Can Stockholders of Employee Leasing or Staffing Companies Claim Section 1202's Gain Exclusion?

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Stockholders must satisfy several eligibility requirements before they can claim Section 1202's generous gain exclusion.[1] One of the more significant issuing-corporation level eligibility requirements is the "80% Test." In order to satisfy the 80% Test, a corporation must continuously use at least 80% of its assets (by value) in the pursuit of one or more qualified business activities.[2] "Leasing" and "the performance of services in the field of consulting" are included in Section 1202's list of activities that are not qualified business activities. This article explores whether Professional Employer Organizations (PEOs), staffing firms, employer of record companies (EORs) and employee leasing companies (referred to in this article as "Leasing/Staffing Companies") are engaged in excluded activities for purposes of Section 1202.

The primary purpose of this article is to illustrate how a particular category of business activities can be analyzed for purposes of Section 1202. If an actual project involves issuing an opinion letter, seeking a private letter ruling or defending a taxpayer's return position, the process would first involve identifying all relevant taxpayer-specific facts and then reviewing the issue at hand within the framework of applicable tax authorities.

This is one in a series of articles and blogs addressing planning issues relating to qualified small business stock (QSBS) and the workings of Sections 1202 and 1045. During the past several years, there has been an increase in the use of C corporations as the start-up entity of choice. Much of this interest can be attributed to the reduction in the federal corporate income rate from 35% to 21%, but savvy founders and investors have also focused on qualifying for Section 1202's generous gain exclusion.

Section 1202's 80% Test

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Sections 1202(e)(1) and 1202(e)(3) provide that a corporation will not meet Section 1202's active business requirement unless for substantially all of a stockholder's QSBS holding period, the corporation issuing the QSBS engages in one or more qualified business activities using at least 80% (by value) of the corporation's assets (referred to in this article as the "80% Test"). Qualified activities are those that are not excluded activities under Sections 1202(e)(3) or 1202(e)(7). Section 1202(e)(3) provides that the term "qualified trade or business" means any trade or business other than:

- any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, **consulting**, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees;
- any banking, insurance, financing, **leasing**, investing, or similar business;
- any farming business (including the business of raising or harvesting trees);
- any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A; and
- any business of operating a hotel, motel, restaurant, or similar business.

Section 1202(e)(7) provides that the "ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a qualified trade or business."

Identifying excluded activities that are potentially applicable to Leasing/Staffing Companies.

A review of the excluded activities listed in Section 1202(e)(3) suggests that a Leasing/Staffing Company might be considered to engage in the activities of "leasing," "engaging in an activity similar to leasing" or "performance of services in the field of consulting."

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Leasing is a possible match because companies falling within the scope of a Leasing/Staffing Company are often identified in the marketplace to be engaged in "employee leasing."

Are Leasing/Staffing Companies engaged in "employee leasing" activities?

PEOs, EORs and staffing firms are likely to argue that they are not engaged in "employee leasing," particularly if they avoid using that term. A survey of online industry sources suggests that employee leasing is generally considered to be a temporary employment arrangement where the company supplies a client with workers on a temporary basis, often for a specific project, timeframe or contract that has a start date and end date. Customers of Leasing/Staffing Companies use "leased employees" because they do not want to be responsible for handling compensation and employment tax functions, HR administration (compliance with labor, employment and employee benefits laws), workers' compensation insurance or other regulatory aspects of hiring contracts or temporary project-specific workers. Law Insider defines a staffing firm as "a person that provides PEO services or temporary help services."[3] The American Staffing Association notes that staffing firms "*employ the employees they assign to clients, [so] they are responsible for paying wages, withholding and remitting employment taxes (including Social Security and unemployment), providing workers' compensation insurance, and providing a variety of employee benefits. As employers, staffing firms are responsible for compliance with all applicable labor, employment, and employee benefits laws, including those pertaining to worker health and safety*."[4] Based on these descriptions of the functions of staffing firms, their services appear to overlap with companies that describe themselves as engaging in "employee leasing" activities.

The relationship between clients and PEOs generally involves a co-employment arrangement described by the National Association of Professional Employer Organizations as "*the contractual allocation and sharing of certain employer responsibilities between the PEO and the client*." Unlike employee leasing companies, PEOs generally do not supply workers to clients for particular projects. Instead, there is an ongoing relationship between the PEO and the client with

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respect to the client's employees that is sometimes referred to as "co-employment." The PEO assumes permanent responsibility for certain employer functions. The PEO often becomes the company of record for HR, payroll, benefits, employment taxes and other related employer functions. The PEO generally handles the administrative side of human resources, while the client retains responsibility for directing the employees' work and making employment decisions.

EORs generally describe themselves as organizations that serve as the employer of record for tax purposes while the employee performs work at a different company. EORs often handle payroll functions, HR functions, depositing and filing and reporting employee-related taxes under its own EIN, unemployment and workers' compensation. While PEOs are said to establish a co-employer relationship, EORs serve as the sole employer of record for employment tax purposes. EORs distinguish themselves from PEOs by noting that unlike PEOs, EORs are parties to employment contracts with the employees and in turn make those employees available to customers through service agreements. EORs take the position that their assumption of the employer function allows their customers to operate in states and often foreign jurisdictions through the EORs' employees without causing the customer to be deemed to be engaging in business in those jurisdictions.

Although the activities of Leasing/Staffing Companies differ, those differences have not been considered particularly relevant to the IRS in connection with its focus on identifying the "employer" for employment tax and benefits purposes. Chief Counsel Advice (CCA) 200916024 states that PEOs are also known as employee leasing companies. In the preamble to regulations issued under Section 7705, which addresses a voluntary certification program made available to PEOs, the regulations begin their definition of PEOs by equating them to "employee leasing companies."[5] Section 414, which sets forth various definitions relevant to employee benefit statutes (ERISA statutes), references "employee leasing" (Section 414(n)(1)) and "leased employee" (Section 414(n)(2)). A review of tax authorities confirms that the term "employee leasing" has been adopted to broadly define an

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arrangement whereby a person is treated for at least some purposes (e.g., wages, benefits, employment taxes) as an employee of a Leasing/Staffing Companies, while at the same time the employee works under the direction of a customer of the Leasing/Staffing Company. Obviously, a company that self-describes itself as engaging in "employee leasing" will have a difficult time arguing that it doesn't engage in employee leasing. And for the reasons outlined above, the same end result will most likely hold true for PEOs, EORs and staffing firms that steer clear of the term "employee leasing." It appears, based on the descriptions of the functions of PEOs, staffing firms and employee leasing companies, that all of these Leasing/Staffing Companies should at least consider the possibility that the IRS would argue that they fall within the scope of "leasing" for purposes of Section 1202.

Does "employee leasing" fall within the scope of "leasing" for purposes of Section 1202?

Assuming for discussion purposes that Leasing/Staffing Companies engage in "employee leasing," the pertinent question is whether the functions of a "leasing company" fall within the scope of "leasing" for purposes of Section 1202. "Leasing" is not defined by any tax authorities interpreting Section 1202. The complete phrase "banking, insurance, financing, leasing or investing" is not used elsewhere in the Internal Revenue Code and no tax authority has addressed what activities, if any, fall within the scope of banking, insurance, financing, leasing or investing for purposes of Section 1202.

A recent Private Letter Ruling (PLR 202352009, 12/29/2023) did not address the issue of whether a Leasing/Staffing Company engages in "leasing" under Section 1202, but the PLR did address whether a company providing staffing services was engaged in the "performance of services in the field of consulting." The PLR concluded that the staffing company was not engaged in excluded activities for purposes of Section 1202. Although the PLR is silent on the issue, the PLR's conclusion does suggest that the IRS does not consider Leasing/Staffing Companies to be engaged in excluded "leasing" activities. Although the PLR does qualify as a "tax authority" for purposes of determining whether taxpayers have substantial authority for a tax position, the ruling is not binding on

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other taxpayers, the IRS or courts.[6] As a consequence, the door remains open for the IRS to argue that a Leasing/Staffing Company is engaged in "leasing" under Section 1202(e)(3), but the PLR suggests that the IRS is not so inclined. The IRS also concluded in PLR 202352009 without analysis that the applicable Leasing/Staffing Company was not engaged in an activity where the principal assets was the reputation or skill of one or more of its employees.

If the IRS asserts that the activities of a Leasing/Staffing Company constitute "leasing" for purposes of Section 1202, neither the IRS nor the taxpayer would be able to point to any binding tax authorities addressing the issue. The IRS has provided that in circumstances where there are no tax authorities specifically defining a Section 1202 excluded activity (e.g., what constitutes engaging in brokerage services), the scope of that activity should be analyzed based on commonly available "dictionary definitions" and "statutory and regulatory definitions" (generally how a term is used by tax authorities interpreting other provisions of the Internal Revenue Code)."[7] The next two sections of this article apply this approach as a tool to assist in defining the scope of the activity of "leasing."

Exploring dictionary definitions of "leasing."

The IRS believes that "*words in a statute generally are presumed to bear their ordinary, contemporary, common meaning*" and "*to ascertain the plain meaning of terms, courts have consulted the definitions of those terms in popular dictionaries*."[8] Also, in cases where the interpretation and meaning of a specific, albeit undefined term found in the Internal Revenue Code is being scrutinized, the United States Supreme Court has stated that it is appropriate to look to leading authorities such as Black's Law Dictionary and Webster's Dictionary for support.[9]

The Merriam-Webster online dictionary has been an IRS favorite for defining Section 1202 activities. Merriam-Webster defines the noun "lease" as "*a contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rent*" and the verb "leasing" as engaging in the activity described in the preceding sentence pursuant to a lease.[10] The Merriam-Webster online

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dictionary does not mention "employee leasing."

The online free legal dictionary by Farlex defines a lease as a "*contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to various conditions, in exchange for something of value, but still retains ownership*." The dictionary further states that "*a lease contract can involve any property that is not illegal to own. Common lease contracts include agreements for leasing real estate and apartments, manufacturing and farming equipment, and consumer goods such as automobiles, televisions, stereos, and appliances.*"[11] The Farlex dictionary does not mention "employee leasing."

The Collins online dictionary defines the noun "lease" as "*a legal agreement by which the owner of a building, a piece of land, or something such as a car allows someone else to use it for a period of time in return for money*" and references "*the property that is leased*" and further refers to the verb "lease" as "*leasing property or something such as a car*." This dictionary uses the term "leasing" in sentences as follows: "*There's a lady here to see you about leasing a piece of property owned by Mr. Osborne*" and "*the Zimbabwe Government is interested in leasing and or buying four airships!*" The Collins online dictionary also states that the term "lease" is used "*in connection with contracts for the hiring of equipment or other chattels for a specified period*," and then further references equipment leases and finance leases.[12] The Collins dictionary does not mention "employee leasing."

The dictionaries referenced above focus on the activity of providing a lessee with the use of a lessor's property for consideration. These dictionaries do not mention "employee leasing," and certainly do not link "employee leasing" with "leasing." In both common and legal usage, the parties to a lease are universally referred to as "lessors" and "lessees." The Merriam-Webster online dictionary defines a lessor as "*one that transfers property (such as a house or a car) by a contract*" and a "lessee" as "*one that holds real or personal property under a lease.*"[13] Needless to say, a Leasing/Staffing Company's employees are not considered to be the "property" of the Leasing/Staffing Company and presumably, agreements among Leasing/Staffing Companies and their clients do not refer to the

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leasing of "property." Based on this background, it does seem reasonable that Leasing/Staffing Companies should not be considered to be engaging in the activity of "leasing" if, as the IRS asserts, the common dictionary usage of terms is a significant factor in defining the scope of an excluded activity under Section 1202.

How tax authorities use the term "leasing" outside of Section 1202.

The terms "employee leasing," "leasing" and associated words are used in various statutes and other tax authorities.

Until Congress repealed the underlying tax credits, there were several statutes and proposed regulations referencing "leasing" in the context of the ownership and leasing of personal property.[14] In a similar vein to the former equipment leasing tax credit provisions, current Section 469(j)(8), dealing with passive activity loss and credit rules, refers to "rental activity" as "*any activity where payments are principally for the use of tangible property*." Although Section 1202 lacks any legislative history that would confirm this observation, it seems reasonable that when the drafters of Section 1202 created the list of activities: "*banking, insurance, financing, leasing, investing, or similar business*," the term "leasing" was intended to be associated with the activity of equipment leasing. [15]

A review of additional tax authorities confirms that the terms "employee leasing company," "leasing company," "lessor" and "lessee" have historically been used by not only the Leasing/Staffing Company industry but also by tax authorities to describe the activities of Leasing/Staffing Companies.[16] Online industry sources confirm that there is a movement away from using this outdated nomenclature that refers to leasing people the same way you would lease owned property. Encylopedia.com notes that *"employee leasing became a visible economic model in the 1980s, when the phrase 'employee leasing' also first occurred. But the phrase is being used less and less in the mid-2000s. In its stead, people refer to 'outsourcing human resources' or simply 'working with a PEO.' Terminology continues to be murky because a milder form of this type of outsourcing . . . also exists. It is called 'administrative*

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services outsourcing'; companies that offer this service are known as ASOs. An ASO takes over the administrative functions only of the human resources activity but does not become a co-employer. Businesses also avoid the word "leasing" of late because, apparently, it has negative connotations—you lease a car, not a person."[17]

Given the absence of legislative history or on-point tax authorities addressing the scope of "leasing", it doesn't seem possible to determine with certainty what Congress intended when enacting Section 1202. Terminology associated with "leasing" has been used by tax authorities to describe the activities of Leasing/Staffing Companies. But the mere fact that "leasing" was repurposed to describe the functions of Leasing/Staffing Companies shouldn't be sufficient to support the conclusion that "employee leasing" falls within the scope of "leasing" for purposes of Section 1202. A perhaps subtle but important point is that most tax authorities use the term "employee leasing" rather than "leasing" when they want to refer to the activities associated with Leasing/Staffing Companies. Also, given the fact that the activity of "employee leasing" is entirely distinct from the activity of property leasing, it seems reasonable to assume that Congress would have referred specifically to "employee leasing" if its intention was to exclude the activities of Leasing/Staffing Companies from the benefits of Section 1202. Another point is that the activities of an equipment leasing company are compared with the activities of a Leasing/Staffing Company, those of the equipment leasing company are more consistent with "*banking, insurance, financing, leasing, investing, or similar business*." If the Leasing/Staffing Company industry had not repurposed the word "leasing" to describe its activities, but instead had adopted term such as "co-employment", "outsourcing human resources" or "working with a PEO," would anyone think to ask whether Leasing/Staffing Companies engage in activities that are functionally equivalent to "leasing" for purposes of Section 1202?

As discussed above, dictionary definitions of "leasing" weigh heavily against equating "employee leasing" with "leasing." Although tax authorities and the Leasing/Staffing Company industry have used leasing terminology to describe the functions of Leasing/Staffing

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Companies, most references to "leasing" fit more closely from a functional standpoint with property leasing companies. On balance, there appears to be substantial support in the authorities discussed above for the conclusion that Leasing/Staffing Companies are not engaged in the activity of "leasing" for purposes of Section 1202.

Could the activity of "employee leasing" be considered a "similar business" to banking, insurance, financing, leasing, or investing?

If "employee leasing" is not "leasing", could it nevertheless be a "similar business" for purposes of Section 1202(e)(3)(B)? A review of how banking, insurance, financing and investing are defined in tax authorities suggests that the answer should be "no." Section 581 defines a "bank" as a company whose business in substantial part consists of receiving deposits and making loans. Tax authorities generally define the activity of insurance in terms of underwriting and/or assuming risk. The Oxford Lexico dictionary defines "financing" as providing funding, and "investing" as a person or organization putting money into a financial plan, property, etc., with the expectation of achieving a profit. While comparing the nature of activities necessitates the making of certain judgment calls, it appears reasonable to conclude that the activities of Leasing/Staffing Companies are not similar in nature to those of companies engaged in banking, insurance, leasing, financing or investing, as those activities are defined through common usage and tax authorities.

Are Leasing/Staffing Companies engaged in the "performance of services in the field of consulting"?

PLR 202352009 addressed the issue of whether an employee staffing company that focused on placing experienced professionals with clients was engaged for purposes of Section 1202(e)(3) in the "performance of services in the field of consulting" or "where the principal asset of the trade or business was the reputation or skill of one or more of its employees." The PLR concluded that the staffing company was not engaged in those excluded activities for purposes of Section 1202.[18] The PLR does not provide any substantive analysis of why the activities of the

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company did not fall within the scope of excluded activities under Section 1202(e)(3). Obviously, the PLR is good news generally for stockholders of Leasing/Staffing Companies looking to claim Section 1202's gain exclusion. The PLR does not address "leasing," which leaves the door open for the IRS to argue that a Leasing/Staffing Company is engaged in "leasing" under Section 1202(e)(3), but as noted above, strongly suggests that the IRS is not so inclined.

Exploring the possibility of seeking a private letter ruling confirming that Leasing/Staffing Companies are not engaged in "leasing" for purposes of Section 1202.

A Leasing/Staffing Company could elect to seek a private letter ruling (PLR) addressing whether the company is engaged in excluded leasing activities for purposes of Section 1202.[19] A number of PLRs addressing Section 1202 issues have been issued in recent years. PLR 202352009 suggests that a taxpayer-favorable PLR might be obtained by a Leasing/Staffing Company. Before seeking a PLR, however, a Leasing/Staffing Company should consider the lengthy timeline and expense associated with obtaining the PLR and the possibility of an unfavorable result. Also, consideration should be given to the benefits of seeking a PLR given the favorable language of PLR 202352009 and further support provided through an independent analysis of the issue along the lines outlined above.

More Resources

In spite of the potential for extraordinary tax savings, many experienced tax advisors are not familiar with Section 1202 and Section 1045 planning. Venture capitalists, founders and investors who want to learn more about Section 1202 and Section 1045 planning opportunities are directed to several articles on the Frost Brown Todd website:

Despite the potential for extraordinary tax savings, many experienced tax advisors are not familiar with Section 1202 and Section 1045 planning. Venture capitalists, founders and investors who want to learn more about Section 1202 and Section 1045

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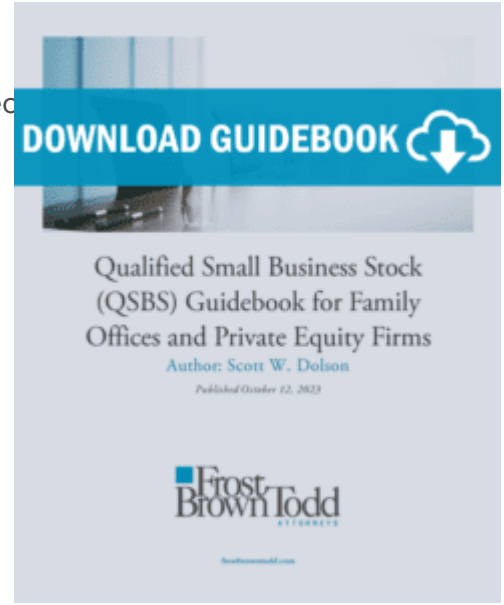
planning opportunities are direc



the Frost Brown Todd website:

- Qualified Small Business Stock (QSBS) Guidebook for Family Offices and Private Equity Firms
- Conversions, Reorganizations, Recapitalizations, Exchanges and Stock Splits Involving Qualified Small Business Stock (QSBS)
- Navigating Section 1202's Redemption (Anti-churning) Rules
- A Section 1202 Walkthrough: The Qualified Small Business Stock Gain Exclusion
- Determining the Applicable Section 1202 Exclusion Percentage When Selling Qualified Small Business Stock
- Selling QSBS Before Satisfying Section 1202's Five-Year Holding Period Requirement?
- Part 1 – Reinvesting QSBS Sales Proceeds on a Pre-tax Basis Under Section 1045
- Part 2 – Reinvesting QSBS Sales Proceeds on a Pre-tax Basis Under Section 1045
- Section 1202 Qualification Checklist and Planning Pointers
- A Roadmap for Obtaining (and not Losing) the Benefits of Section 1202 Stock
- Maximizing the Section 1202 Gain Exclusion Amount

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- Dissecting 1202's Active Business and Qualified Trade or Business Qualification Requirements
- Recapitalizations Involving Qualified Small Business Stock
- The 21% Corporate Rate Breathes New Life into IRC § 1202

Contact Scott Dolson if you want to discuss QSBS issues by telephone or video conference. You can also visit the **QSBS & Tax Planning Services page** to get our latest insights and analysis.

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[1] References to "Section" are to sections of the Internal Revenue Code of 1986, as amended.

[2] The 80% Test is a subpart of Section 1202(c)(2)'s requirement that the corporation issuing QSBS must satisfy the "active business requirement" for substantially all of a stockholder holding period for his QSBS. Any period of time during which the issuing corporation fails the 80% Test applies against meeting Section 1202(c)(2)'s "substantially all" time period requirement.

[3] *Staffing firm*, Law Insider, https://www.lawinsider.com/dictionary/staffing-firm (last visited July 5, 2022).

[4] *What Staffing Firms Do*, Am. Staffing Ass'n, https://americanstaffing.net/staffing-industry/what-staffing-firms-do/#:~:text=Because%20staffing%20firms%20employ%20the,a%20variety%20 (Last visited July 5, 2022).

[5] TD 97689, Certified professional employer organization – voluntary certification program; Code Section 7705 (5/4/2016).

[6] See the Treasury Regulations issued under Sections 6662 and 6664 for information regarding what qualifies as "tax authorities" for purposes of return positions.

[7] See PLR 202114002 (4/9/2021) and CCA 202204007 (1/28/2022).

[8] Walters v. Metropolitan Educational Enterprises, Inc., 519 U.S. 202 (1997) and Metro One Telecommunications, Inc. v. Commissioner, 704 F.3d 1057, 1061 (9th Cir. 2012).

[9] See, e.g., Holywell Corp. v. Smith, 503 U.S. 47 (1992); U.S. v. Home Concrete & Supply, LLC, 566 U.S.478 (2012); and Colony, Inc. v. C.I.R.,

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357 U.S. 28 (1958).

[10] Lease, Merriam-Webster, https://www.merriam-webster.com/dictionary/leasing (last visited July 5, 2022).

[11] Lease, The Free Dictionary, https://legal-dictionary.thefreedictionary.com/lease (last visited July 5, 2022).

[12] Lease, Collins Dictionary, https://www.collinsdictionary.com/dictionary/english/lease (last visited July 5, 2022);
Leasing, Collins Dictionary, https://www.collinsdictionary.com/dictionary/english/leasing (last visited July 5, 2022).

[13] Lessor, Merriam-Webster, https://www.merriam-webster.com/dictionary/lessor (last visited July 5, 2022); Lessee, Merriam-Webster, https://www.merriam-webster.com/dictionary/lessee (last visited July 5, 2022).

[14] The Tax Court noted that Proposed Regulation Section 1.57-3(d)(1) defined the term "lease" in an extremely broad manner, i.e., "any arrangement or agreement, formal or informal, written or oral, by which the owner of property (the 'lessor') receives consideration in any form for the use of his property by another person. See *Amerco v. Commissioner*, 82 T.C. 654, 692 (1984) and Treasury Regulation Section 1.46-4(d)(1).

[15] The leasing of real property is addressed as an excluded activity in Section 1202(e)(7).

[16] Treasury Regulation Section 1.274-2, dealing with expense reimbursement, references employee leasing companies. Revenue Ruling 2008-23, 2008-1 CB 852, dealing with Section 274(n) entertainment expense issues, references the leasing of drivers, leasing companies, and employee leasing contracts. The Eighth Circuit Court of Appeals references "lessors" and "lessees" in the context of PEOs in a Section 274(n) case dealing with the deductibility of mean and entertainment expenses. Section 7705's regulations state that PEOs are the same as "employee leasing companies."

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[17] Employee Leasing Programs, https://www.encyclopedia.com/entrepreneurs/encyclopedias-almanacs-transcripts-and-maps/employee-leasing-programs (last visited July 5, 2022).

[18] PLR 202352009 included the following background information: "*Taxpayer founded Company, a C Corporation, in Year 1. Company was owned by Taxpayer and other shareholders. Since its formation, the Company operated as an interim staffing services business with a focus on matching experienced executives and managers with the staffing needs of its clients.*

As part of its business, Company provided two main categories of staffing services that included interim staffing and executive searching. Interim staffing services consisted of matching professionals with Company's clients' self-identified needs as temporary or interim employees for particular positions or projects. Company billed clients at an agreed upon rate for the time professionals spent on projects. Company also billed for engagement oversight and project communication services provided by its own employees.

Additionally, Company provided executive search services, which consisted of placing permanent professionals in executive positions with its clients. Company's clients provided the specifications for the desired executives and Company searched for candidates based on the client-provided criteria and specifications. Clients engaged Company for a total fee equal to a percentage of the executive's actual first year compensation, with Company entitled to a portion of the fee upon signing of the agreement prior to performance of search services.

Company's clients often engaged a third-party consulting firm to provide analysis, counsel, and business development plans. Following such consultations, clients would engage Company to provide professionals to implement the plan or fulfill other business needs. Company did not participate in the analysis, counsel, or business development plans developed for the clients. Company's role was to provide the professionals identified in the plan or to fill other business needs identified by the clients.

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Although Company processed the payroll of a professional who fulfilled the staffing needs of a client, the client was the professional's employer for state law purposes and federal income tax purposes. Further, the client was responsible for the direction, supervision, and quality review of a professional's work product, as well as providing all resources, workstations and other tools to the professional. Additionally, the client was responsible for monitoring and controlling the engagement."

The PLR provided the following analysis and conclusion: *"Company operated a temporary staffing business that focused on placing experienced professionals with its clients. Company's clients engaged Company to provide professionals to implement business plans or fulfill other business needs. Once professionals were provided to clients, the clients were considered the employers of the professionals. The clients were responsible for the supervision of assigned professionals, and the provision of all resources, workstations, and other tools to assigned professionals.*

Company billed clients at an agreed upon rate for the time the temporary professionals spent on clients' projects. Company also billed for engagement oversight and project communication services provided by its own employees. For permanent executives placed with clients, Company billed a total fee equal to a percentage of the executive's actual first year compensation, with Company entitled to a portion of the total fee upon signing of the agreement prior to performance of search services.

Therefore, with respect to its temporary staffing business, Company was not engaged in a trade or business (i) involving the performance of services in the field of consulting or (ii) where the principal asset of the trade or business was the reputation or skill of one or more of its employees."

"We conclude that based on the facts and representations submitted, with respect to its temporary staffing business, Company was engaged in a qualified trade or business as defined in section 1202(e)(3) and was not engaged in a trade or business involving the performance of services in the field of consulting or where the principal asset of the trade or business was the reputation or skill of one or more of its employees."

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[19] A PLR is a written opinion from the IRS addressing a specific tax issue with respect to a particular taxpayer, and is based on that taxpayer's representations and statement of fact. A favorable ruling is generally thought to ensure that the IRS will not challenge the taxpayer's position, so long as the facts upon which the PLR is based haven't materially changed. A PLR can only be relied upon by the taxpayer obtaining the ruling, but redacted versions of PLRs are publicly available and are carefully scrutinized by tax professionals as indicators of IRS positions. Recent PLRs are considered tax authorities for purposes of issuing "substantial authority" and "reasonable basis" opinions.

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