

## *Ruling 95-09*

Vermont Department of Taxes

Date: December 15, 1995

Written By: George H. Phillips, Tax Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

You have requested a ruling as to whether your client, [Taxpayer] and its successor (Name) will qualify as an investment holding company under 32 VSA 5837. This ruling relies on information provided in your letter of June 5, 1995 as revised by your letter of September 25, 1995. It replaces the ruling of the same number issued July 19, 1995.

Factual Statement: The Company is duly incorporated in the State of [State]. Its Federal Employer Identification Number is [Number]. The Company is presently authorized to do business in [State], and its principal place of business is [Address]. The Company's principal assets consist of sixteen (16) patents which relate to a catheter device designed to treat patients suffering from atherosclerosis by removing plaques of cholesterol, lipids and other cellular debris from the inner walls of a patient's arteries (the "[Trade Name System]"). The patents are licensed to [Company] a [State] corporation with offices at [Address] (Corporation). [Corporation] is a publicly traded corporation unrelated to the Company and the Company's shareholders. Pursuant to the license agreement, [Corporation] is required to pay the Company a royalty calculated at a fixed percentage of its net sales of the [System]. The license agreement also required [Corporation] to make minimum, guaranteed, prepaid royalty payments in January of 1996 and 1997 which amount, in the case of the 1996 prepayment, will be credited against the royalties earned during the ensuing 12-month period. The 1997 guaranteed prepayment will be credited against royalties earned over the remaining period of the license agreement.

In addition to the patents which cover the [System], the Company owns a computer, filing cabinets and other miscellaneous office equipment. The Company is also engaged in litigation against a [State] corporation for infringement of the claims of two of the sixteen patents which comprise the [System] (the "Pending Litigation"). The Company seeks lost profits and other damages. At present it is unclear whether the Company will prevail in such lawsuit but believes that the prospects for a monetary judgment or favorable settlement are reasonably good.

The Company plans to relocate to [State]. As part of the planned relocation to [State], it will lease office space in [State] for the purpose of maintaining corporate records and communicating with Bard and its shareholders. It will obtain a certificate of authority from the [State] and discontinue operations in [State]. Activities will be confined to managing and maintaining its intangible property and collecting and distributing income earned from such property.

The Company is an S-corporation within the meaning of Section 1361 of the Code. The Company has two individual shareholders, both of whom are Vermont non-residents.

1. Whether the [Company] will qualify as an investment holding company for purposes of 32 V.S.A. Section 5837 following its relocation to [State].
2. Whether [Company] [State] income tax liability will be limited by 32 V.S.A. Section 5837 even though [Company] will be an S-corporation with non-resident shareholders.
3. Whether the actions to be taken by [Company] in connection with the Pending Litigation and the receipt of a monetary judgment or settlement will constitute "maintenance" of its intangible investments and the "collection...of the income from such investments" within the meaning of 32 V.S.A. Section 5837.

Analysis: The Vermont corporate income tax liability of a qualifying investment holding company is limited as follows:

"The tax imposed by this subchapter as it applies to corporations whose activities are confined to the maintenance and management of their intangible investments and the collection and distribution of the income from such investments or from tangible property physically located outside of the state shall not exceed the \$150 minimum tax provided by [32 V.S.A. Section 5832]. For purposes of this section intangible investments" shall include without limitation investments in stocks, bonds, notes or...patents, patent applications, copyrights, trademarks, tradenames and similar types of intangible assets."

The Company would qualify as investment or holding company under 32 V.S.A. 5837. Litigation to protect the value of the patents and recover lost income and damages would be within the scope of the litigation would be income from the investment. The S-corporation status of [Company] would have no effect on the corporation's ability to qualify as an investment or holding company under 32 VSA 5837. Sections 5811(18)(B) defines Vermont net income of an S corporation but does not provide for how that income is taxed. Section 5837 contains no language which limits the specific tax treatment to C corporations.

This ruling is issued solely to your firm and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.