

Internal Revenue Service

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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:PSI:B07
PLR-131261-13
Date:
January 10, 2014

Legend:

Company1 =

Company2 =

Device =

License =
Agreement

Essential =
Terms

Dear _____ :

This letter responds to a letter dated July 15, 2013, submitted on your behalf by your authorized representative, requesting a ruling that under the facts described below, Company1 is not the manufacturer, producer, or importer of Device for purposes of § 4191 of the Internal Revenue Code (Code).

The facts submitted state that Company1 produces Device for Company2 pursuant to License Agreement. License Agreement is irrevocable during the term of the agreement and contains Essential Terms. Device is a taxable medical device as defined in § 4191(b).

Section 48.0-2(a)(4)(i) of the Manufacturers and Retailers Excise Tax Regulations defines the term “manufacturer” to include any person who produces a taxable article from scrap, salvage, or junk material, or from new or raw material, by processing, manipulating, or changing the form of an article or by combining or assembling two or more articles. The term also includes a “producer” and an “importer”.

Section 48.0-2(a)(4)(ii) provides that under certain circumstances, as where a person manufactures or produces a taxable article for another person who furnishes materials under an agreement whereby the person who furnished the materials retains title thereto and to the finished article, the person for whom the taxable article is manufactured or produced, and not the person who actually manufactures or produces it, will be considered the manufacturer.

Rev. Rul. 58-134, 1958-1 C.B. 395, and Rev. Rul. 78-34, 1978-1 C.B. 355 (citing Polaroid Corp. v. U.S., 235 F.2d 276 (1st Cir. 1956), cert. denied 352 U.S. 953 (1956)), provide generally that where a company owns the patents under which a taxable article is fabricated by another company, exercises control as to the amounts to be so fabricated, and has exclusive rights to the output so that the fabricator is not free to sell

elsewhere, the company owning the patents is the manufacturer for purposes of the manufacturers excise tax.

Rev. Rul. 60-42, 1960-1 C.B. 474, states that among the factors to be considered in determining whether a fabricator or his vendee is liable for the manufacturers excise tax are (1) the ownership of the raw materials used in producing the articles, and (2) who has the right to control the production and sale of the articles.

In the present case, License Agreement provides for an irrevocable license transfer from Company1 to Company2 of all intellectual property rights related to Device in the United States. In addition, under License Agreement, Company2 has complete control over the quantity of Device to be produced by Company1 during the license period. Further, during the license period, Company1 must sell its entire non-exported production of Device to Company2. Accordingly, we conclude that Company1 is not the manufacturer, producer, or importer of Device for purposes of § 4191. See Polariod, Rev. Rul. 58-134, Rev. Rul. 60-42, and Rev. Rul. 78-34.

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 conditioned on License Agreement's Essential Terms remaining in effect.

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.

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,

/s/ Stephanie Bland

Stephanie Bland
Branch Chief, Branch 7
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for section 6110 purposes

cc: