.

Technicians perform medically related services on all manned hospital ambulance transports and are in direct radio contact with hospital emergency room physicians. Even their response to non-emergency calls is medically directed because, if a physician determines a patient does not require medical assistance in transit, a different type of carrier will provide the transportation. We conclude that Technicians provide medical services.

The second criteria of the function test requires that the service of the taxpayer be provided by health-care professionals. Specifically, section 1.448-1T(e)(4)(ii) of the temporary regulations requires that the medical services are provided by physicians, nurses, dentists, or other "similar health-care professionals." The Code and regulation do not define the term "similar health-care professionals." Nonetheless, the Technicians are "similar" to other health-care professionals listed in section 1.448-1T(e)(4)(ii) in training, and the very nature of their services.

Technicians are licensed and certified pursuant to the state health and safety code and must pass a statewide competency test. They are also required to take annual and biannual courses and tests on these courses to maintain their certification.

Furthermore, the very nature of a Technicians service is to provide basic medical services during ambulance transit. As a practical matter, Technicians are trained to perform medical services in this narrow medical area at least as well as most licensed physicians and nurses other than the small segment of the licensed physicians and nurses specializing in the field of emergency medicine. Thus, the very nature of a Technician's services are similar to the services provided by other health-care professionals such as physicians and nurses.

The third criteria of the function test requires that substantially all, 95 percent, of the taxpayer's activities must be devoted to the performance of services within the field of health. In our conclusion to the first criteria, we conclude that a Technician's services are performed as medical services in the field of health. Thus, X's employees devote substantially all of their time to the performance of services in the field of health.

The contention that X is not considered a state professional corporation requires additional analysis. The reason X is not considered a state professional corporation is that X does not technically qualify under the two state statutes for achieving professional corporation status. Nevertheless, X is regarded by the state as a personal service corporation. Moreover, similar application of state law would deny qualified personal service corporation status to performing arts and consultant companies, a result clearly contrary to the definition of "qualified personal service corporations" under *section 448(d)(2) of the Code*. In view of the unique application of state law, we believe state laws defining professional corporation status should be disregarded for purposes of determinations under *section 448(d)(2)*.

CONCLUSION

X is a qualified personal service corporation under *section 448(d)(2) of the Code* and may compute its taxable income under the cash receipts and disbursements method of accounting.

A copy of this technical advice memorandum is to be given to X. *Section 6110(j)(3) of the Code* provides that it may not be used or cited as precedent.