

General Information Letter: IT 03-0003 PLR is revoked.

February 17, 2009

Dear:

This letter is to inform you that Letter Ruling IT 03-0003-PLR, dated March 4, 2003, and addressed to Ms. Z of your firm is revoked with respect to the ruling on sales by COMPANY1, Inc. to COMPANY2. The request for ruling represented that the sales occurred when COMPANY2 had made a sale of an item to a customer, and would then order the item from COMPANY1, Inc., who would then ship the item directly to the customer of COMPANY2. A review of the "Services Agreement" dated April 16, 2002, between COMPANY1 and COMPANY2 shows that this representation is incorrect.

The preamble to the Services Agreement states that COMPANY2 "is in the business of licensing, developing, marketing and selling pharmaceutical products (the "Business") and COMPANY2 is engaging COMPANY1 "to provide services to operate [COMPANY2's] business in the Territory." The "Territory" is defined in paragraph 1.13 of the Services Agreement as the United States and its territories and possessions, but excluding Illinois. Paragraph 2.4 of the Services Agreement provides that COMPANY1:

Shall coordinate all manufacturing efforts of Products for sale in the Territory and shall provide all usual and customary services performed by a distributor, including, without limitation, the following:

(a) procure on behalf of COMANY2 all necessary or desirable supplies of the Active Pharmaceutical Ingredients of the Product and the finished Products for sale;

(b) handle all responsibilities associated with physical distribution of finished Products, including, without limitation, warehousing (including shipping and storage) orders, processing, transportation, shipping (including packing), receiving, invoicing, inventory management and customer service; and

(c) handle all recalls of the Products.

These provisions show that COMPANY1, Inc. was acting as a purchasing agent for COMPANY2, so that the items in question were not sold by COMPANY1, Inc., to COMPANY2, but rather were purchased, stored and subsequently shipped by COMPANY1, Inc., on behalf of COMPANY2.

As stated in the March 4, 2003, ruling:

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete.

Because the ruling request contained a misstatement of a material fact regarding the parties activities, the ruling on the purported sales by COMPANY1, Inc., to COMPANY2 is not binding on the Department and is revoked.

This is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under

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audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax