

Exhibit I



Baker & McKenzie LLP

452 Fifth Avenue
New York, NY 10018
United States

Tel: +1 212 626 4100
Fax: +1 212 310 1600
www.bakermckenzie.com

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* Associated Firm
** In cooperation with
Trench, Rossi e Watanabe
Advogados

February 15, 2023

Internal Revenue Service
GLDS Support Services
Stop 211
Post Office Box 621506
Atlanta, GA 30362

Re: Freedom of Information Act Request

Dear Sir or Madam:

In accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, I request copies of all records in the possession, custody, or control of the Internal Revenue Service (“IRS”) and the IRS Office of Chief Counsel relating to or referencing IRS Office of Chief Counsel employee Helen Hubbard’s participation in a January 16, 2018, Practising Law Institute conference on the taxation of financial products and transactions in New York.¹ I also request copies of all records in the possession, custody, or control of the IRS and the IRS Office of Chief Counsel relating to or referencing Helen Hubbard’s or any other IRS official’s participation in any conference addressing the Federal income tax treatment of termination or break fees and/or the application of I.R.C. §§ 162, 165, and/or 1234A to termination or break fees (“Section 1234A Speaking Engagements”).

This request includes, but is not limited to, the following:

1. Notifications, forms, or requests related to or referencing Section 1234A Speaking Engagements;
2. Notes prepared by or for Helen Hubbard or other IRS officials related to or referencing Section 1234A Speaking Engagements;
3. Records reviewed by Helen Hubbard or other IRS officials to prepare for Section 1234A Speaking Engagements; and

¹ We made a similar request, dated December 22, 2022, for records relating to or referencing Helen Hubbard’s participation in other industry conferences. See Exhibit A.



4. Communications within or between the IRS Office of Chief Counsel and the IRS related to or referencing Section 1234A Speaking Engagements.

For purposes of this request, the terms “record” and “records” are used expansively and include, by way of illustration and without limitation, all agreements, contracts, communications, letters, reports, analyses, memoranda, e-mails (and attachments), instant messages, transcripts, minutes, notes, bulletins, worksheets, schedules, notebooks, drawings, photographs, drafts, diaries, calendars, workpapers, contracts, purchase orders, teletypes, telexes, or any information stored on optical disc, magnetic tape, microfilm or microfiche, or computer memory storage device. These terms also refer to all drafts or prior versions of records responsive to this request. All requests for records set forth herein are for records in their native electronic format, where applicable.

If it is determined that records, or any portions thereof, will not be disclosed, please provide me with the non-exempt records and with the non-exempt portions of the remaining records. In the event an exemption is claimed, please provide me with all segregable non-exempt portions of any withheld records pursuant to 5 U.S.C. § 552(b). When material is to be redacted, please “black out” rather than “white out” or “cut out” any portions for which an exemption is claimed.

If records responsive to this request have been destroyed, please identify the records destroyed, the date of destruction, and the person who destroyed the records.

Pursuant to 5 U.S.C. §§ 552(a)(6)(A)(i) and 552(b), if this request is denied either in part or in whole, please provide me with an index that specifies which exemption(s) is (are) being claimed for each portion of each record withheld. Please provide a detailed description of each record withheld, including the author(s) and any recipients, the date of its creation, its subject matter, its family members (if any), and its current physical location. In addition, please provide the reason that each record falls within the exemption claimed for it. Please also specify the number of pages in each record and the total number of pages that are responsive to this request. Such an index is required to allow me to evaluate the IRS’s claims that these records are exempt from disclosure. *See, e.g., Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

In accordance with Treas. Reg. §§ 601.702(c)(4)(i)(H) and 601.702(f), I agree to pay reasonable charges incurred to search for and duplicate the requested records.



Once the materials have been assembled, please advise me of the projected copying charges.

In accordance with Treas. Reg. §§ 601.702(c)(4)(i)(E) and 601.702(c)(5)(iii)(C), I establish my identity and right to access requested AbbVie, Inc. (“AbbVie”) records by the previously filed Power of Attorney and Declaration of Representative on Form 2848 executed by AbbVie, attached as Exhibit B. A copy of my State of New York driver’s license is attached for photo identification as Exhibit C. AbbVie and I authorize you to send any of the above-mentioned records to:

Daniel A. Rosen
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
(212) 626-4272

In accordance with Treas. Reg. § 601.702(f)(3), I am a “commercial use requester” as defined in Treas. Reg. § 601.702(f)(3)(ii)(A). As set forth in 5 U.S.C. § 522(a)(6)(A)(i), 31 C.F.R. § 1.4, and Treas. Reg. § 601.702(c)(9)(ii), I would appreciate a response to this request within twenty (20) working days of its receipt.

If you have any questions concerning this request or require further identifying information, please contact me at (212) 626-4272.

Thank you in advance for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel A. Rosen".

Daniel A. Rosen
Daniel.Rosen@bakermckenzie.com

Attachments: Exhibits A through C

EXHIBIT A



Baker & McKenzie LLP

452 Fifth Avenue
New York, NY 10018
United States

Tel: +1 212 626 4100
Fax: +1 212 310 1600
www.bakermckenzie.com

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Santiago
Sao Paulo**
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Toronto
Valencia
Washington, DC

* Associated Firm
** In cooperation with
Trench, Rossi e Watanabe
Advogados

December 22, 2022

Internal Revenue Service
GLDS Support Services
Stop 93A
Post Office Box 621506
Atlanta, GA 30362

**Re: IRS Office of Chief Counsel Legal Advice
Freedom of Information Act Request**

Dear Sir or Madam:

In accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, I request copies of all records in the possession, custody, or control of the Internal Revenue Service (“IRS”) and the IRS Office of Chief Counsel relating to or referencing any and all of the following: (1) Chief Counsel Advice 202224010 (release date June 17, 2022); (2) Chief Counsel Advice 202119001 (release date May 14, 2021); (3) Chief Counsel Advice 201642035 (release date Oct. 14, 2016), and (4) Field Attorney Advice 20163701F (release date Sep. 9, 2016) (collectively, the “OCC Advice”).¹ I also request copies of all records in the possession, custody, or control of the IRS and the IRS Office of Chief Counsel relating to or referencing IRS Office of Chief Counsel employee Helen Hubbard’s participation in: (1) an October 20, 2016, Practising Law Institute conference on corporate tax strategies in New York; and (2) a January 20, 2017, American Bar Association Section of Taxation - Financial Transactions meeting in Florida.

This request includes, but is not limited to, the following:

1. All records related to or referencing the OCC Advice, including but not limited to the following items:
 - a. Requests for legal advice or assistance;
 - b. Requests for expedited treatment;
 - c. Response forms;

¹ The OCC Advice is attached as Exhibits A through D, respectively.



- d. Notices of tentative conclusions;
 - e. Records prepared, assembled, or forwarded to assist in the understanding of relevant facts, transaction(s), or issues;
 - f. Records setting forth the issues upon which advice was being sought, relevant facts, law, or conclusions or proposed course(s) of action;
 - g. Requests for information;
 - h. Records relating to or referencing IRS Office of Chief Counsel's review of legal advice prepared by Field Counsel;
 - i. Background file documents; and
 - j. Communications within or between the IRS Office of Chief Counsel and the IRS regarding the OCC Advice.
2. All records related to or referencing IRS Office of Chief Counsel employee Helen Hubbard's participation in: (1) an October 20, 2016, Practising Law Institute conference on corporate tax strategies in New York; and (2) a January 20, 2017, American Bar Association Section of Taxation - Financial Transactions meeting in Florida, including but not limited to the following items:
- a. Notifications, forms, or requests related to or referencing the speaking engagements;
 - b. Notes prepared by or for Helen Hubbard related to or referencing the speaking engagements;
 - c. Records reviewed by Helen Hubbard to prepare for the speaking engagements; and
 - d. Communications within or between the IRS Office of Chief Counsel and the IRS related to or referencing Helen Hubbard's speaking engagements.



3. To the extent not captured in the above requests, all records related to or referencing legal positions taken in the OCC Advice, including, but not limited to, all records related to or referencing the consideration of the Federal income tax treatment of termination or break fees and/or the application of I.R.C. §§ 162, 165, and/or 1234A to termination or break fees.

For purposes of this request, the terms “record” and “records” are used expansively and include, by way of illustration and without limitation, all agreements, contracts, communications, letters, reports, analyses, memoranda, e-mails (and attachments), instant messages, transcripts, minutes, notes, bulletins, worksheets, schedules, notebooks, drawings, photographs, drafts, diaries, calendars, workpapers, contracts, purchase orders, telecopies, telexes, or any information stored on optical disc, magnetic tape, microfilm or microfiche, or computer memory storage device. These terms also refer to all drafts or prior versions of records responsive to this request. All requests for records set forth herein are for records in their native electronic format, where applicable.

If it is determined that records, or any portions thereof, will not be disclosed, please provide me with the non-exempt records and with the non-exempt portions of the remaining records. In the event an exemption is claimed, please provide me with all segregable non-exempt portions of any withheld records pursuant to 5 U.S.C. § 552(b). When material is to be redacted, please “black out” rather than “white out” or “cut out” any portions for which an exemption is claimed.

If records responsive to this request have been destroyed, please identify the records destroyed, the date of destruction, and the person who destroyed the records.

Pursuant to 5 U.S.C. §§ 552(a)(6)(A)(i) and 552(b), if this request is denied either in part or in whole, please provide me with an index that specifies which exemption(s) is (are) being claimed for each portion of each record withheld. Please provide a detailed description of each record withheld, including the author(s) and any recipients, the date of its creation, its subject matter, its family members (if any), and its current physical location. In addition, please provide the reason that each record falls within the exemption claimed for it. Please also specify the number of pages in each record and the total number of pages that are responsive to this request. Such an index is required to allow me to evaluate the IRS’s claims



that these records are exempt from disclosure. *See, e.g., Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

In accordance with Treas. Reg. §§ 601.702(c)(4)(i)(H) and 601.702(f), I agree to pay reasonable charges incurred to search for and duplicate the requested records. Once the materials have been assembled, please advise me of the projected copying charges.

In accordance with Treas. Reg. §§ 601.702(c)(4)(i)(E) and 601.702(c)(5)(iii)(C), I establish my identity and right to access requested AbbVie Inc. (“AbbVie”) records by the previously filed Power of Attorney and Declaration of Representative on Form 2848 executed by AbbVie, attached as Exhibit E. A copy of my State of New York driver’s license is attached for photo identification as Exhibit F. AbbVie and I authorize you to send any of the above-mentioned records to:

Daniel A. Rosen
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
(212) 626-4272

In accordance with Treas. Reg. § 601.702(f)(3), I am a “commercial use requester” as defined in Treas. Reg. § 601.702(f)(3)(ii)(A). As set forth in 5 U.S.C. § 522(a)(6)(A)(i), 31 C.F.R. § 1.4, and Treas. Reg. § 601.702(c)(9)(ii), I would appreciate a response to this request within twenty (20) working days of its receipt.

If you have any questions concerning this request or require further identifying information, please contact me at (212) 626-4272.

Thank you in advance for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel A. Rosen".

Daniel A. Rosen
Daniel.Rosen@bakermckenzie.com

Attachments: Exhibits A through F

EXHIBIT A

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

Number: **202224010**

Release Date: 6/17/2022

CC:FIP:ICFriedman

POSTF-119443-19

UILC: 1234A.01-00, 1001.00-00, 165.00-00, 263.08-03

date: February 24, 2022

to: Associate Area Counsel ()
(Large Business & International)
Attn:

from: Ian C. Friedman
Attorney, Branch 1
(Financial Institutions & Products)

subject:

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Taxpayer	=
Target	=
	=
	=
Asset Buyer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
\$X	=
\$Y	=

ISSUE

Whether the termination fees Taxpayer paid to
described below are treated as capital losses of Taxpayer under section

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1234A of the Internal Revenue Code (the "Code"), or whether Taxpayer properly claimed the fees as business expense deductions under section 162. In particular, this memorandum considers:

- (a) Whether there was a section 165 loss (rather than a section 162 expense) upon termination of each transaction;
- (b) Whether the Treasury Regulations accompanying section 263(a) provide that the termination fees are deductible under section 162 if the fees are not expressly capitalized by those regulations;
- (c) Whether case law pertaining to terminations and the origin of the claim doctrine requires that the Service accept Taxpayer's treatment of the termination fees as section 162 expenses; and
- (d) If the terminations of the transactions resulted in section 165 losses to which section 1234A can apply, how section 1234A applies to those losses.

CONCLUSIONS

We conclude as follows:

- (a) Taxpayer's terminations of the transactions resulted in dispositions under section 1001 that gave rise to losses under section 165 rather than business expenses under section 162;
- (b) The regulations accompanying section 263(a) do not require that the termination fees be treated as section 162 expenses;
- (c) The case law pertaining to terminations and the origin of the claim doctrine does not require that the Service accept Taxpayer's treatment of the termination fees as section 162 expenses; and
- (d) Section 1234A applies to characterize the section 165 losses that result from the terminations of the transactions as capital losses to the extent those losses were attributable to the termination of rights or obligations with respect to capital assets. As discussed below, Taxpayer's loss resulting from the termination of is characterized as capital to the extent that loss was attributable to property that would have been capital assets in Taxpayer's hands, if Taxpayer had acquired that property pursuant to . Taxpayer's loss resulting from the termination of the is characterized as capital to the extent the property that Taxpayer would have sold pursuant to the constituted capital assets of Taxpayer.

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FACTS

dated as of
Date 1 (“ Agreement”), which provided for Taxpayer’s acquisition of Target. If the Merger Agreement had been carried out pursuant to its terms,

The provided that Taxpayer or Target could terminate if,
,
was not consummated by a specified date. If such a termination was triggered and certain other circumstances existed, Taxpayer was required to pay Target a termination fee of \$X.

On Date 2,

(“ ”). On Date 3,

. Shortly thereafter, due to the impracticability, if not impossibility, of proceeding with , Taxpayer and Target agreed to terminate the Agreement and Taxpayer paid the termination fee of \$X (the “ Termination Fee”). Because Taxpayer was the acquirer in the proposed transaction, the Termination Fee paid by Taxpayer is commonly known as a “reverse” termination fee.¹

While the was ongoing, in an effort to address issues raised in that litigation, Taxpayer entered into an Agreement with Buyer,

”). The Agreement permitted the parties to terminate if the Agreement was terminated by its terms. If the Agreement was terminated because the Agreement was terminated, the Agreement provided that Buyer became entitled to receive a termination fee

¹ Where a agreement sets forth break-up fees to be paid by a party seeking to terminate the agreement, the fee to be paid by the target is known as the “termination fee,” and the fee to be paid by the acquirer is known as the “reverse termination fee.” See Afra Afsharipour, “Transforming the Allocation of Deal Risk Through Reverse Termination Fees,” 63 Vand. L. Rev. 1161, 1163-64 (2010).

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When Taxpayer and Target terminated the _____ Agreement, Taxpayer and Buyer executed a termination agreement in which Taxpayer agreed to pay the termination fee required by the _____ Agreement, which _____ was \$Y (“_____ Termination Fee”).

Taxpayer reported the _____ Termination Fee and the _____ Termination Fee (collectively, the “Termination Fees”) as ordinary business expense deductions under section 162 on its Form 1120, U.S. Corporation Income Tax Return, as filed. On audit, the Service is considering disallowing the ordinary business expense deductions and recharacterizing all or part of the Termination Fees as capital losses pursuant to sections 165 and 1234A.

Taxpayer’s position is that section 1234A does not apply to the Termination Fees and Taxpayer is permitted business expense deductions for the Termination Fees under section 162.

LAW AND ANALYSIS

Whether the Termination Fees Taxpayer paid to terminate the _____ and the related _____ are treated as capital losses of Taxpayer under section 1234A, or whether Taxpayer properly claimed them as business expense deductions under section 162.

Section 1234A in relevant part provides:

Gain or loss attributable to the cancellation, lapse, expiration, or other termination of—

(1) a right or obligation . . . with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer, or

(2) a section 1256 contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer,

shall be treated as gain or loss from the sale of a capital asset.

Application of section 1234A begins with the plain language of the statute. See CRI-Leslie, LLC v. Commissioner, 882 F.3d 1026, 1033 (11th Cir. 2018), aff’d 147 T.C. 217 (2016). The plain language of section 1234A sets forth the following requirements in determining whether a transaction is subject to section 1234A(1):

(1) There is gain or loss attributable to an extinguishing event – (i.e., cancellation, lapse, expiration, or other termination);

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- (2) That event extinguishes a contractual right or obligation;
- (3) The contractual right or obligation concerns underlying property that is a capital asset in the taxpayer's hands (or that would be a capital asset if the property were acquired by the taxpayer); and
- (4) There is a "with respect to" nexus or connection between the right or obligation and the underlying capital asset.

With respect to the first two requirements, the Agreement and the Agreement created contractual rights and obligations for the Taxpayer and the other parties to those agreements. The rights and obligations in those agreements were extinguished by events within the scope of section 1234A: the terminations of the agreements. Moreover, the payments of the Termination Fees and the tax consequences of those payments were attributable to those extinguishing events.

In sections a., b., and c. below, we explain that the termination of each agreement and the payment of the Termination Fee required by that agreement resulted in "gain or loss" and, accordingly, that the remaining element of the first two requirements for the application of section 1234A(1) was satisfied. In section d. below, we address how the remaining two requirements apply to the terminated rights and obligations in each transaction.

a. Whether there was a section 165 loss (rather than a section 162 expense) upon termination of each transaction.

Section 1234A implicitly requires that there be a "gain or loss" in order for the gain or loss attributable to a cancellation, lapse, expiration, or other termination to be treated as "gain or loss from the sale of a capital asset." Section 1234A creates a deemed "sale of a capital asset," but contains no special definition of "gain or loss." Taxpayer argues that its payment of the Termination Fees resulted in section 162 expenses and that section 1234A applies to losses but not section 162 expenses.

As discussed in detail below, case law, a revenue ruling, and the regulations accompanying section 263(a) demonstrate that the facilitative costs of mergers and other similar major corporate transactions, including acquisitions or dispositions of assets constituting a trade or business, are required to be capitalized.² If the acquisition

² See Treas. Reg. § 1.263(a)-5(e); see also 67 Fed. Reg. 77701, 77706 (Dec. 19, 2002) (preamble to proposed regulations under section 263(a), providing that the rules in Rev. Rul. 99-23, 1999-1 C.B. 998, are being replaced with the rules set forth in the proposed regulations for ease of administration); T.D. 9107, 69 Fed. Reg. 436, 442-43 (Jan. 5, 2004) (preamble to final regulations under section 263(a), discussing modifications to the rules set forth in the proposed regulations).

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is terminated or abandoned, these facilitative costs are recovered as section 165 losses.³

Moreover, the legislative history of section 1234A reflects Congress's assumption that the making of a payment to terminate contracts with respect to capital assets results in the requisite gain or loss to apply the statute. The legislative history of the 1997 amendment of section 1234A also demonstrates Congress's intent that section 1234A as amended would apply to the making of a fixed payment to terminate a contract to acquire stock (or other capital assets).

For all these reasons, we conclude that terminations of the _____ Agreement and the _____ Agreement were dispositions of property for purposes of section 1001 that gave rise to gain or loss, and that Taxpayer's payments of the Termination Fees are taken into account in determining the amount of Taxpayer's losses from the dispositions of the agreements.⁴ For the same reasons, we conclude that the first two requirements for the application of section 1234A(1) were satisfied when the _____ Agreement and the _____ Agreement were terminated.

In Portland Furniture Mfg. Co. v. Commissioner, 30 B.T.A. 878, 881 (1934), the court allowed a deduction for an ordinary loss in the amount of the taxpayer's share of the expenses of investigating the feasibility of an abandoned merger. Rev. Rul. 73-580, 1973-2 C.B. 86, holds that the portion of the compensation paid by a corporation to its employees attributable to services performed in connection with corporate mergers and acquisitions must be capitalized; however, such amounts paid with respect to abandoned plans for mergers or acquisitions are deductible as losses in the year of abandonment. Treas. Reg. § 1.263(a)-5(d)(1), which post-dates Rev. Rul. 73-580, now provides that employee compensation (as defined in Treas. Reg. § 1.263(a)-5(d)(2)) is treated as an amount that does not facilitate a capital transaction set forth in Treas. Reg. § 1.263(a)-5(a). The preamble to the proposed regulations explains that the departure from the conclusion in Rev. Rul. 73-580 was made to provide a simplifying assumption to resolve much controversy between taxpayers and the Service, and to eliminate the burden on taxpayers of allocating certain transaction costs among various

³ Deductions for abandonment losses are not specified in section 165. Treas. Reg. § 1.165-2(a), however, allows a deduction under section 165(a) for a loss incurred in a business (or in a transaction entered into for profit) and arising from the sudden termination of the usefulness in such business (or transaction) of any nondepreciable property, in a case where such business (or transaction) is discontinued or where such property is permanently discarded from use therein. Accordingly, merger and acquisition costs, otherwise capitalizable, are deductible losses under section 165 when the transaction is abandoned.

⁴ We understand that Taxpayer capitalized facilitative transaction costs of the _____ and the _____. The loss resulting from the termination of the _____ and the loss resulting from the termination of the _____ are each determined by taking into account both the Termination Fee paid to terminate the transaction and the Taxpayer's properly capitalized facilitative transaction costs of that transaction.

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intangible assets.⁵ This simplifying convention is intended to be a rule of administrative convenience, and not a substantive rule of law. The final regulations retained this simplifying convention, with several modifications that are not relevant to this discussion.⁶ Accordingly, the general principle illustrated by Rev. Rul. 73-580, *i.e.*, that facilitative expenses that would have to be capitalized to the transaction are deductible as losses if the transaction is abandoned, still holds.

Treas. Reg. § 1.263(a)-5(a) requires capitalization of costs that facilitate capital transactions. Treas. Reg. § 1.263(a)-5(a)(4) requires capitalization of costs in transactions involving a restructuring, recapitalization, or a reorganization of the capital structure of a business entity (including a reorganization described in section 368). Treas. Reg. § 1.263(a)-5(a)(2) requires capitalization of costs in transactions involving the acquisition by a taxpayer of an ownership interest in a business entity if, immediately after the acquisition, the taxpayer and the business entity are related within the meaning of Code sections 267(b) or 707(b). Treas. Reg. § 1.263(a)-5(a)(1) requires capitalization in cases involving an acquisition of assets that constitute a trade or business (whether the taxpayer is the acquirer or the target of the acquisition).

Treas. Reg. § 1.263(a)-5(e)(3)(iii) identifies a reorganization described in section 368(a)(1)(A), (B), or (C), and certain reorganizations described in section 368(a)(1)(D), as a “covered transaction”. This designation requires that “inherently facilitative amounts” (as defined in Treas. Reg. § 1.263(a)-5(e)(2)) paid in the process of investigating or otherwise pursuing the reorganization be capitalized, regardless of whether the amount is paid for activities performed prior to the date determined under Treas. Reg. § 1.263(a)-5(e)(1), *i.e.*, the date described in the regulations after which amounts paid in the process of investigating or otherwise pursuing a covered acquisition (or reorganization) are deemed to facilitate the transaction. See Treas. Reg. § 1.263(a)-5(e)(2).

Treas. Reg. § 1.263(a)-5 contemplates that the costs required to be capitalized by that section will be recovered as section 165 losses when the transactions are terminated or abandoned. Treas. Reg. § 1.263(a)-5(l), Example 3 provides that costs associated with evaluating “an acquisition by Z of a competitor, and an acquisition of Z by a competitor” must be capitalized and are recoverable by Z as losses under section 165 when Z abandons the acquisition transactions. Treas. Reg. § 1.263(a)-5(l), Example 4 requires that appraisal costs incurred in investigating the acquisition of certain targets be capitalized and are recovered as section 165 losses in the year the planned mergers are abandoned.

The case law dealing with the taxation of merger termination fees further supports the conclusion that Taxpayer’s payments of the Termination Fees gave rise to section 165

⁵ See 67 Fed. Reg. 77701, 77707 (Dec. 19, 2002) (explaining decision to treat employee compensation as not a facilitative cost and that this decision was part of a simplifying convention intended to be a rule of administrative convenience, and not a substantive rule of law).

⁶ See T.D. 9107, 69 Fed. Reg. 436, 439-440 (Jan. 5, 2004) (discussing retention of simplifying conventions for employee compensation generally).

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losses. In Santa Fe Pac. Gold Co. v. Commissioner, 132 T.C. 240 (2009), and United States v. Federated Dept. Stores, Inc., 171 B.R. 603 (S.D. Ohio 1994), the taxpayer was the target of an unwanted (but ultimately successful) acquisition attempt. To try to prevent the acquisition, the taxpayer entered into a “white knight” merger agreement with a preferred partner. When the unwanted acquisition succeeded, the taxpayer in each case terminated the white knight agreement and paid a termination fee to the white knight.⁷

The issue in Santa Fe and Federated was whether the termination fee was deductible when the fee was paid and the white knight transaction was abandoned, or whether (as contended by the government) the taxpayer had to capitalize the fee to the hostile merger that actually occurred and account for that cost (for tax purposes) in connection with that subsequent transaction. The courts in both cases concluded that the merger termination fees were deductible currently under two Code sections, including section 165, when the white knight mergers were abandoned.⁸ See Santa Fe, 132 T.C. at 276-79 (explaining that section 165 allows a current deduction for “costs associated with an abandoned capital transaction,” stating that the merger termination fee was a “cost” of the abandoned merger, and concluding that the taxpayer was entitled to deduct the fee under section 165); Federated, 171 B.R. at 610-13 (stating that “[s]ection 165 allows a current deduction for costs associated with an abandoned capital transaction,” that each corporation was presented with “two mutually exclusive capital transactions: a merger with the white knight or a merger with [the unwanted suitor],” and concluding that the break-up fees were costs incurred in abandoned transactions and therefore were currently deductible under section 165); see also A.E. Staley Mfg. Co. v. Commissioner, 119 F.3d 482, 490-92 (7th Cir. 1997) (concluding that most of taxpayer’s failed efforts to prevent an unwanted (but ultimately successful) takeover attempt concerned “alternative capital transactions” whose costs were deductible as section 165 losses), rev’g 105 T.C. 166 (1995).⁹ Moreover, the issue in this case is not only whether there is “loss” versus “expense” generally, but also the applicability of section 1234A to the termination. The courts in Santa Fe and Federated did not have to consider whether there was a “loss” (and not an “expense”) for purposes of section 1234A because the transactions in those cases occurred before the 1997 amendment to section 1234A.¹⁰ Accordingly, case law pertaining to terminated agreements supports the

⁷ The opinion in Federated considered merger termination fees paid by two corporations, each of whom was the subject of an unwanted takeover attempt and entered into a white knight merger agreement in an unsuccessful attempt to prevent that takeover.

⁸ The courts in Santa Fe and Federated concluded that the white knight merger termination fees could also be deducted as section 162 expenses. As explained below in part c. of this memorandum, the rationale of those courts in concluding that the taxpayers could deduct the termination fees under section 162 is not applicable in this case.

⁹ The Court of Appeals in A.E. Staley concluded that the costs of the alternative capital transactions could also be deducted as section 162 expenses. The Tax Court had concluded that the costs were capital expenditures and no deduction was allowable under either section 162 or section 165.

¹⁰ The 1997 amendment is discussed in the text below at pp. 10-12.

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treatment of merger terminations as dispositions of capital transactions that result in losses under section 165 to the payor of the termination fee.

Finally, the legislative history of section 1234A reflects Congress's assumption that the making of a payment to terminate contracts with respect to capital assets results in the requisite gain or loss to apply the statute. Section 1234A was enacted by section 507(a) of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, 95 Stat. 172, 333 ("1981 Act"). To address how Congress understood the phrase "gain or loss" when enacting section 1234A, we turn first to the legislative history from 1981, which explains:

The definition of capital gains and losses in section 1222 requires that for gain or loss to be capital gain or loss, there must be a "sale or exchange" of a capital asset. Court decisions have interpreted this requirement to mean that when a disposition is not a sale or exchange of a capital asset, for example, a lapse, cancellation, or abandonment, the disposition produces ordinary income or loss. This interpretation has been applied even to dispositions which are economically equivalent to a sale or exchange of a capital asset. [Text omitted].

The committee believes that the change in the sale or exchange rule is necessary to prevent tax-avoidance transactions designed to create fully-deductible [sic] ordinary losses on certain dispositions of capital assets, which if sold at a gain, would produce capital gain. . . . The committee considers this ordinary loss treatment inappropriate if the transaction, such as settlement of a contract to deliver a capital asset, is economically equivalent to a sale or exchange of the contract.

H. Rep. No. 97-201, at 212 (1981) (emphasis added; footnote omitted) [hereinafter "1981 House Report"]. The 1981 House Report further provides, as an example of a type of transaction that prompted enactment of section 1234A, the following straddle transaction composed of forward contracts referencing foreign currency or securities:

Some of the more common of these tax-oriented ordinary loss and capital gain transactions involve cancellations of forward contracts for currency or securities. For example, a taxpayer may simultaneously enter into a contract to buy German marks for future delivery and a contract to sell German marks for future delivery with very little risk. If the price of German marks thereafter declines, the taxpayer will assign his contract to sell marks to a bank or other institution for a gain equivalent to the excess of the contract price over the lower market price and cancel his obligation to buy marks by payment of an amount in settlement of his obligation to the other party to the contract. The taxpayer will treat the sale proceeds as capital gain and will treat the amount paid to terminate his obligation to buy as an ordinary loss.

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1981 House Report at 213 (emphasis added). This example reflects Congress's understanding that making a payment to terminate a burdensome contract may give rise to a loss for tax purposes, which taxpayers were then treating as an ordinary loss in reliance upon case law and the limited "sale or exchange" language of section 1222. Congress enacted section 1234A to deem certain non-sale or exchange dispositions to be sales or exchanges to ensure that gain or loss from such dispositions had the same character as a gain or loss from selling the contract. Congress did not have to provide that a "gain or loss" arose from such dispositions in order to achieve uniform character because such dispositions already resulted in gain or loss prior to enactment of section 1234A.

In 1997, Congress amended section 1234A to apply it to a broader variety of transactions. As originally enacted in 1981, section 1234A applied to the termination of "a right or obligation with respect to personal property (as defined in section 1092(d)(1)) which is (or on acquisition would be) a capital asset in the hands of the taxpayer. . . ." ¹¹ Section 1092(d)(1) at that time defined personal property to include only "personal property (other than stock) of a type which is actively traded" ¹² The 1997 amendment broadened the scope of section 1234A by replacing the reference to "personal property (as defined in section 1092(d)(1))" with the word "property," thereby causing section 1234A to apply to the termination of a right or obligation with respect to any property that is (or on acquisition would be) a capital asset in the taxpayer's hands. ¹³

The legislative history of the 1997 amendment, consistent with the legislative history from 1981, also confirms Congress' belief that, before the enactment of section 1234A, the termination of burdensome contracts with respect to capital assets resulted in losses, which some taxpayers were treating as ordinary losses. The 1997 legislative history further confirms that section 1234A was intended to provide that terminations of such contracts at an economic loss would result in losses that were capital losses, despite the absence of a sale or exchange. A Senate Report describing the 1997 amendment explains:

There has been a considerable amount of litigation dealing with whether modifications of legal relationships between taxpayers is to be treated as a "sale or exchange." . . . Several court decisions interpreted the "sale or exchange" requirement to mean that a disposition, that occurs as a result of a lapse, cancellation, or abandonment, is not a sale or exchange of a capital asset, but produces ordinary income or loss.

. . . .

¹¹ See sec. 507(a) of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, 95 Stat. 172, 333.

¹² In 1984, section 1092(d) was amended to include certain stock involved in straddle-type transactions in that section's definition of personal property. See sec. 101(b) of P.L. 98-369, Deficit Reduction Act of 1984, 98 Stat. 494, 618-19.

¹³ See sec. 1003(a) of P.L. 105-34, Taxpayer Relief Act of 1997, 111 Stat. 788, 909-10.

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More recently, in Stoller v. Commissioner, 994 F.2d 855 (1993), the Court of Appeals for the District of Columbia held, in a transaction that preceded the effective date of section 1234A, that losses incurred on the cancellation of forward contracts to buy and sell short-term Government securities that formed a straddle were ordinary because the cancellation of the contracts was not a “sale or exchange.”

• • • •

Courts have given different answers as to whether transactions which terminate contractual interests are treated as a “sale or exchange.” This lack of uniformity has caused uncertainty to both taxpayers and [the Service] in the administration of the tax laws.

S. Rep. No. 105-33, at 132-35 (emphasis added) [hereinafter “1997 Senate Report”].¹⁴ The legislative history from 1997 reaffirms Congress’s concerns, expressed in 1981, that taxpayers could elect character through the form of disposition of an asset. The legislative history from 1997 further explains that Congress amended section 1234A to create more uniformity and certainty generally as to the character of transactions that terminate contractual interests.

The 1997 Senate Report, in describing how the amendment to section 1234A would affect specific transactions, explains as follows:

An example of the second type of property interest that is affected by the committee bill is the forfeiture of a down payment under a contract to purchase stock. [footnote 81, citing U.S. Freight Co. v. United States, 422 F.2d 887 (Ct. Cl. 1970)]. The committee bill does not affect whether a right is “property” or whether property is a “capital asset.”

1997 Senate Report at 135-36.

The case cited in the above-quoted language from the 1997 Senate Report (U.S. Freight) is of particular relevance in the present case because it also involved a fixed termination payment. In U.S. Freight, a taxpayer entered into a forward contract to acquire stock and paid part of the purchase price upfront. The contract provided that, if the taxpayer did not complete the sale, the seller would retain the fixed upfront payment as liquidated damages. The taxpayer became concerned that the contract price was unfavorable and terminated the burdensome contract, at which time the seller retained the upfront payment. The Court of Claims recognized that a contract with respect to a capital asset such as stock likely was itself a capital asset whose sale or exchange

¹⁴ The parties in Stoller, a case cited in the legislative history, assumed that cancellation fees that the taxpayer paid upon termination of forward contracts resulted in “loss” from disposition of the contracts, and, thus, the only issue was whether the losses were ordinary or capital.

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would produce capital gain or loss.¹⁵ The court nevertheless concluded that the upfront payment gave rise to an ordinary loss rather than a capital loss because the termination of the contract was not a sale or exchange. Accordingly, the 1997 Senate Report is clear: Congress understood that the fact pattern in U.S. Freight was a disposition that generated gain or loss that would be covered by section 1234A, thereby overriding the result in that case and characterizing the gain or loss as capital because the disposition would be a deemed sale or exchange. More generally, the legislative history of section 1234A reflects Congress's understanding that terminations of contracts with respect to capital assets (such as the stock in U.S. Freight) were dispositions of the contracts, which would generate gain or loss for purposes of applying section 1234A.

For all of the above reasons, we conclude that Taxpayer's terminations of the _____ were dispositions of property within the meaning of section 1001. Upon termination, the Taxpayer was able to recover the _____ Termination Fee, the _____ Termination Fee, and the facilitative costs required to be capitalized by Treas. Reg. § 1.263(a)-5(a) as losses under section 165.

b. Whether the Treasury Regulations accompanying section 263(a) provide that the Termination Fees are deductible under section 162 if the fees are not expressly capitalized by those regulations.

Taxpayer asserts Treas. Reg. § 1.263(a)-5(c)(8) provides that a fee paid to terminate a _____ can be deducted when paid unless the fee was paid to engage in a second, mutually exclusive capital transaction. Taxpayer infers that, if the Termination Fees are not expressly capitalized under the regulations accompanying section 263(a), then they must necessarily be deductible (as section 162 expenses) when paid. We disagree.

Section 263(a)(1) provides that no deduction shall be allowed for amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. Treas. Reg. § 1.263(a)-4 provides rules for applying section 263(a) "to amounts paid to acquire or create intangibles." See Treas. Reg. § 1.263(a)-4(a). Treas. Reg. § 1.263(a)-5 provides rules for applying section 263(a) to amounts paid "to facilitate" an acquisition of a trade or business, a change in the capital structure of a business entity, and certain other transactions. For this purpose, an amount is paid to facilitate one of the specified transactions "if the amount is paid in the process of investigating or otherwise pursuing the transaction." See Treas. Reg. § 1.263(a)-5(b)(1).

¹⁵ See U.S. Freight, 442 F.2d, at 892 n.3 ("We consider the substance of our assumption for purposes of argument, that a contract right to purchase what would be a capital asset in the purchaser's hands is itself a capital asset, to be not only reasonable, but also the subject of authoritative support.") (citing Commissioner v. Ferrer, 304 F.2d 125 (2d Cir. 1962)). Although the court in U.S. Freight concluded that the forfeiture of the deposit for the purchase of stock was fully deductible as a loss under section 165(a), the court further explained that it "need not decide" whether the forfeited amount was deductible in the alternative under section 162, raising the possibility that the item could have been both a loss and an expense. U.S. Freight, 422 F.2d, at 896 n.8.

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Treas. Reg. § 1.263(a)-5(c)(8)¹⁶ considers when a fee paid to terminate an agreement to enter into a transaction is a cost of facilitating another, subsequent transaction, and thus must be capitalized to the subsequent transaction. Under Treas. Reg. § 1.263(a)-5(c)(8), the fee to terminate the first transaction is a cost paid to facilitate the subsequent transaction, only if the transactions are mutually exclusive. Examples 13 and 14 of Treas. Reg. § 1.263(a)-5(l) illustrate this rule.

Treas. Reg. § 1.263(a)-5(c)(8) and Examples 13 and 14 of Treas. Reg. § 1.263(a)-5(l) do not address whether a termination fee paid is deductible under section 165 or section 162 when the requirements of Treas. Reg. § 1.263(a)-5(c)(8) are not applicable, which is the case here.

Section 263 and its regulations provide guidance as to when a taxpayer must capitalize an expense otherwise deductible (or subject to specific treatment) under another section of the Code such as sections 161 through 261. When section 263 and its accompanying regulations require capitalization, the taxpayer can only deduct (or otherwise account for) the expense when the terms of a Code section are satisfied (as is the case when a merger is terminated or abandoned allowing deduction of the capitalized expense as a section 165 loss). The preamble to the advance notice of proposed rulemaking that preceded the issuance of Treas. Regs. §§ 1.263(a)-4 and -5 states:

A fundamental purpose of section 263(a) is to prevent the distortion of taxable income through current deduction of expenditures relating to the production of income in future taxable years. See Commissioner v. Idaho Power Co., 418 U.S. 1, 16 (1974). Thus, the Supreme Court has held that expenditures that create or enhance separate and distinct assets or produce certain other future benefits of a significant nature must be capitalized under section 263(a). See INDOPCO, Inc. v. Commissioner, 503 U.S. 79 (1992); Commissioner v. Lincoln Savings & Loan Ass'n, 403 U.S. 345 (1971).

. . . .
Recently, much of the uncertainty and controversy in the capitalization area has related to expenditures that create or enhance intangible assets or benefits. To clarify the application of section 263(a), the forthcoming notice of proposed rulemaking will describe the specific categories of expenditures incurred in acquiring, creating, or enhancing intangible assets or benefits that taxpayers are required to capitalize. . . .

. . . .
The proposed standards and rules described in this document will not alter the manner in which provisions of the law other than section 263(a) (e.g.,

¹⁶ Treas. Reg. §1.263(a)-4(d)(7)(ii) provides that Treas. Reg. §1.263(a)-4(d)(7)(i) does not apply to termination fees paid in connection with a transaction described in Treas. Reg. §1.263(a)-5(a), as is the case here. See also Example 4 of Treas. Reg. § 1.263(a)-4(d)(iii).

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sections 195, 263(g), 263(h), or 263A) apply to determine the correct tax treatment of an item. Moreover, these standards and rules will not address the treatment of costs other than those to acquire, create, or enhance intangible assets or benefits¹⁷

The preambles to the proposed and final regulations similarly limit the scope of the issues addressed to amounts related to the creation or acquisition of intangible assets or to the facilitation of specified transactions.¹⁸ In addition, with regard to termination costs, the preamble to the final regulations states:

The final regulations clarify when costs of terminating a transaction described in § 1.263(a)–5 (including break-up fees) are treated as facilitating another transaction described in § 1.263(a)–5. . . . [A]n amount paid to terminate (or facilitate the termination of) an agreement to enter into a transaction described in the regulations is treated as facilitating another transaction described in the regulations only if the transactions are mutually exclusive and the agreement is terminated to enable the taxpayer to engage in the second transaction.¹⁹

Section 263 and its regulations require capitalization and thus deny current deductibility for an otherwise deductible expenditure. Once capitalized the expenditure is only recovered if the terms of a Code section are independently satisfied. In this case, section 165's terms were satisfied when the _____ were terminated/abandoned, allowing Taxpayer losses equal to the Termination Fees and the facilitative costs required to be capitalized by Treas. Reg. § 1.263(a)-5(a).

For all these reasons, section 263 and its regulations do not control whether the Termination Fees are expenses under section 162 or losses under section 165, or (in the case of section 165 losses) otherwise limit the application of section 1234A to those losses.

c. Whether case law pertaining to merger terminations and the origin of the claim doctrine requires that the Service accept Taxpayer's treatment of the Termination Fees as section 162 expenses.

¹⁷ 67 Fed. Reg. 3461, 3462 (Jan. 24, 2002) (emphasis added).

¹⁸ See the preamble to the proposed regulations under section 263(a), 67 Fed. Reg. 77701, 77701 (Dec. 19, 2002) (“[t]his document contains proposed regulations that explain how section 263(a) of the Code applies to amounts paid to acquire, create, or enhance intangible assets”); T.D. 9107, 69 Fed. Reg. 436, 436 (Jan. 5, 2004) (“the final regulations provide that an amount paid to acquire or create an intangible not otherwise required to be capitalized by the regulations is not required to be capitalized on the ground that it produces significant future benefits for the taxpayer, unless the IRS publishes guidance requiring capitalization of the expenditure”).

¹⁹ 69 Fed. Reg. at 441-42.

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Taxpayer next argues that the case law discussed above pertaining to merger termination fees, and the origin of the claim doctrine, require that the Service accept Taxpayer's treatment of the Termination Fees as section 162 expenses.

Taxpayer's reliance upon the cases discussed above, Santa Fe and Federated, is misplaced. The threshold question in Taxpayer's case is whether the Termination Fees resulted in current "losses" under section 165(a)²⁰ to which section 1234A could apply, rather than business expenses under section 162. The merger cases cited by Taxpayer were primarily concerned with whether merger termination fees (i) were currently deductible under either section 162 or section 165 (or both) when the transaction with respect to which the fees were incurred was terminated, or (ii) instead were required to be capitalized and deferred under section 263(a) with respect to some subsequent transaction. They thus answered a question of timing rather than one of "expense" vs. "loss."²¹ Nevertheless, as noted above, each of the cases supports our conclusion that a fee paid to terminate a proposed _____ generates a loss under section 165(a) when the transaction is abandoned altogether.

As Taxpayer correctly notes, the courts in Santa Fe and Federated reached alternative conclusions under both section 162 and section 165: The courts concluded that the merger termination fees were deductible under section 162 because the fees fit within the rubric of expenses paid to defend an existing business against attack, and the courts alternatively concluded that the fees were deductible under section 165 as losses from abandoned capital transactions.²² Taxpayer suggests that the alternative holdings in Santa Fe and Federated under sections 162 and 165 mean that its payments of the Termination Fees must properly be viewed as deductible expenses under section 162. The section 162 rationale in Santa Fe and Federated, however, is not applicable to the present case because the Termination Fees were not ordinary and necessary business

²⁰ Section 165(a) provides that "[t]here shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise" (emphasis added). Treas. Reg. §1.165-1(b) provides that "a loss must be evidenced by closed and completed transactions, fixed by identifiable events, and . . . actually sustained during the taxable year."

²¹ In Santa Fe and Federated, the government argued that the cost of defending against an eventually successful hostile acquisition was required to be capitalized into the eventual acquisition under section 263(a), rather than currently deducted under either sections 162 or 165. The courts rejected the government's arguments, reasoning instead that the "white knight" or "alternative" transactions were not part of the eventual merger.

²² The court in Federated found "that the bankruptcy court did not err in determining that the break-up fees were currently deductible under section 162 as ordinary and necessary business expenses," and further held in the alternative that "the break-up fees represent costs incurred in abandoned transactions" and that "therefore they are currently deductible under section 165." Federated, 171 B.R. at 610. The court in Santa Fe likewise held that the merger termination fee was deductible under section 162, and alternatively concluded that the taxpayer was entitled to a deduction for the merger termination fees under section 165 because "the termination fee was paid as a result of that [merger] abandonment and was therefore a cost of the abandoned merger . . ." Santa Fe, 132 T.C. at 276, 278.

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expenses of defending against unwanted attacks on Taxpayer's trade or business.²³ Most importantly, as noted previously, the issue in this case is not only whether there is "loss" versus "expense," but the impact of section 1234A on the termination – an issue which was not in Santa Fe and Federated because the transactions in those cases occurred before the 1997 amendment to section 1234A.²⁴ As explained above, the legislative history of section 1234A demonstrates Congress's understanding that making a payment to terminate a contract with respect to capital property would result in a "loss" to which section 1234A could apply.

Lastly, Taxpayer argues that the Termination Fees are deductible as section 162 expenses because they were negotiated to compensate Target and Buyer for their transaction costs. This appears to be a reference to the origin of the claim doctrine, under which courts analyze "the origin and character of the claim with respect to which an expense was incurred" to determine its tax consequences. See United States v. Gilmore, 372 U.S. 39, 49 (1963). Taxpayer provides little evidence that the Termination Fees (other than a small portion of the Termination Fee) were solely intended to compensate Target and Buyer for their current expenses, although any such evidence would not affect our analysis under section 1234A. That a portion of a Termination Fee may have compensated the payee for its own expenses does not alter the fact that Taxpayer paid the Termination Fees to dispose of its rights and obligations arising from capital transactions.²⁵

²³ As noted above, the Court of Appeals in A.E. Staley similarly concluded that the costs of the taxpayer's abandoned alternate (and defensive) capital transactions were deductible under section 162 and section 165. Like the section 162 conclusions in Santa Fe and Federated, the section 162 conclusion in A.E. Staley was based on the rationale that the expenses were paid to defend an existing business against attack.

The current regulations accompanying section 263(a) were not in effect when the transactions in Santa Fe and Federated occurred. Under the current regulations, the termination fees paid would be capitalized to the mergers that occurred. See Treas. Reg. § 1.263(a)-5(c)(8) and Treas. Reg. § 1.263(a)-5(l), Example 13.

²⁴ As noted above, before the 1997 amendment, section 1234A could apply only to the termination of rights or obligations with respect to personal property as defined in section 1092(d)(1). At the time of the transactions in Santa Fe and Federated (as well as at the time of the transactions in A.E. Staley), the definition of personal property in section 1092(d) was limited to personal property of a type that was actively traded and generally excluded stock. Accordingly, it is unlikely that the terminations in those cases could have involved rights or obligations with respect to property within section 1234A's scope at that time. In any event, the courts in Santa Fe and Federated did not consider whether section 1234A applied to the merger termination fees in those cases, nor did the courts in A.E. Staley consider whether section 1234A applied to the costs of the alternative capital transactions in that case.

²⁵ As noted above, because Taxpayer was the acquirer, the Termination Fee was a "reverse" termination fee. The development of fixed reverse termination fees has raised the issue of valuing merger agreements (from the acquirer's perspective) as comparable to discrete financial instruments. See Vijay Sekhon, "Valuation of Reverse Termination Options in Mergers and Acquisitions," 7 Berkeley Bus. L.J. 72, 75 (2010) (explaining that similarity of transactions with reverse termination fee provisions to European call options makes it possible to use a modified version of the Black-Scholes option pricing formula to estimate the transaction's value to a merger acquirer). This lends further support to the conclusion that the Termination Fee is a cost of disposing of a type of contract to which section 1234A was intended to apply, rather than a section 162 expense.

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The case law is clear: A taxpayer who makes a payment to terminate a _____ or similar transaction is disposing of a capital transaction and generally has a loss. We have seen no evidence in this case that would warrant our departure from this general rule.

d. How section 1234A applies to the section 165 losses that result from the termination of the transactions.

As noted above, based on the plain language of section 1234A, there are four requirements in determining whether a transaction is subject to section 1234A(1):

- (1) There is gain or loss attributable to an extinguishing event – (i.e., cancellation, lapse, expiration, or other termination);
- (2) That event extinguishes a contractual right or obligation;
- (3) The contractual right or obligation concerns underlying property that is a capital asset in the taxpayer’s hands (or that would be a capital asset if the property were acquired by the taxpayer);²⁶ and
- (4) There is a “with respect to” nexus or connection between the right or obligation and the underlying capital asset.

With respect to the first two requirements, the _____ Agreement and the _____ Agreement created contractual rights and obligations. The termination of those agreements resulted in the payment of the Termination Fees. Moreover, as we have just explained, the termination of those rights and obligations resulted in section 165 losses equal in value to the Termination Fees and the costs to facilitate the transactions required to be capitalized under Treas. Reg. § 1.263(a)-5(a). Accordingly, we now consider the third and fourth requirements, i.e., whether the rights and obligations embodied in the _____ Agreement and the _____ Agreement were with respect to property that either was a capital asset in Taxpayer’s hands, or would have been a capital asset in Taxpayer’s hands, if Taxpayer had acquired it.

The _____. If the _____ had been consummated in accordance with its terms,

_____.). Though the _____ Agreement does not explicitly state the type of reorganization contemplated by the parties, it describes a transaction that was intended to qualify as a reorganization under section 368(a).

The _____ would have resulted in the acquisition of Target stock by Taxpayer. That transaction, viewed in isolation, would have given Taxpayer rights and obligations

²⁶ We note that, as used in section 1234A, the term “capital asset” does not include property described in section 1221(a)(2) (certain property used in the taxpayer’s trade or business), even if the sale or exchange of that property would give rise to capital gain or capital loss under section 1231. See CRI-Leslie LLC, 882 F.3d at 1030.

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with respect to Target stock—a capital asset in Taxpayer’s hands, if Taxpayer had acquired it. However, immediately after the First Merger, Target would have merged with and into Merger Sub, LLC, a DE. Under step transaction principles, because the Second Merger was a step in an integrated plan that included the First Merger, the First Merger and Second Merger would have been treated as a single statutory merger of Target into Taxpayer which would have, if consummated, qualified as a reorganization under section 368(a)(1)(A) (an “A Reorganization”). See Rev. Rul. 2001-46, 2001-2 C.B. 321; Treas. Reg. § 1.368-2(b)(1)(iii), Example 2. Because an A Reorganization results in an asset acquisition by the acquiror, the Agreement provided Taxpayer with rights and obligations with respect to Target’s assets.

The . The Agreement was labeled agreement and provided for the sale by Taxpayer to Buyer of . We have not seen any evidence that the should be characterized for tax purposes in a manner different from its form. Accordingly, we believe the involved rights and obligations to the that Taxpayer would have sold pursuant to the Agreement.

Application of Section 1234A. Applying the third and fourth requirements of section 1234A to the facts of this case as analyzed immediately above, Taxpayer’s section 165 loss resulting from the termination of the is treated as capital under section 1234A to the extent that loss is attributable to the property of Target that would have been capital assets in Taxpayer’s hands if Taxpayer had acquired it. Similarly, Taxpayer’s loss resulting from the termination of the is treated as capital under section 1234A to the extent that loss is attributable to capital assets of Taxpayer that Taxpayer would have sold to Buyer if the had been consummated. The amount of loss attributable to capital property may be determined by dividing the value of Target’s property that would have been capital assets in Taxpayer’s hands by the total value of Target’s property that Taxpayer would have acquired and then multiplying the loss by that fraction. Similarly, the amount of loss attributable to capital property may be determined by dividing the value of Taxpayer’s capital assets that it would have sold pursuant to the by the value of all property that Taxpayer would have sold pursuant to that transaction and then multiplying the loss by that fraction.²⁷ Cf. Watson v. Commissioner, 345 U.S. 544 (1953); Williams v. McGowan, 152 F.2d 570 (2d Cir. 1945) (for purposes of determining the character of gain or loss upon the sale of a business or other group of assets for a lump sum, the sale must be comminuted into its parts and the lump sum must be allocated among the individual assets based on their relative fair market values).

²⁷ As explained at n.26 above, capital assets for these purposes do not include property described in section 1221(a)(2), even if the sale or exchange of that property would give rise to capital gain under section 1231.

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CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 317-4451 if you have any further questions.

By: _____
Robert A. Martin
Senior Technician Reviewer, Branch 6
(Financial Institutions & Products)

cc: Robin Greenhouse
Division Counsel
(Large Business & International)

EXHIBIT B

**Office of Chief Counsel
Internal Revenue Service
memorandum**

Number: **202119001**

Release Date: 5/14/2021

CC:FIP:RAMartin
POSTS-107405-17

UILC: 6110.05-00

date: February 03, 2021

to: Area Counsel (Area 3)
(Large Business & International)
Attn: Dan Trevino, Senior Attorney, CC:LBI:3:CHI:1

from: Robert A. Martin
Senior Technician Reviewer, Branch 1
(Financial Institutions & Products)

subject:

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Taxpayer	=
Target	=
State A	=
Date A	=
Date B	=
Date C	=
Industry	=
TPEntity 1	=
TPEntity 2	=
TPEntity 3	=
TPEntity 4	=
Amount A	=
B	=
Amount C	=
Amount D	=
E	=

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F =
 GGG =
 H =
 J =
 K =
 L =
 Amount M =

ISSUES

(1) Whether a fee that Taxpayer is treated as a I.R.C. under I.R.C.

(a) Whether there the

(b) Whether case law

under section

(c) Whether the Treasury Regulations accompanying I.R.C. § under section and

(d) section in this case, if applied in other cases, under I.R.C.

(2) Whether the form of the proposed Transaction, which contemplated that stock would be acquired by a newly formed subsidiary of Taxpayer precludes application of section section

CONCLUSIONS

1. The Service is correct that section resulting in a we conclude that (a) there

With respect to Taxpayer's specific arguments,

(b) the case

law pertaining to

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section (c) the regulations accompanying section do not require that the
be treated as section and (d) the Service's
interpretation of section

section

2. The phrase

of section

Taxpayer

language of section

The

provided

We read the plain

to be completed.

FACTS

On Date A, Taxpayer, a publicly traded corporation incorporated in State A, and

a publicly traded company

Also, on Date A, Taxpayer

and Target entered into

set forth the consideration that

shareholders would receive in exchange for their

stock under the proposed

Transaction, i.e.,

a

corporation.

”

explained Taxpayer's

the proposed Transaction, which included:

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Accordingly, on the date _____, Taxpayer's _____
who held shares in _____ The _____ directors
_____ at the
_____ on the matter.

To facilitate the Transaction and pursuant to its obligations
_____ among other entities, TPEntity 1 and TPEntity 2, both formed under
the laws of _____ and TPEntity 3 and TPEntity 4, both formed as State A
limited liability companies.

To accommodate this requirement, Taxpayer would have formed a
_____ of TPEntity 1. On
the closing date of the Transaction,

_____ The
would have been implemented as follows:

¹ The _____ refers to _____ as "a newly formed Subsidiary of Taxpayer."

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The implementation of the Transaction had numerous conditions. In particular, these conditions included: The approval of the _____ by the shareholders and the approval by the _____

3

Taxpayer reported

Form 1120, U.S. Corporation Income Tax Return, as-filed. On audit, the Service

its

I.R.C. §

²

_____ include Taxpayer; the terms of the

defines the term _____ are set forth at

of

to

3

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Taxpayer's position is that section

section

LAW AND ANALYSIS

Section

Application of section begins with the plain language of the statute. See

The plain language of section sets forth the following requirements in determining whether a transaction is subject to section

In determining whether to apply section

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In concluding that Taxpayer's

section

applying the plain language of section
⁴ as it is
and that the common meaning of

the Service interpreted the phrase

In

Issue 1: Whether the

under section
under section

a. Whether there was

Section implicitly requires that there be

Section

resulted in a section
section

and that section

The legislative history of

reflects Congress' assumption that

the statute. Section

to apply

Congress understood the phrase
first to the legislative history

To address how
when enacting section we turn
which explains:

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type

further provides, as an example of a
section the following
or securities:

-

understanding that

This example reflects Congress's

Congress enacted section

of section

that a

Congress did not have to provide
prior to enactment of section

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In Congress amended section to apply it
As originally enacted in section

Section at that time defined The
amendment broadened the scope of section

The legislative history of the amendment, consistent with the legislative history
from also confirms Congress' belief that, before the enactment of section

which some taxpayers were treating The legislative
history also confirms that section was intended to provide that

A Senate Report describing the
amendment explains:

The legislative history from reaffirms Congress' concerns, expressed in that

⁵ The parties in a case cited in the legislative history, assumed that

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taxpayers could legislative history from further explains that Congress amended section The

The affect in describing how the amendment to section would explain as follows:

The case cited in the above-quoted language from the is of particular relevance in the present case because it also involved a In a taxpayer entered

The taxpayer became concerned that

The Court

⁶ The Court nevertheless concluded that the

6

Although the court concluded that , the court further explained that it “need not decide” whether the

raising the possibility that the item could have been

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Accordingly, the clear: Congress understood that the fact pattern result in that case section thereby overriding the

Although did not concern a , courts have treated and have treated the of section

⁷ Accordingly, we conclude that meaning of I.R.C. § which resulted in a In doing when it so, we note that Taxpayer's

set forth the rationale for Taxpayer's

considerable value in the The Taxpayer saw was not merely a itself.

⁷

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Our conclusion is consistent with the legislative history of section which, by citing indicates that Congress considered the

and intended that section apply to

b. Whether case law pertaining to supports Taxpayer's position that the under section

Taxpayer next argues that the referring to three lines of cases, the first involving the second involving the , and a third involving the

Taxpayer first cites cases involving the

Taxpayer's reliance upon these cases is misplaced. The threshold question in the present case is whether the under section ⁸ to which section could apply, rather than a under section The cases cited by Taxpayer do not consider that distinction under section versus under section Instead, they primarily concern whether under section or section (or both) when the instead must be

Nevertheless, each of the cases cited by Taxpayers lends support for the Service's position that

In at issue was whether

section when the

8

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were section the court further concluded
that the

under section that became
analysis in Taxpayer's ⁹ Under the court's
section because it was the under

The opinions in and are even more applicable to the present case
than because they involve
In both and the taxpayers were

was similar to the The issue in and
issue that was addressed in

.¹⁰ The courts rendered

⁹ The took place before expansion of the scope of section

¹⁰ In the government argued that the

under either sections or The courts rejected the government's
arguments, reasoning instead that the

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section and section The courts concluded that the
under section because the

courts alternatively concluded that the section and the

11

Taxpayer suggests that

and mean that its under sections

section The section rationale in and
however, is not applicable to the present case because the

Rather, Taxpayer . More importantly, the issue in this
case is whether there which was not in issue in those cases.
Given that the legislative purpose of section was to
taxpayers can rely upon case law we disagree that

. Section requires that if the

¹¹ The court in found

and further held in the alternative

court in likewise held that the section and alternatively concluded that the
taxpayer was The

Neither nor considered whether section could apply to
those cases occurred before the
amendment to section

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Taxpayer also cites other cases that section as authority for its position that

taxpayers

These are cases in which

courts concluded that the taxpayers should

In both of these cases, the

previously, however, the

cited

As discussed to clarify that

section generally applies. Thus, applicability of section in this case.

have no bearing on the

Lastly, Taxpayer argues that the

under

section because it was This appears to be a reference to the

to determine its tax consequences.

Taxpayer provides little evidence that the

would not affect our analysis under section . Taxpayer had

.12

¹² The development of

This lends further support to the notion that which section a section

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that the was applicable in this case, we further note

¹³ A

would fall squarely within section

The case law is clear: A taxpayer who makes

We have seen no evidence
in this case that would warrant our departure from this general rule.

c. Whether the Treasury Regulations accompanying section provide that
under section

The next authority Taxpayer relies on is Treas. Reg. §
that this regulation provides that

Taxpayer asserts

Taxpayer further asserts that the Service is disregarding this regulation by

Thus, Taxpayer makes the inference that if the

¹³ The use of

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Section

section Treas. Reg. § provides rules for applying
See Treas. Reg. §
Treas. Reg. § provides rules for applying section

For this purpose, an

See Treas. Reg. §

Treas. Reg. § ¹⁴ considers when a

. Under Treas. Reg. §

of Treas. Reg. § illustrate this rule.

Treas. Reg. § of Treas. Reg. §
do not address whether section
section when the requirements of Treas. Reg. § are not applicable,
which is the case here. Section and its regulations provide guidance on when

under another section of the Internal Revenue Code (Code) such as
sections

of Treas. Regs. §§ states:

¹⁴ Treas. Reg. § provides that Treas. Reg. §1

See also of Treas. Reg. §

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15

The preambles to the proposed and final regulations similarly

¹⁶ In addition, with regard to the preamble to the final regulations states:

The final regulations clarify

.17

Contrary to Taxpayer's assertion, the Service is not disregarding Treas. Reg. § or any other regulation. Treas. Reg. § does not control whether

15

¹⁶ See the preamble to Proposed Treas. Regs. §§

17

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section

section

section

d. Whether the Service's interpretation of section
other cases, will allow

in this case, if applied in

section

Taxpayer makes the hypothetical argument that if the Service applies section

under section

which would be a result that Congress did not intend by amending section

Given that Taxpayer's argument is not actually at issue, we can only offer a
general analysis of how section

The

actual application of section in a given case would be specific to each taxpayer
and transaction.

Section provides as follows:

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In this case, Taxpayer
Taxpayer had
because that the Transaction
was of strategic value to Taxpayer and its shareholders.

Additionally, if Taxpayer's arguments were accepted, section would be rendered

supports the Service's conclusion that section This further
can apply to a taxpayer that has

We note that the
Service is not contending that Taxpayer

.²⁰ Rather, the Service instead contends that, if
Taxpayer's position were accepted, the statute

that expanded the scope of section explains that
the amendment was intended to apply and make
the tax results more uniform.²¹ Section is not limited to tax-avoidance

²⁰ On the other hand, under Taxpayer's interpretation

²¹ The legislative history of the amendment to section makes clear that eliminating the ability
for the taxation was another. See, e.g., Establishing clearer rules

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transactions in which a taxpayer intended from the

In accordance with the plain language of section

phrase the Service uses its ordinary meaning, i.e. In applying the
fact that Taxpayer and Target Accordingly, the
has no bearing on whether section applies to

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call if you have any further questions.

By: _____
Robert A. Martin
Senior Technician Reviewer, Branch 1
(Financial Institutions & Products)

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cc:

-

EXHIBIT C

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

Number: **201642035**

Release Date: 10/14/2016

CC:ITA:B01:CMGlendening
POSTN-133450-15

UILC: 1234A.00-00, 165.00-00, 1222.00-00

date: February 09, 2016

to: David Q. Cao
Senior Counsel (Houston)
(Large Business & International)

from: Andrew M. Irving
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)

subject: Receipt of merger termination fee

This memorandum responds to your October 5, 2015, request for advice.

ISSUES

1. Under the circumstances discussed below, how is gain or loss determined by a taxpayer who incurs expenses investigating an acquisition of stock, and also receives a fee for the termination of an agreement between the taxpayer and a target corporation pursuant to which the parties agree to undertake a series of steps designed to lead to the taxpayer's acquisition of the target corporation's stock?
2. Whether, under the circumstances discussed below, section 1234A applies to the gain or loss realized?

CONCLUSIONS

1. Under the circumstances discussed below, gain or loss is determined by reducing any fee received for the termination of the agreement by any costs incurred in the process of investigating and pursuing the transaction that were properly capitalized under section 1.263(a)-5(e) of the Income Tax Regulations.

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2. Under the circumstances discussed below, section 1234A applies to the gain or loss realized by the taxpayer.

FACTS

Situation 1

A domestic corporation (“Acquirer”) enters into an agreement (“Contract”) with another corporation (“Target”) pursuant to which the parties agree to undertake a series of steps that are designed to lead to Acquirer’s acquisition of Target’s stock. At the time that the Contract is entered into, Target’s stock is publicly traded on an established exchange.

The Contract is a bilateral agreement that requires both Acquirer and Target to pursue a plan of merger by making best efforts to effectuate Acquirer’s proposed stock acquisition through a merger of a newly formed, wholly owned subsidiary of Acquirer with and into Target, including by recommending the deal to their respective shareholders and obtaining required governmental approvals.

Regarding Target’s obligations under the Contract, the Contract requires Target to recommend to its shareholders that they approve the plan of merger, subject to the receipt of a superior offer. The Contract provides that Target may terminate the contract upon (i) entering into another agreement based on a superior offer, (ii) a rejection of Acquirer’s offer by Target’s shareholders, or (iii) a failure to obtain approval of Target’s shareholders by a certain date. The Contract provides that in the event the Contract is terminated due to one of the foregoing, Target must pay a termination fee of \$1,000,000 to Acquirer.

Target receives a superior offer from an unrelated company and enters into another agreement with the company making the superior offer. As a result, Target terminates the Contract and pays Acquirer the \$1,000,000 termination fee. At the time the Contract is terminated, Acquirer has incurred \$200,000 of costs in the process of investigating and pursuing the transaction that Acquirer properly capitalized as costs of facilitating the proposed transaction under section 1.263(a)-5(e) of the Income Tax Regulations.

Situation 2

The facts are the same as in Situation 1, except that Acquirer incurs costs in the amount of \$1,100,000 that Acquirer properly capitalized as costs of facilitating the proposed transaction under section 1.263(a)-5(e) of the Income Tax Regulations.

APPLICABLE LAW AND ANALYSIS

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Section 1222 provides that capital gain or loss is gain or loss from the sale or exchange of a capital asset.

Section 1221 defines a capital asset as property held by the taxpayer, with certain exceptions.

Section 1234A(1) of the Code provides that gain or loss attributable to the cancellation, lapse, expiration or other termination of a right or obligation with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer is treated as gain or loss from the sale of a capital asset.

The legislative history to section 1234A provides that the Committee believed that the law as it existed was deficient because it “taxes similar economic transactions differently,” and “its lack of certainty makes the tax laws unnecessarily difficult to administer.” S. Rept. No. 105-33, at 134, 1997-4 C.B. (Vol. 2) at 1214. The legislative history to section 1234A further provides that—

...[a] major effect of the Committee bill would be to remove the effective ability of a taxpayer to elect the character of gains and losses from certain transactions. Another significant effect of the Committee bill would be to reduce the uncertainty concerning the tax treatment of modifications of property rights.

S. Rept. No. 105-33, at 135, 1997-4 C.B. (Vol. 2) at 1215. The explanation of the provision provides further that—

...[t]he bill extends to all types of property the rule which treats gain or loss from the cancellation, lapse, expiration, or other termination of a right or obligation with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer [as capital gain or loss].... Thus, the committee bill will apply to (1) interests in real property and (2) non-actively traded personal property.... An example of the second type of property interest that is affected by the committee bill is the forfeiture of a down payment under a contract to purchase stock. See U.S. Freight Co. v. U.S. 422 F.2d 887 (Ct. Cl. 1970), holding that forfeiture was an ordinary loss.

S. Rept. No. 105-33, at 135, 1997-4 C.B. (Vol. 2) at 1215.

Section 1.263(a)-5(e) of the regulations provides that amounts paid in the process of investigating or otherwise pursuing certain acquisitive transactions are capitalized as costs of facilitating the transaction.

Section 165(a) provides that there shall be allowed as a deduction any uncompensated loss sustained during the taxable year. Section 165(f) provides that capital losses are subject to the limitations in sections 1211 and 1212.

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Section 1211 provides that in the case of a corporation, losses from sales or exchanges of capital assets are limited to gains from such sales or exchanges. Section 1212 provides for the carryover of excess capital losses.

In both *Situation 1 and Situation 2*, under section 1221 Target's stock would be a capital asset in Acquirer's hands upon acquisition. The Contract provides Acquirer with a bundle of rights vis-à-vis Target that relates to Acquirer's proposed acquisition of Target stock. Although the Contract is between Acquirer and Target rather than between Acquirer and Target's shareholders, a contract between the acquiring corporation and the target corporation is a customary part of the process by which the stock of a publicly held corporation is acquired. As discussed above, the Contract imposes obligations on both parties with respect to Target's stock. The Contract also provides Acquirer with rights with respect to Target's stock. The termination fee payable to Acquirer under the Contract is in the nature of liquidated damages rather than as compensation for services. Consistent with the purpose of section 1234A, any gain or loss realized by Acquirer on the termination of the Contract, which provides rights and obligations with respect to Target's stock, a capital asset, would be capital in nature.

Based on these particular facts we conclude:

In *Situation 1*, Acquirer's amount realized from the receipt of the termination fee (\$1,000,000) is reduced by Acquirer's capitalized facilitative costs (\$200,000). Because this gain was attributable to the termination of Acquirer's right with respect to Target's stock -- property that would have been a capital asset in Acquirer's hands -- the gain is treated as a gain from the sale of a capital asset under section 1234A. Accordingly, Acquirer has a capital gain of \$800,000 (the termination fee income of \$1,000,000 less Acquirer's capitalized facilitative costs of \$200,000).

In *Situation 2*, Acquirer's amount realized from the receipt of the termination fee (\$1,000,000) is reduced by Acquirer's capitalized facilitative costs (\$1,100,000), resulting in a loss of \$100,000. Because this loss was attributable to the termination of Acquirer's right with respect to Target's stock -- property that would have been a capital asset in Acquirer's hands -- the loss is treated as a loss from the sale of a capital asset under section 1234A. Accordingly, Acquirer has a capital loss of \$100,000 (the termination fee income of \$1,000,000 less Acquirer's capitalized facilitative costs of \$1,100,000) that Acquirer may deduct under section 165, subject to the limitations on capital losses in sections 1211 and 1212.

This advice applies only in the situations and under the facts and circumstances described herein.¹ The label "termination fee" is not determinative, and the

¹ We note that the conclusion in this memorandum is contrary to the conclusion reached on similar facts in PLR 200823012, which held without explanation that the receipt of a termination fee like that in *Situation 1* resulted in ordinary income.

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specific provisions of the contract in question in a given case must be examined to determine the correct tax treatment.

Pursuant to section 6110(k)(3) of the Code, this document may not be used or cited as precedent. Please call (202) 317-7003 if you have further questions.

EXHIBIT D

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

Release Number: 20163701F

Release Date: 9/9/2016

POSTF-109245-16

UILC: 1234A.00-00

date: May 03, 2016

to:

Revenue Agent
(Large Business & International)

from:

(Large Business & International)

subject:

This memorandum responds to your request for assistance. This advice has been reviewed by Financial Institutions and Products in National Office. This advice may not be used or cited as precedent.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

ISSUE

Whether (Taxpayer) payment of a break fee arising from the termination of an agreement of merger gives rise to a capital loss under section 1234A.

CONCLUSION

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Yes. Under the circumstances discussed below, section 1234A applies to Taxpayer's loss arising from the payment of a break fee attributable to the termination of an agreement of merger, and the loss is a capital loss.

FACTS¹

On _____, Taxpayer announced in a press release the recommended combination of Taxpayer and _____ (Target), a _____ company organized under the laws of _____

Also on _____, Taxpayer and Target entered into a _____ Agreement that intended to give effect to the terms and conditions set forth in the press release recommending the merger.

To facilitate the merger, Taxpayer formed a new company, _____, which is incorporated in _____. Under the terms of the _____ Agreement, Target shareholders would be entitled to receive _____. Taxpayer stockholders would receive _____. Both Taxpayer and Target would become _____ subsidiaries of _____, with _____ stock being listed on the _____ Exchange.

The merger was conditioned upon Taxpayer's board recommending the merger to its shareholders. Before the transaction could be consummated, the U.S. Treasury Department issued a notice that adversely affected the expected tax benefits of the proposed merger. In _____, Taxpayer withdrew its recommendation for the merger.

Under the _____ Agreement, Taxpayer was required to pay a break fee to Target if Taxpayer withdrew its recommendation for the merger. On _____, Taxpayer and Target entered into a _____ Agreement to terminate the _____ Agreement. The _____ Agreement provided that Taxpayer would pay Target the break fee because Taxpayer did withdraw its recommendation for merger. Taxpayer paid a break fee of \$ _____ to Target on _____

This break fee also operated as the Target's sole and exclusive remedy for the terminated merger.

¹ Our understanding of the facts of this case is limited to the information that you have provided to us unless otherwise stated. We have not undertaken any independent investigation of the facts of this case. If the facts known to us are incorrect or incomplete in any material respect, you should not rely on this advice, but instead should contact our office immediately.

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During the _____, Taxpayer provided a copy of the wire transfer and description of line item for this amount to be reflected in its _____ U.S return.

LAW AND ANALYSIS

Law

Section 1222 provides that capital gain or loss is gain or loss from the sale or exchange of a capital asset.

Section 1221(a) defines a capital asset as any property that is held by the taxpayer, regardless of whether it is connected to the taxpayer's trade or business, unless it is one of the exceptions listed under section 1221(a).

Section 1234A states that gain or loss attributable to the cancellation, lapse, expiration, or other termination of a right or obligation (other than a securities futures contract) with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer shall be treated as gain or loss from the sale of a capital asset.

The law under section 1234A as it existed (prior to its amendment in 1997) was deficient because "it taxes similar economic transactions differently," and "its lack of certainty makes the tax laws unnecessarily difficult to administer." S. Rept. No. 105-33, at 134, 1997-4 C.B. (Vol. 2) at 1214. The legislative history further provides that a "major effect of the Committee bill would be to remove the effective ability of a taxpayer to elect the character of gains and losses from certain transactions. Another significant effect of the Committee bill would be to reduce the uncertainty concerning the tax treatment of modifications of property rights." S. Rept. No. 105-33, at 135, 1997-4 C.B. (Vol. 2) at 1215.

The explanation of section 1234A further provides –

The bill extends to all types of property the rule which treats gain or loss from the cancellation, lapse, expiration, or other termination of a right or obligation with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer [as capital gain or loss].. . . Thus, the committee bill will apply to (1)

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interests in real property and (2) non-actively traded personal property. . . . An example of the second type of property interest that is affected by the committee bill is the forfeiture of a down payment under a contract to purchase stock. See *U.S. Freight Co. v. United States*, 422 F.2d 887 (Ct. Cl. 1970), holding that forfeiture was an ordinary loss.

S. Rept. No. 105-33, at 135, 1997-4 C.B. (Vol. 2) at 1215.

Section 165(a) provides that there shall be allowed as a deduction any uncompensated loss sustained during the taxable year. Section 165(f) provides that capital losses are subject to the limitations in sections 1211 and 1212. Section 1211 provides that in the case of a corporation, losses from sales or exchanges of capital assets are limited to gains from such sales or exchanges. Section 1212 provides for the carryover of excess capital losses.

Analysis

Section 1234A treats as gain or loss from the sale of a capital asset a “[g]ain or loss attributable to the cancellation, lapse, expiration, or other termination” of a right or obligation “with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer.” A capital asset is any property that is held by the taxpayer, with eight exceptions listed in section 1221(a). Stock is generally considered a capital asset. *Appalachian Elec. Power Co. v. United States*, 158 F. Supp. 138, 140 (Ct. Cl. 1958).

stock would be a capital asset in Taxpayer’s hands upon acquisition. Taxpayer and Target had entered into a Agreement in which Taxpayer and Target each would acquire stock. Furthermore, the Agreement required Taxpayer and Target to obtain clearances in order to implement the merger. The Agreement outlined a list of obligations that Taxpayer and Target would undertake, which consisted primarily of the respective parties providing

The contract thus provided Taxpayer with rights and obligations with respect to Target’s and stock.

Under the Agreement, if Taxpayer makes an adverse recommendation change and the merger fails to go through, Taxpayer was required to pay a break fee to Target. Per the Agreement and Agreement, the break fee provision was for “

” The break fee operated as Target’s sole and exclusive remedy against Taxpayer and was in the nature of liquidated damages rather than as compensation for services.

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The break fee relates to a contractual right and obligation concerning a capital asset (the right and obligation to acquire _____ stock). Consistent with the purpose of section 1234A, any gain or loss realized by Taxpayer on the termination of the contract, which provides Taxpayer with rights and obligations with respect to _____ stock, a capital asset, would be capital in nature. Therefore, section 1234A applies and Taxpayer's loss on paying the break fee is a capital loss.

This advice applies only in the situations and under the facts and circumstances described herein. Pursuant to section 6110(k)(3) of the Code, this document may not be used or cited as precedent. Please call _____ if you have any further questions.

Associate Area Counsel
(Large Business & International)

By: _____

Attorney, (_____)
(Large Business & International)

EXHIBIT E

Form **2848**
 (Rev. January 2018)
 Department of the Treasury
 Internal Revenue Service

**Power of Attorney
 and Declaration of Representative**

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address AbbVie Inc. 1 N. Waukegan Road North Chicago, IL 60064		Taxpayer identification number(s) 32-0375147	
		Daytime telephone number	Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Daniel A. Rosen Baker & McKenzie, LLP 452 Fifth Avenue, New York, NY 10018	CAF No. 0310-99756R PTIN P01787930 Telephone No. 212-626-4272 Fax No. 212-310-1672
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Robert H. Albaral Baker & McKenzie, LLP 1900 North Pearl Street, Suite 1500, Dallas, TX 75201	CAF No. 03-0124252R PTIN P01250061 Telephone No. 214-978-3044 Fax No. 214-965-5962
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address George M. Clarke, III Baker & McKenzie, LLP 815 Connecticut Avenue NW, Washington, D.C. 20006	CAF No. P01464225 PTIN P01464225 Telephone No. 202-835-6124 Fax No. 202-416-7124
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Joy Williamson Baker & McKenzie, LLP 1900 North Pearl Street, Suite 1500, Dallas, TX 75201	CAF No. 0309-66134R PTIN P01615727 Telephone No. 214-965-7239 Fax No. 214-965-5905
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income	1120	2014

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific Use Not Recorded on CAF**

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

Access my IRS records via an Intermediate Service Provider;

Authorize disclosure to third parties; Substitute or add representative(s); Sign a return; _____

Other acts authorized: _____

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.
List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): _____

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

 05/18/22

Vice President, Tax
Title (if applicable)

Lindsey Bristow
Print Name

AbbVie Inc.
Print name of taxpayer from line 1 if other than individual

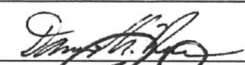



Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer’s immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). **See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
 - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation— Insert above letter (a-r).	Licensing jurisdiction (State) or other licensing authority (if applicable).	Bar, license, certification, registration, or enrollment number (if applicable).	Signature	Date
a	NY	2790442		5/18/2022
a	TX	00969175		5/18/2022
a	DC	480073		5/18/2022
a	TX	24088652		5/18/2022

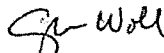

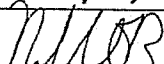
AbbVie Inc.
 No. 32-0375147
 Power of Attorney (Form 2848)
 Addendum (Page 1)

Part I: Box 2. Additional Representative(s)

Name and address Glenn Woll Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0306-21588R PTIN. P01231737 Telephone No. 212-891-3533 Fax No. 212-310-1633
Name and address Lucy J. Alberto Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0310-90938R PTIN. P01287347 Telephone No. 212-626-4954 Fax No. 212-310-1749
Name and address Nicholas O'Brien Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0314-00281R PTIN. P02340059 Telephone No. 212-626-4946 Fax No. 212-310-1787

AbbVie Inc.
No. 32-0375147
Power of Attorney (Form 2848)
Addendum (Page 2)

Part II: Declaration of Representative

Designation	Jurisdiction	License	Signature	Date
a	NY	2928885		5/18/22
a	NY	4544649		5/18/22
a	NY	5748082		5/18/22

Form **2848**
 (Rev. January 2018)
 Department of the Treasury
 Internal Revenue Service

Power of Attorney and Declaration of Representative

OMB No. 1545-0150

For IRS Use Only

Received by: _____

Name _____

Telephone _____

Function _____

Date / / _____

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address AbbVie Inc. 1 North Waukegan Road, Dept V367, Bldg AP 34-3N North Chicago, IL 60064	Taxpayer identification number(s) 32-0375147 Daytime telephone number 847-932-7000 Plan number (if applicable)
--	--

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Matthew Houchens 1 North Waukegan Road, Dept V367, Bldg AP 34-3N North Chicago, IL 60064 Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	CAF No. 0300-71701R PTIN _____ Telephone No. 847-935-5793 Fax No. 847-936-3039 Check if new: Address <input checked="" type="checkbox"/> Telephone No. <input checked="" type="checkbox"/> Fax No. <input checked="" type="checkbox"/>
Name and address Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address (Note: IRS sends notices and communications to only two representatives.)	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address (Note: IRS sends notices and communications to only two representatives.)	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income	1120	2014-2023
Excise/Withholding	720,1042	2014 - 2023
Employment/Civil Penalty	941,940, CP504	2014 - 2023

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Use Not Recorded on CAF

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

Access my IRS records via an Intermediate Service Provider;

Authorize disclosure to third parties; Substitute or add representative(s); Sign a return;

Other acts authorized: _____

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.

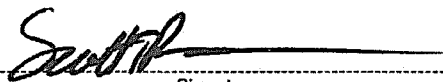
List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): Not authorized to sign any agreements, consents, or documents.

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.



Signature

11/9/2020
Date

Vice President, Tax and Treasury
Title (if applicable)

Scott T. Reents

Print Name

AbbVie Inc.

Print name of taxpayer from line 1 if other than individual

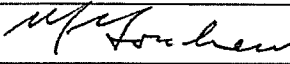
Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). **See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
 - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation— Insert above letter (a-r).	Licensing jurisdiction (State) or other licensing authority (if applicable).	Bar, license, certification, registration, or enrollment number (if applicable).	Signature	Date
a	IL	6243145		11/8/2020

Form **2848**
 (Rev. February 2020)
 Department of the Treasury
 Internal Revenue Service

Power of Attorney and Declaration of Representative

OMB No. 1545-0150

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

For IRS Use Only

Received by:
 Name _____
 Telephone _____
 Function _____
 Date / /

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address AbbVie Inc. 1 North Waukegan Road, Dept V367, Bldg AP 34-2 North Chicago, IL 60064	Taxpayer identification number(s) <p style="text-align: center;">32-0375147</p> Daytime telephone number Plan number (if applicable) 847-932-7900
---	---

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
David L. Forst Fenwick & West LLP 801 California Street, Mountain View, CA 94041 Check if to be sent copies of notices and communications <input type="checkbox"/>	0200-36623R (650) 335-7254 (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Michael D. Knobler Fenwick & West LLP 801 California Street, Mountain View, CA 94041 Check if to be sent copies of notices and communications <input type="checkbox"/>	0312-49812R (650) 335-7717 (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Kristofer Hatch Fenwick & West LLP 801 California Street, Mountain View, CA 94041 (Note: IRS sends notices and communications to only two representatives.)	NONE (650) 335-7882 (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
_____ (Note: IRS sends notices and communications to only two representatives.)	_____ _____ _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income - Appeals proceeding	1120	2014

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See Line 4. *Specific Use Not Recorded on CAF* in the instructions

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information): Access my IRS records via an Intermediate Service Provider; Authorize disclosure to third parties; Substitute or add representative(s); Sign a return; _____

Other acts authorized: _____

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.

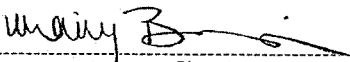
List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): _____

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative (or designated individual, if applicable), executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.


9/14/2020
Vice President, Tax

 Signature Date Title (if applicable)

Lindsey Bristow _____
 Print name Print name of taxpayer from line 1 if other than individual

Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the IRS per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the IRS is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). **See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
 - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d–f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

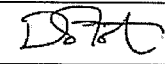
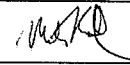

Designation— Insert above letter (a–r).	Licensing jurisdiction (State) or other licensing authority (if applicable)	Bar, license, certification, registration, or enrollment number (if applicable)	Signature	Date
a	CA	165385		9/10/2020
a	CA	287701		9/10/2020
a	CA	324078		9/10/2020

EXHIBIT F

NEW YORK STATE

DRIVER LICENSE

USA

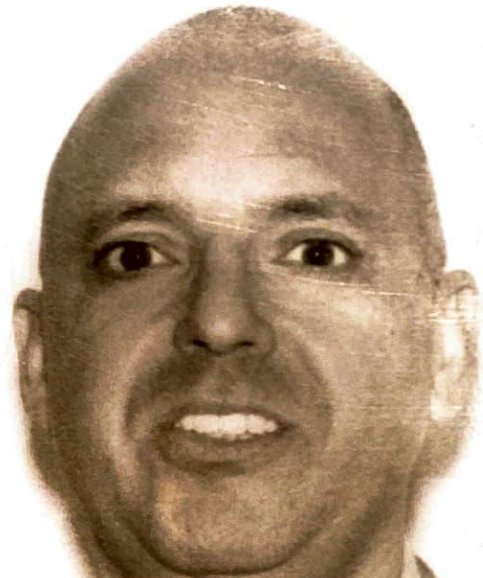
Mark JF. Schneider
Commissioner of Motor Vehicles

ENHANCED

ID **445 257 493**

Class **D**

ROSEN
DANIEL, ALLEN



Sex **M** Height **5'-06"** Eyes **BRO**

DOB **03/04/1969**

Expires **03/04/2029**

E **NONE**

R **B**

Issued **02/24/2021**

Daniel Rosen

MAR 69

EXCELSIOR



EXHIBIT B

Form **2848**
 (Rev. January 2018)
 Department of the Treasury
 Internal Revenue Service

**Power of Attorney
 and Declaration of Representative**

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address AbbVie Inc. 1 N. Waukegan Road North Chicago, IL 60064		Taxpayer identification number(s) 32-0375147	
		Daytime telephone number	Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Daniel A. Rosen Baker & McKenzie, LLP 452 Fifth Avenue, New York, NY 10018	CAF No. 0310-99756R PTIN P01787930 Telephone No. 212-626-4272 Fax No. 212-310-1672
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Robert H. Albaral Baker & McKenzie, LLP 1900 North Pearl Street, Suite 1500, Dallas, TX 75201	CAF No. 03-0124252R PTIN P01250061 Telephone No. 214-978-3044 Fax No. 214-965-5962
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address George M. Clarke, III Baker & McKenzie, LLP 815 Connecticut Avenue NW, Washington, D.C. 20006	CAF No. P01464225 PTIN P01464225 Telephone No. 202-835-6124 Fax No. 202-416-7124
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Joy Williamson Baker & McKenzie, LLP 1900 North Pearl Street, Suite 1500, Dallas, TX 75201	CAF No. 0309-66134R PTIN P01615727 Telephone No. 214-965-7239 Fax No. 214-965-5905
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income	1120	2014

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific Use Not Recorded on CAF**

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

Access my IRS records via an Intermediate Service Provider;

Authorize disclosure to third parties; Substitute or add representative(s); Sign a return; _____

Other acts authorized: _____

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.
List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): _____

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

 05/18/22

Vice President, Tax
Title (if applicable)

Signature

Date

Lindsey Bristow

AbbVie Inc.

Print Name

Print name of taxpayer from line 1 if other than individual

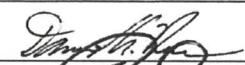



Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer’s immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). **See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
 - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation— Insert above letter (a-r).	Licensing jurisdiction (State) or other licensing authority (if applicable).	Bar, license, certification, registration, or enrollment number (if applicable).	Signature	Date
a	NY	2790442		5/18/2022
a	TX	00969175		5/18/2022
a	DC	480073		5/18/2022
a	TX	24088652		5/18/2022

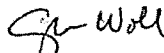

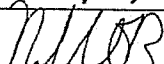
AbbVie Inc.
 No. 32-0375147
 Power of Attorney (Form 2848)
 Addendum (Page 1)

Part I: Box 2. Additional Representative(s)

Name and address Glenn Woll Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0306-21588R PTIN. P01231737 Telephone No. 212-891-3533 Fax No. 212-310-1633
Name and address Lucy J. Alberto Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0310-90938R PTIN. P01287347 Telephone No. 212-626-4954 Fax No. 212-310-1749
Name and address Nicholas O'Brien Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0314-00281R PTIN. P02340059 Telephone No. 212-626-4946 Fax No. 212-310-1787

AbbVie Inc.
No. 32-0375147
Power of Attorney (Form 2848)
Addendum (Page 2)

Part II: Declaration of Representative

Designation	Jurisdiction	License	Signature	Date
a	NY	2928885		5/18/22
a	NY	4544649		5/18/22
a	NY	5748082		5/18/22

Form **2848**
 (Rev. January 2018)
 Department of the Treasury
 Internal Revenue Service

Power of Attorney and Declaration of Representative

OMB No. 1545-0150

For IRS Use Only

Received by: _____

Name _____

Telephone _____

Function _____

Date / /

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address AbbVie Inc. 1 North Waukegan Road, Dept V367, Bldg AP 34-3N North Chicago, IL 60064	Taxpayer identification number(s) 32-0375147
Daytime telephone number 847-932-7000	Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Matthew Houchens 1 North Waukegan Road, Dept V367, Bldg AP 34-3N North Chicago, IL 60064	CAF No. 0300-71701R PTIN _____ Telephone No. 847-935-5793 Fax No. 847-936-3039
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input checked="" type="checkbox"/> Telephone No. <input checked="" type="checkbox"/> Fax No. <input checked="" type="checkbox"/>
Name and address _____	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
Check if to be sent copies of notices and communications <input type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address _____	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address _____	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income	1120	2014-2023
Excise/Withholding	720,1042	2014 - 2023
Employment/Civil Penalty	941,940, CP504	2014 - 2023

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Use Not Recorded on CAF

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):
 Access my IRS records via an Intermediate Service Provider;
 Authorize disclosure to third parties; Substitute or add representative(s); Sign a return;

Other acts authorized: _____

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.

List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): Not authorized to sign any agreements, consents, or documents.

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.


Signature

11/9/2020
Date

Vice President, Tax and Treasury
Title (if applicable)

Scott T. Reents

Print Name

AbbVie Inc.

Print name of taxpayer from line 1 if other than individual

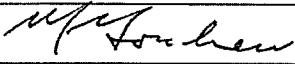
Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). **See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
 - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation— Insert above letter (a-r).	Licensing jurisdiction (State) or other licensing authority (if applicable).	Bar, license, certification, registration, or enrollment number (if applicable).	Signature	Date
a	IL	6243145		11/8/2020

Form **2848**
 (Rev. February 2020)
 Department of the Treasury
 Internal Revenue Service

Power of Attorney and Declaration of Representative

OMB No. 1545-0150

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

For IRS Use Only

Received by:
 Name _____
 Telephone _____
 Function _____
 Date / /

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address AbbVie Inc. 1 North Waukegan Road, Dept V367, Bldg AP 34-2 North Chicago, IL 60064	Taxpayer identification number(s) <p style="text-align: center;">32-0375147</p> Daytime telephone number Plan number (if applicable) 847-932-7900
---	---

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address David L. Forst Fenwick & West LLP 801 California Street, Mountain View, CA 94041 Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. 0200-36623R PTIN _____ Telephone No. (650) 335-7254 Fax No. (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Michael D. Knobler Fenwick & West LLP 801 California Street, Mountain View, CA 94041 Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. 0312-49812R PTIN _____ Telephone No. (650) 335-7717 Fax No. (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Kristofer Hatch Fenwick & West LLP 801 California Street, Mountain View, CA 94041 (Note: IRS sends notices and communications to only two representatives.)	CAF No. NONE PTIN _____ Telephone No. (650) 335-7882 Fax No. (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address (Note: IRS sends notices and communications to only two representatives.)	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income - Appeals proceeding	1120	2014

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See Line 4. *Specific Use Not Recorded on CAF* in the instructions

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information): Access my IRS records via an Intermediate Service Provider; Authorize disclosure to third parties; Substitute or add representative(s); Sign a return; _____

Other acts authorized: _____

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.

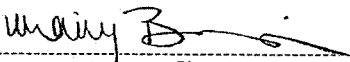
List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): _____

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative (or designated individual, if applicable), executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.


9/14/2020
Vice President, Tax

 Signature Date Title (if applicable)

Lindsey Bristow _____
 Print name Print name of taxpayer from line 1 if other than individual

Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the IRS per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the IRS is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). **See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
 - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d–f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

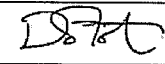
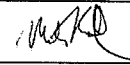

Designation— Insert above letter (a–r).	Licensing jurisdiction (State) or other licensing authority (if applicable)	Bar, license, certification, registration, or enrollment number (if applicable)	Signature	Date
a	CA	165385		9/10/2020
a	CA	287701		9/10/2020
a	CA	324078		9/10/2020

EXHIBIT C

NEW YORK STATE

DRIVER LICENSE

USA

Mark JF. Schneider
Commissioner of Motor Vehicles

ENHANCED

ID **445 257 493**

Class **D**

ROSEN
DANIEL, ALLEN



Sex **M** Height **5'-06"** Eyes **BRO**

DOB **03/04/1969**

Expires **03/04/2029**

E **NONE**

R **B**

Issued **02/24/2021**

Daniel Rosen

MAR 69

EXCELSIOR



Exhibit II



**Department of the Treasury
Internal Revenue Service
Privacy, Governmental Liaison and
Disclosure**

GLDS Support Services

Stop 93A
PO Box 621506
Atlanta, GA 30362

Daniel Rosen
Baker & McKenzie, LLP
452 Fifth Ave.
New York, NY 10018

Date:

May 16, 2023

Employee name:

Gail Minauro

Employee ID number:

1000259377

Telephone number:

313-234-1856

Fax number:

855-205-9335

Case number:

2023-08643

Dear Daniel Rosen:

This is in response to your Freedom of Information Act (FOIA) request dated February 15, 2023, received in our office on February 15, 2023.

You asked for copies of all records in the possession, custody, or control of the Internal Revenue Service ("IRS") and the IRS Office of Chief Counsel relating to or referencing IRS Office of Chief Counsel employee Helen Hubbard's participation in a January 16, 2018, Practising Law institute conference on the taxation of financial products and transactions in New York, copies of all records in the possession, custody, or control of the IRS and the IRS Office of Chief Counsel relating to or referencing Helen Hubbard's or any other IRS official's participation in any conference addressing the Federal income tax treatment of termination or break fees and/or the application of I.R.C. 162, 165, and/or 1234A to termination or break fees ("Section 1234A Speaking Engagements").

I'm unable to provide the information you requested by May 25, 2023, which is the 20 business-day period required by law for us to respond.

In certain circumstances, the FOIA allows for an additional 10-day statutory extension. I need additional time to:

- Search for and, to the extent that records exist, collect requested records from other locations
- Review a large volume of records
- Consult with another agency and/or two or more Treasury components

As part of this extension, the statutory response date will be extended to June 9, 2023. Unfortunately, I will still be unable to respond to you by the extended statutory response date.

I expect to provide a final response to your request by July 31, 2023. You don't need to reply to this letter if you agree to this extension. Please consider contacting me to arrange an alternative

timeframe for processing the request or limiting the scope of your FOIA request, which may reduce the timeframe in processing your request.

Pursuant to 26 CFR § 601.702, there is no right to an administrative appeal for failure to meet the statutory 20 business-day, or additional 10 business-day, timeframes for response.

However, you do have the right to file suit for a judicial review. You can file suit after June 9, 2023. File your suit in the U.S. District Court:

- Where you reside or have your principal place of business,
- Where the records are located, or
- In the District of Columbia

Rule 4(i)(1)(C), of the Federal Rules of Civil Procedure, requires you to send the IRS a copy of the summons and complaint as well as to the Attorney General and the United States Attorney for the district in which the action is brought. You must send the IRS copies, by registered or certified mail, to:

Commissioner of Internal Revenue
Attention: CC: PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

I apologize for any inconvenience this delay may cause.

If you have questions regarding the processing of your FOIA request, please contact the caseworker assigned to your case at the phone number listed at the top of this letter.

If you are not able to resolve any concerns you may have regarding our response with the caseworker, you have the right to seek dispute resolution services by contacting our FOIA Public Liaisons at 312-292-3297. The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency, and assisting in the resolution of disputes with respect to the FOIA.

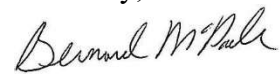
There is no provision for the FOIA Public Liaison to address non-FOIA concerns such as return filing and other tax-related matters or personnel matters. If you need assistance with tax-related issues, you may call the IRS at 800-829-1040.

You also have the right to contact the Office of Government Information Services (OGIS). The Office of Government Information Services, the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and federal agencies.

The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,

A handwritten signature in cursive script, appearing to read "Bernard McDade".

Bernard McDade
Acting Disclosure Manager
Disclosure Office 13

Exhibit III



**Department of the Treasury
Internal Revenue Service
Privacy, Governmental Liaison and
Disclosure**

GLDS Support Services

Stop 93A
PO Box 621506
Atlanta, GA 30362

Daniel Rosen
Baker & McKenzie, LLP
452 Fifth Ave.
New York, NY 10018

Date:

July 14, 2023

Employee name:

Gail Minauro

Employee ID number:

1000259377

Telephone number:

313-234-1856

Fax number:

855-205-9335

Case number:

2023-08643

Dear Daniel Rosen:

This is in response to your Freedom of Information Act (FOIA) request dated February 15, 2023, received in our office on April 27, 2023.

You asked for copies of all records in the possession, custody, or control of the Internal Revenue Service ("IRS") and the IRS Office of Chief Counsel relating to or referencing IRS Office of Chief Counsel employee Helen Hubbard's participation in a January 16, 2018, Practising Law Institute Conference on the taxation of financial products and transactions in New York, copies of all records in the possession, custody, or control of the IRS and the IRS Office of Chief Counsel relating to or referencing Helen Hubbard's or any other IRS official's participation in any conference addressing the Federal income tax treatment of termination or break fees and/or the application of I.R.C. 162, 165, and/or 1234A to termination or break fees ("Section 1234A Speaking Engagements").

I sent you a letter on May 16, 2023, requesting additional time to obtain and review the records requested in your Freedom of Information Act (FOIA) request.

I need additional time to obtain and review the records. I expect to provide a final response to your request by September 29, 2023. You don't need to reply to this letter if you agree to this extension. Please consider contacting me to arrange an alternative time frame for processing the request or limiting the scope of your FOIA request, which may reduce the time in processing your request.

Pursuant to 26 CFR § 601.702, there is no right to an administrative appeal for failure to meet the statutory 20 business-day timeframe for response.

However, you do have the right to file suit for a judicial review. You can file suit after June 9, 2023. File your suit in the U.S. District Court:

- Where you reside or have your principal place of business,
- Where the records are located, or
- In the District of Columbia

Rule 4(i)(1)(C), of the Federal Rules of Civil Procedure, requires you to send the IRS a copy of the summons and complaint as well as to the Attorney General and the United States Attorney for the district in which the action is brought. You must send the IRS copies, by registered or certified mail, to:

Commissioner of Internal Revenue
Attention: CC: PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

I apologize for any inconvenience this delay may cause.

If you have questions regarding the processing of your FOIA request, please contact the caseworker assigned to your case at the phone number listed at the top of this letter.

If you are not able to resolve any concerns you may have regarding our response with the caseworker, you have the right to seek dispute resolution services by contacting our FOIA Public Liaisons at 312-292-3297. The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency, and assisting in the resolution of disputes with respect to the FOIA.

There is no provision for the FOIA Public Liaison to address non-FOIA concerns such as return filing and other tax-related matters or personnel matters. If you need assistance with tax-related issues, you may call the IRS at 800-829-1040.

You also have the right to contact the Office of Government Information Services (OGIS). The Office of Government Information Services, the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,



Deanna Fitti-Hafer
Disclosure Manager
Disclosure Office 13

Exhibit IV



Baker & McKenzie LLP

452 Fifth Avenue
New York, NY 10018
United States

Tel: +1 212 626 4100
Fax: +1 212 310 1600
www.bakermckenzie.com

Asia Pacific

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Seoul
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& Africa**

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Santiago
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Tijuana
Toronto
Valencia
Washington, DC

* Associated Firm
** In cooperation with
Trench, Rossi e Watanabe
Advogados

March 9, 2023

Internal Revenue Service
GLDS Support Services
Stop 211
Post Office Box 621506
Atlanta, GA 30362

**Re: IRS Determinations
Freedom of Information Act Request**

Dear Sir or Madam:

In accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, I request copies of all records in the possession, custody, or control of the Internal Revenue Service (“IRS”) and the IRS Office of Chief Counsel relating to or referencing either of the following: (1) Technical Advice Memorandum 200438038 (release date Sep. 17, 2004) and (2) Private Letter Ruling 200823012 (release date June 6, 2008) (collectively, the “IRS Determinations”).¹

This request includes, but is not limited to, the following:

1. All records related to or referencing the IRS Determinations, including but not limited to the following items:
 - a. Requests for legal advice, assistance, or rulings;
 - b. Requests for expedited treatment;
 - c. Response forms;
 - d. Replies to requests for technical advice;
 - e. Notices of tentative conclusions;
 - f. Records prepared, assembled, or forwarded to assist in the understanding of relevant facts, transaction(s), or issues;

¹ The IRS Determinations are attached as Exhibits A and B, respectively.



- g. Records setting forth the issues upon which advice or determinations were being sought, relevant facts, law, or conclusions or proposed course(s) of action;
- h. Statements of facts and/or authorities or contrary authorities;
- i. Records forwarded, prepared, or assembled for pre-submission conferences or tentative adverse decision conferences;
- j. Coordination reports;
- k. Requests for information;
- l. Records relating to or referencing IRS Office of Chief Counsel's review of legal advice prepared by Field Counsel;
- m. Background file documents; and
- n. Communications within or between the IRS Office of Chief Counsel and the IRS regarding the IRS Determinations.

For purposes of this request, the terms "record" and "records" are used expansively and include, by way of illustration and without limitation, all agreements, contracts, communications, letters, reports, analyses, memoranda, e-mails (and attachments), instant messages, transcripts, minutes, notes, bulletins, worksheets, schedules, notebooks, drawings, photographs, drafts, diaries, calendars, workpapers, contracts, purchase orders, telecopies, telexes, or any information stored on optical disc, magnetic tape, microfilm or microfiche, or computer memory storage device. These terms also refer to all drafts or prior versions of records responsive to this request. All requests for records set forth herein are for records in their native electronic format, where applicable.

If it is determined that records, or any portions thereof, will not be disclosed, please provide me with the non-exempt records and with the non-exempt portions of the remaining records. In the event an exemption is claimed, please provide me with all segregable non-exempt portions of any withheld records pursuant to 5 U.S.C. § 552(b). When material is to be redacted, please "black out" rather than "white out" or "cut out" any portions for which an exemption is claimed.



If records responsive to this request have been destroyed, please identify the records destroyed, the date of destruction, and the person who destroyed the records.

Pursuant to 5 U.S.C. §§ 552(a)(6)(A)(i) and 552(b), if this request is denied either in part or in whole, please provide me with an index that specifies which exemption(s) is (are) being claimed for each portion of each record withheld. Please provide a detailed description of each record withheld, including the author(s) and any recipients, the date of its creation, its subject matter, its family members (if any), and its current physical location. In addition, please provide the reason that each record falls within the exemption claimed for it. Please also specify the number of pages in each record and the total number of pages that are responsive to this request. Such an index is required to allow me to evaluate the IRS's claims that these records are exempt from disclosure. *See, e.g., Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

In accordance with Treas. Reg. §§ 601.702(c)(4)(i)(H) and 601.702(f), I agree to pay reasonable charges incurred to search for and duplicate the requested records. Once the materials have been assembled, please advise me of the projected copying charges.

In accordance with Treas. Reg. §§ 601.702(c)(4)(i)(E) and 601.702(c)(5)(iii)(C), I establish my identity and right to access requested AbbVie, Inc. ("AbbVie") records by the previously filed Power of Attorney and Declaration of Representative on Form 2848 executed by AbbVie, attached as Exhibit C. A copy of my State of New York driver's license is attached for photo identification as Exhibit D. AbbVie and I authorize you to send any of the above-mentioned records to:

Daniel A. Rosen
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
(212) 626-4272

In accordance with Treas. Reg. § 601.702(f)(3), I am a "commercial use requester" as defined in Treas. Reg. § 601.702(f)(3)(ii)(A). As set forth in 5 U.S.C. § 522(a)(6)(A)(i), 31 C.F.R. § 1.4, and Treas. Reg. § 601.702(c)(9)(ii), I would appreciate a response to this request within twenty (20) working days of its receipt.



If you have any questions concerning this request or require further identifying information, please contact me at (212) 626-4272.

Thank you in advance for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel A. Rosen".

Daniel A. Rosen
Daniel.Rosen@bakermckenzie.com

Attachments: Exhibits A through D

EXHIBIT A

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

June 02, 2004

Number: **200438038**
Release Date: 9/17/04
Index (UIL) No.: 61.49-01
CASE-MIS No.: TAM-137482-03, CC:ITA:B04

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Year Involved:
Date of Conference: January 21, 2004

LEGEND:

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Taxpayer =
B =
C =
Year 1 =
\$x =

TAM-137482-03

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ISSUE:

Is a termination fee received by Taxpayer as the result of a failed merger and acquisition ordinary income or a return of capital and includible in income only to the extent that it exceeds the basis in Taxpayer's property?

CONCLUSION:

The termination fee received by Taxpayer is ordinary income.

FACTS:

On Date 1, Taxpayer entered into an Agreement and Plan of Merger with B (Agreement 1) to acquire the stock of B for stock, cash, and the assumption of debt. Under the terms of Agreement 1, B was prohibited from soliciting other offers during the period prior to closing but was permitted to consider and accept unsolicited superior offers. If B agreed to accept a superior offer, B was required to communicate that offer to Taxpayer to afford the latter an opportunity to meet or beat the superior offer within 5 days. If the superior offer was finally accepted, B agreed to pay Taxpayer a termination fee of \$x.

In general, the termination fee provision in Agreement 1 provides certain terms and conditions regarding the payment of the termination fee; however, it is silent as to its underlying purpose. Also, the provision provides that all costs and expenses incurred will be paid by the party incurring such cost or expense whether or not the merger is consummated.

On Date 2, C submitted an unsolicited offer to purchase B for stock, cash, and the assumption of debt. The offer constituted a binding irrevocable offer to enter into a Merger Agreement (Agreement 2) subject to C's right to withdraw the offer if not accepted and executed by B within 10 days. C also agreed, for the purpose of inducing B to deliver to Taxpayer a notice that it had accepted a superior offer, to pay B the sum of \$x upon the termination of Agreement 1 and B's execution and delivery of Agreement 2.

On Date 2, B's Board of Directors met and concluded that C's offer constituted a superior offer, and that it was in B's best interests to terminate Agreement 1 and accept Agreement 2. Later that day, B notified Taxpayer that it had received a superior offer from C and that it was terminating Agreement 1. The notice of termination triggered Taxpayer's right to submit a superior counteroffer within 5 days.

During the 5-day period Taxpayer and C conducted negotiations in an attempt to reach an acceptable alternative to a round of competitive bidding. On Date 3, as a result of these negotiations, Taxpayer and C entered into a separate Letter Agreement (Agreement 3) whereby Taxpayer agreed to withdraw from Agreement 1 once it had been paid the \$x termination fee. Moreover, Taxpayer and C agreed to trade franchises

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in selected parts of the country. The exchange of franchises was to take place even if Agreement 2 was not consummated. Agreement 3 contained a second provision calling for a second exchange of franchises to be implemented if Agreement 2 was consummated.

On Date 4, B agreed to be acquired by C, C paid Taxpayer the termination fee of \$x, and Taxpayer and C agreed to exchange franchises.

Taxpayer, on its Year 1 income tax return, reported the entire \$x termination fee as capital gain. Shortly thereafter, Taxpayer filed a claim for refund taking the position that the termination fee represented compensation for damages to its corporate infrastructure. As such, the termination fee was asserted to be a return of capital entirely excluded from income as Taxpayer's basis in its property exceeded the amount received.

The examination team is of the view that the termination fee paid to Taxpayer under Agreement 1 constitutes a recovery for lost profits and is ordinary income.

LAW AND ANALYSIS:

Section 61 of the Internal Revenue Code and § 1.61-1(a) of the Income Tax Regulations provide that gross income includes all income from whatever source derived unless excluded by law. The Supreme Court of the United States has long recognized that the definition of gross income sweeps broadly and reflects Congress' intent to exert the full measure of its taxing power and to bring within the definition of income "any accession to wealth." *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 430 (1955). Accordingly, any receipt of funds by a taxpayer is presumed to be gross income unless the taxpayer can demonstrate that the accession fits into one of the narrowly construed exclusions provided by law. See *Glenshaw Glass Co.* at 431; *United States v. Burke*, 504 U.S. 229, 248 (1992).

Under the origin-of-the-claim doctrine, the taxability of the proceeds of a settlement or a judgment depends on the nature of the claim and the actual basis of recovery. *United States v. Gilmore*, 372 U.S. 39 (1963). If the amount received represents damages for lost profits, it is taxable as ordinary income. However, if the recovery is received as the replacement of capital destroyed or injured rather than for lost profits, the money received is a return of capital and not taxable. *Freeman v. Commissioner*, 33 T.C. 323, 327 (1959). The burden is on the taxpayer to demonstrate that the amounts received are for capital replacement. *Raytheon Production Corporation v. Commissioner*, 1 T.C. 952 (1943), *aff'd*, 144 F.2d 110 (1st Cir. 1944), *cert. denied*, 323 U.S. 779 (1944).

The courts and the Internal Revenue Service have typically applied the origin-of-the-claim doctrine in situations involving a recovery received pursuant to a judgment or a settlement. Termination fee provisions and settlements are similar in that the underlying purpose of each is the avoidance of litigation through arms-length negotiations. The

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termination fee provision that is part of Agreement 1 represents a bargained-for position¹ similar to that of a negotiated settlement between two adversarial parties. In the present case, since no litigation was initiated on which a negotiated settlement was based, our focus must be on the bargained-for termination fee in determining the character of the payment received by Taxpayer.

Taxpayer takes the position that the termination fee represents damages for injury to goodwill that is properly treated as a return of capital, and is includible in income only to the extent it exceeds its basis in the property. Taxpayer bases its position on the principals of *Durkee v. Commissioner*, 162 F.2d 184 (6th Cir. 1947); *Raytheon*; and *Farmers and Merchant's Bank of Catlettsburg, Kentucky v. Commissioner*, 59 F.2d 912 (6th Cir. 1932). Taxpayer states that *Durkee*, *Raytheon*, and *Farmers and Merchant's Bank* stand for the proposition that damages received for injury to a taxpayer's overall business, including damages to prospects for future growth of the business, are properly treated as a return of capital. Over the years, Taxpayer had made a substantial investment, in the form of higher premiums over market value in various acquisitions than were typical in the industry, in developing an infrastructure with the intention and expectation of becoming a dominant force in the industry. Taxpayer asserts that the failed acquisition of B deprived it of a unique opportunity resulting in a diminution of the value of its infrastructure.

Taxpayer's reliance on *Durkee*, *Raytheon*, and *Farmers and Merchant's Bank* is misplaced for several reasons. First, these cases are factually distinguishable. They dealt with a conspiracy, an anti-trust violation, and other tortious acts that resulted in actual damage to goodwill or virtual destruction of a taxpayer's business. The present situation does not deal with tortious acts but concerns a contract that provides for a bargained-for termination fee. The termination fee was a payment in lieu of damages for failure to consummate a contract of sale. Such payments have been viewed as liquidated damages and treated as ordinary income. *Harold S. Smith v. Commissioner*, 418 F.2d 573 (9th Cir. 1969) *aff'g*, 50 T.C. 273 (1968); *Binns v. U.S.*, 385 F. 2d 159 (6th Cir. 1967) *aff'g*, 254 F. Supp 889 (M.D. Tenn. 1966).

Secondly, in analyzing this case under the origin-of-the-claim doctrine, the focus should be on the origin and character of the claim with respect to which a payment is made, the bargained-for termination fee, rather than its potential consequences on the business operations of Taxpayer.

Taxpayer relies on *Durkee*, *Raytheon*, and *Farmers and Merchant's Bank* for the proposition that damages received for injury to a taxpayer's overall business, including damages to prospects for future growth of the business, are properly treated as a return

¹ Termination fee provisions have become "the most intensely negotiated provisions in these acquisitions," and are becoming an expected part of negotiating a merger. See Thomas A. Swett, *Merger Terminations after Bell Atlantic: Applying a Liquidated Damages Analysis to Termination Fee Provisions*, 70 U. Colo. L. Rev. 341, 355, (1999) quoting Lou R. Kling et al., *Summary of Acquisition Agreements*, 51 U. Miami L. Rev. 779, 782-92 (1997).

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of capital. In these cases, the litigation on which the settlements were based alleged only damages to goodwill and did not seek lost profits. “No claim is made for lost profits.” See *Durkee*, 162 F.2d at 186. “Upon examination of Raytheon’s declaration in its anti-trust suit we find nothing to indicate that the suit was for the recovery of lost profits.” See *Raytheon*, 144 F.2d at 113. “Petitioner not only did not insist upon the restoration of anticipated profits as a matter of fact, but based its claim for damages upon an alleged tortious injury to the good will of its business.” See *Farmers and Merchant’s Bank*, 59 F.2d at 913. In each case, the court concluded that the original claim in litigation was intended to compensate the taxpayers for damages to goodwill. In the present situation, Taxpayer has provided no evidence to support the conclusion that the original claim, the bargained-for termination fee, was intended to compensate Taxpayer for damages to goodwill. To the contrary, there is indirect support for the position that Taxpayer’s receipt of the termination fee is for the recovery of lost profits.

The termination fee provision in Agreement 1, beyond providing the trigger for the payment of the \$x termination fee, is silent as to the allocation of the recovery to either lost profits or damage to capital and does not lend any guidance in resolving the issue. However, commentators have provided significant insight as to the purpose of termination fee provisions.

To guard against this risk of non-consummation, and to protect their interests in the event this risk is realized, potential acquirors insert various deal-protective provisions into merger agreements. These measures can, for example, reimburse would-be acquirors for their expenses and lost profits should another bidder emerge and prevail in a bidding contest. These provisions have the additional and intentional effect of making the target less financially or otherwise attractive to subsequent bidders, thereby deterring such bidders from entering the competition for the target. Thus, deal-protective measures can encourage bids by offering bidders some measure of comfort that their deals will go through, and perhaps the promise that they will be compensated if they do not. Judd F. Sneirson, *Merger Agreements, Termination Fees, and the Contract-Corporate Tension*, 2002 Colum. Bus. L. Rev. 573, 578.

The bargained-for termination fee provision in Agreement 1 provides Taxpayer an effective manner in which to address the consequences of a failed merger. The termination fee provision is similar to a liquidated damages provision in that it provides for “a sum stipulated and agreed on by the parties, at the time of entering into a contract, as being payable as compensation for injuries in the event of a breach.”² The termination fee provision protects each parties’ contractual interests and was paid in lieu of damages for failure to consummate the contract. Commentators have discussed termination fees under the principles of contract law in merger agreements.

² 67A AM. JUR. 2D Sales § 894 (1985).

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One purpose of contract law is to protect the expectations that arise when parties agree to exchange things in the future. When there is a breach, contract law thus aims to put the injured party in the position she would have occupied had the breaching party satisfied his obligations. This ‘expectation interest’ gives the injured party the benefit of her bargain. In a merger agreement, where a party repudiates or breaches, the expectation interest would entail putting the disappointed bidder in the position it would have occupied had the target not repudiated or breached. If the merger agreement is not specifically enforced, this would translate to substantial relief in the form of money damages to approximate the benefits the disappointed acquirer would have enjoyed had the merger agreement been consummated. Sneirson at 599.

The principal purpose of contract law is to protect the justified expectations that arise from promises underlying bargains. Contract law also “further[s] the general good by encouraging parties to enter into ... productive transactions.” The parties’ contractual expectations are protected by awarding “benefit of the bargain” or “expectation” damages as the usual remedy for breach. Such damages place the injured party in the same financial position as if the contract had been fully performed. This measure of damages also may include lost profits expected from the exchange. Paul L. Regan, *Great Expectations? A Contract Law Analysis for Preclusive Corporate Lock-Ups*, 21 Cardozo L. Rev. 1, 33 (1999).

In *Glendale Federal Bank, FSB, v. United States*, 239 F.3d 1374, 1380 (Fed.Cir. 2001), the court discussed the basic principles of contract law and expectancy damages.

One way the law makes the non-breaching party whole is to give him the benefits he expected to receive had the breach not occurred. See *Restatement (Second) of Contracts* § 344(a) (1981). The benefits that were expected from the contract, “expectancy damages,” are often equated with lost profits, although they can include other damage elements as well. See *Restatement (Second) of Contracts* § 347.

Based on the underlying purpose of the termination fee provision as discussed above, principles of contract law, and the above-mentioned authorities, it is reasonable to conclude that Taxpayer’s bargained-for termination fee provided for benefit of the bargain or expectancy damages. As such damages are equated with lost profits, Taxpayer’s receipt of the termination fee is for the recovery of lost profits. There is ample authority to support the position that recovery for loss of anticipated profits is ordinary income. *Martin Bros. Box Co. v. Commissioner*, No. 110,397 (T.C.M. 1943), *aff’d*, 142 F.2d 457 (6th Cir. 1944); *Estate of Carter v. Commissioner*, 35 T.C. 326 (1960), *aff’d*, 298 F.2d 192 (8th Cir. 1962).

Additionally, as the termination fee provision in Agreement 1 is silent as to the allocation of the recovery to either lost profits or damage to capital, the Service has substantial

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support for the position that whenever the status of the payment is unclear or no allocation is made, the recovery will be treated as lost profits. *Stocks v. Commissioner*, 98 T.C. 1 (1992); *Evans v. Commissioner*, T.C.M. 1980-142; *Armstrong Knitting Mills v. Commissioner*, 19 B.T.A. 318 (1930).

In *Walley, Inc. v. Commissioner*, No. 13,499 (T.C.M. 1948), the taxpayer in an action for breach of contract requested damages for lost profits and injury to goodwill. The settlement document provided for a general release covering all causes of action, which did not allocate the payment. The court stated that the taxpayer had failed to provide any evidence of what portion of the recovery was received for injury to goodwill and held that the entire amount was for the recovery of lost profits. See *Vanderlaan v. Commissioner*, T.C.M. 1962-130 (taxpayer received an amount pursuant to a settlement that was unclearly designated as “funds received for development.” The payment was held to be ordinary income.)

Taxpayer has not sustained the burden of proof in demonstrating that its accession of wealth fits in the narrowly construed exclusion that the termination fee is an amount received for damage to capital. The termination fee received by Taxpayer is ordinary income.

CAVEAT:

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

EXHIBIT B

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200823012**
Release Date: 6/6/2008
Index Number: 61.49-01, 1234A.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-140872-07
Date:
March 10, 2008

LEGEND

- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Taxpayer =
- B =
- C =
- \$r =
- \$s =

Dear :

This is in reply to a letter dated September 11, 2007, submitted by your authorized representatives, requesting a ruling concerning the federal income tax consequences of termination fees received by Taxpayer. Specifically, you request a ruling that the termination fees received in connection with an abandoned merger transaction will be treated as ordinary income under § 61 of the Internal Revenue Code, rather than as capital gain.

FACTS

On Date 1, Taxpayer and B entered into an agreement (Agreement 1) under which the parties agreed to use their best efforts to take a series of steps that were designed to lead to Taxpayer's acquisition of the stock of B for consideration consisting of cash plus a specified number of shares of Taxpayer common stock. The proposed acquisition was subject to a number of substantial conditions, including the approval by the shareholders of Taxpayer and B, both of which were publicly-traded corporations. The shareholders of B were not parties to Agreement 1. Under the terms of Agreement 1, B agreed not to solicit other offers regarding an acquisition of B, but had the right to

PLR-140872-07

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terminate Agreement 1 if it received an unsolicited, superior third party bid. Termination of Agreement 1 by either party under certain circumstances, such as failure to obtain approval by a party's board of directors or shareholders or a change in recommendation by a party's board, would give rise to an obligation to pay termination fees to the other party. Agreement 1 provided certain terms and conditions regarding the payment of the termination fees but did not indicate whether the termination fees related to any particular item or specify the purpose for the termination fees. Also, Agreement 1 provided that, except in the case of a breach of Agreement 1, all fees and expenses incurred in connection with Agreement 1 and the transactions contemplated thereby were to be paid by the party incurring such expenses whether or not the acquisition was consummated.

On Date 2, C, an unrelated company, commenced an unsolicited tender offer to purchase for cash all outstanding common shares of B. Because B's board of directors believed C's offer could amount to a superior proposal as defined in Agreement 1, B began discussions and negotiations with C.

By its terms, Agreement 1 could not be formally terminated until a shareholder vote was taken and the planned acquisition by Taxpayer was rejected. Under Agreement 1, B would be required to pay Taxpayer \$r as a termination fee if B's shareholders met and formally rejected the acquisition and an additional \$s termination fee if B consummated a change-of-control transaction on or prior to Date 6. It became clear to Taxpayer and B, however, that the acquisition would not be approved by B's shareholders, based on the proxies received from B's shareholders. To avoid the need for a shareholder meeting to conduct a formal vote, on Date 3, two days before the scheduled meeting of B's shareholders for such a vote, Taxpayer and B entered into an agreement (Agreement 2) terminating Agreement 1.

Agreement 2 included termination provisions that mirrored those of Agreement 1, except that an actual vote of B's shareholders was not a condition to payment to Taxpayer of the \$r termination fee. Like Agreement 1, Agreement 2 was silent as to the purpose of the termination fees.

On the same date that Agreement 2 was entered into, B paid Taxpayer \$r as a termination fee. On Date 4, B's board recommended that its shareholders accept the bid from C, and on Date 5, C acquired control of B. B thereby became obligated to pay Taxpayer the additional \$s termination fee described above, which it subsequently paid to Taxpayer.

LAW AND ANALYSIS

Part 1

PLR-140872-07

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Section 61 of the Code and § 1.61-1(a) of the Income Tax Regulations provide that gross income includes all income from whatever source derived unless excluded by law. The Supreme Court of the United States has long recognized that the definition of gross income sweeps broadly and reflects Congress' intent to exert the full measure of its taxing power and to bring within the definition of income "any accession to wealth." *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 430 (1955). Accordingly, any receipt of funds by a taxpayer is presumed to be gross income unless the taxpayer can demonstrate that the accession fits into one of the narrowly construed exclusions provided by law. See *Glenshaw Glass Co.* at 431; *United States v. Burke*, 504 U.S. 229, 248 (1992).

Under the origin-of-the-claim doctrine, the taxability of the proceeds of a settlement or a judgment depends on the nature of the claim and the actual basis of recovery. *United States v. Gilmore*, 372 U.S. 39 (1963). If the amount received represents damages for lost profits, it is taxable as ordinary income. However, if the recovery is received as the replacement of capital destroyed or injured rather than for lost profits, the money received is a return of capital and taxable only to the extent it exceeds the basis of the destroyed capital. *Freeman v. Commissioner*, 33 T.C. 323, 327 (1959). The burden is on the taxpayer to demonstrate that the amounts received are for capital replacement. *Raytheon Production Corporation v. Commissioner*, 1 T.C. 952 (1943), *aff'd*, 144 F.2d 110 (1st Cir. 1944), *cert. denied*, 323 U.S. 779 (1944).

The courts and the Internal Revenue Service have typically applied the origin-of-the-claim doctrine in situations involving a recovery received pursuant to a judgment or a settlement. Contractual termination fee provisions and settlements are similar in that the underlying purpose of each is the avoidance of litigation through arms-length negotiations. The termination fee provision that is part of Agreement 1 and Agreement 2 represents a bargained-for position¹ similar to that of a negotiated settlement between two adversarial parties. In the present case, since no litigation was initiated on which a negotiated settlement was based, our focus must be on the bargained-for termination fee in determining the character of the payment received by Taxpayer.

Taxpayer has chosen not to present any legal authority to support the position that the original claim, the bargained-for termination fee, was intended to compensate Taxpayer for capital destroyed or injured. However, the Service has considered such arguments and has determined that there is prevailing support for Taxpayer's position that the receipt of the termination fee is for the recovery of lost profits.

¹ Termination fee provisions have become "the most intensely negotiated provisions in these acquisitions," and are becoming an expected part of negotiating a merger. See Thomas A. Swett, *Merger Terminations after Bell Atlantic: Applying a Liquidated Damages Analysis to Termination Fee Provisions*, 70 U. Colo. L. Rev. 341, 355, (1999) quoting Lou R. Kling et al., *Summary of Acquisition Agreements*, 51 U. Miami L. Rev. 779, 782-92 (1997).

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The termination fee provision in Agreement 1 and Agreement 2, beyond providing the trigger for the payment of the termination fees, is silent as to the allocation of the recovery to either lost profits or damage to capital and does not lend any guidance in resolving the issue. However, commentators have provided significant insight as to the purpose of termination fee provisions.

To guard against this risk of non-consummation, and to protect their interests in the event this risk is realized, potential acquirors insert various deal-protective provisions into merger agreements. These measures can, for example, reimburse would-be acquirors for their expenses and lost profits should another bidder emerge and prevail in a bidding contest. These provisions have the additional and intentional effect of making the target less financially or otherwise attractive to subsequent bidders, thereby deterring such bidders from entering the competition for the target. Thus, deal-protective measures can encourage bids by offering bidders some measure of comfort that their deals will go through, and perhaps the promise that they will be compensated if they do not. Judd F. Sneirson, *Merger Agreements, Termination Fees, and the Contract-Corporate Tension*, 2002 Colum. Bus. L. Rev. 573, 578.

The bargained-for termination fee provision in Agreement 1 and Agreement 2 provides Taxpayer an effective manner in which to address the consequences of a failed acquisition. The termination fee provision is similar to a liquidated damages² provision in that it provides for “a sum stipulated and agreed on by the parties, at the time of entering into a contract, as being payable as compensation for injuries in the event of a breach.”³ The termination fee provision protects each parties’ contractual interests and the termination fee is paid in lieu of damages for failure to consummate the contract. Commentators have discussed termination fees under the principles of contract law in merger agreements.

One purpose of contract law is to protect the expectations that arise when parties agree to exchange things in the future. When there is a breach, contract law thus aims to put the injured party in the position she would have occupied had the breaching party satisfied his obligations. This ‘expectation interest’ gives the injured party the benefit of her bargain. In a merger agreement, where a party repudiates or breaches, the expectation interest would entail putting the disappointed bidder in the position it would have occupied had the target not repudiated or breached. If the merger agreement is not specifically enforced, this would translate to substantial relief in the form of money damages to

² Liquidated damages are taxable as ordinary income. *Harold S. Smith v. Commissioner*, 418 F.2d 573 (9th Cir. 1969) *aff’g*, 50 T.C. 273 (1968); *Binns v. U.S.*, 385 F. 2d 159 (6th Cir. 1967) *aff’g*, 254 F. Supp 889 (M.D. Tenn. 1966).

³ 67A AM. JUR. 2D Sales § 894 (1985).

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approximate the benefits the disappointed acquirer would have enjoyed had the merger agreement been consummated. Sneirson at 599.

The principal purpose of contract law is to protect the justified expectations that arise from promises underlying bargains. Contract law also “further[s] the general good by encouraging parties to enter into ... productive transactions.” The parties’ contractual expectations are protected by awarding “benefit of the bargain” or “expectation” damages as the usual remedy for breach. Such damages place the injured party in the same financial position as if the contract had been fully performed. This measure of damages also may include lost profits expected from the exchange. Paul L. Regan, *Great Expectations? A Contract Law Analysis for Preclusive Corporate Lock-Ups*, 21 *Cardozo L. Rev.* 1, 33 (1999).

In *Glendale Federal Bank, FSB, v. United States*, 239 F.3d 1374, 1380 (Fed.Cir. 2001), the court discussed the basic principles of contract law and expectancy damages.

One way the law makes the non-breaching party whole is to give him the benefits he expected to receive had the breach not occurred. See *Restatement (Second) of Contracts* § 344(a) (1981). The benefits that were expected from the contract, “expectancy damages,” are often equated with lost profits, although they can include other damage elements as well. See *Restatement (Second) of Contracts* § 347.

Accordingly, based on the underlying purpose of the termination fee provisions as discussed above, principles of contract law, and the above-mentioned authorities, it is reasonable to conclude that Taxpayer’s bargained-for termination fees provided for benefit of the bargain or expectancy damages. As such damages are equated with lost profits, Taxpayer’s receipt of the termination fees is for the recovery of lost profits. There is ample authority to support the position that recovery for loss of anticipated profits is ordinary income. *Martin Bros. Box Co. v. Commissioner*, No. 110,397 (T.C.M. 1943), *aff’d*, 142 F.2d 457 (6th Cir. 1944); *Estate of Carter v. Commissioner*, 35 T.C. 326 (1960), *aff’d*, 298 F.2d 192 (8th Cir. 1962).

Additionally, as the termination fee provision in Agreement 1 and Agreement 2 is silent as to the allocation of the recovery to either lost profits or damage to capital, the Service has substantial support for the position that whenever the status of the payment is unclear or no allocation is made, the recovery will be treated as lost profits. *Evans v. Commissioner*, T.C.M. 1980-142; *Armstrong Knitting Mills v. Commissioner*, 19 B.T.A. 318 (1930); *Walley, Inc. v. Commissioner*, No. 13,499 (T.C.M. 1948).

In *Walley, Inc. v. Commissioner*, *supra*, the taxpayer in an action for breach of contract requested damages for lost profits and injury to goodwill. The settlement document provided for a general release covering all causes of action and did not allocate the

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payment. The court stated that the taxpayer had failed to provide any evidence of what portion of the recovery was received for injury to goodwill and held that the entire amount was for the recovery of lost profits. See *Vanderlaan v. Commissioner*, T.C.M. 1962-130 (taxpayer received an amount pursuant to a settlement that was held to be ordinary income because nothing in the settlement agreement or in other evidence presented convinced the court that the payment should be treated otherwise).

Part 2

Section 1234A of the Code provides that gain or loss attributable to the cancellation, lapse, expiration or other termination of a right or obligation with respect to property which is a capital asset in the hands of the taxpayer will be treated as gain or loss from the sale of a capital asset.

The Service has concluded that § 1234A does not apply to the termination fees received by Taxpayer.

CONCLUSION

The termination fees paid by B to Taxpayer will be treated as ordinary income to Taxpayer.

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 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. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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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,

Michael J. Montemurro
Branch Chief, Branch 4
(Income Tax & Accounting)

EXHIBIT C

Form **2848**
 (Rev. January 2018)
 Department of the Treasury
 Internal Revenue Service

Power of Attorney and Declaration of Representative

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address AbbVie Inc. 1 N. Waukegan Road North Chicago, IL 60064	Taxpayer identification number(s) <p style="text-align: center;">32-0375147</p> Daytime telephone number _____ Plan number (if applicable) _____
---	---

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Daniel A. Rosen Baker & McKenzie, LLP 452 Fifth Avenue, New York, NY 10018 Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	CAF No. <u>0310-99756R</u> PTIN <u>P01787930</u> Telephone No. <u>212-626-4272</u> Fax No. <u>212-310-1672</u> Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Robert H. Albaral Baker & McKenzie, LLP 1900 North Pearl Street, Suite 1500, Dallas, TX 75201 Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	CAF No. <u>03-0124252R</u> PTIN <u>P01250061</u> Telephone No. <u>214-978-3044</u> Fax No. <u>214-965-5962</u> Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address George M. Clarke, III Baker & McKenzie, LLP 815 Connecticut Avenue NW, Washington, D.C. 20006 (Note: IRS sends notices and communications to only two representatives.)	CAF No. _____ PTIN <u>P01464225</u> Telephone No. <u>202-835-6124</u> Fax No. <u>202-416-7124</u> Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Joy Williamson Baker & McKenzie, LLP 1900 North Pearl Street, Suite 1500, Dallas, TX 75201 (Note: IRS sends notices and communications to only two representatives.)	CAF No. <u>0309-66134R</u> PTIN <u>P01615727</u> Telephone No. <u>214-965-7239</u> Fax No. <u>214-965-5905</u> Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income	1120	2014

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific Use Not Recorded on CAF**

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

Access my IRS records via an Intermediate Service Provider;

Authorize disclosure to third parties; Substitute or add representative(s); Sign a return; _____

Other acts authorized: _____

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.
List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): _____

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

 05/18/22

Vice President, Tax
Title (if applicable)

Lindsey Bristow
Print Name

AbbVie Inc.
Print name of taxpayer from line 1 if other than individual

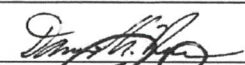



Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer’s immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). **See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
 - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation— Insert above letter (a-r).	Licensing jurisdiction (State) or other licensing authority (if applicable).	Bar, license, certification, registration, or enrollment number (if applicable).	Signature	Date
a	NY	2790442		5/18/2022
a	TX	00969175		5/18/2022
a	DC	480073		5/18/2022
a	TX	24088652		5/18/2022

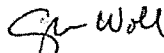

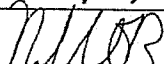
AbbVie Inc.
 No. 32-0375147
 Power of Attorney (Form 2848)
 Addendum (Page 1)

Part I: Box 2. Additional Representative(s)

Name and address Glenn Woll Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0306-21588R PTIN. P01231737 Telephone No. 212-891-3533 Fax No. 212-310-1633
Name and address Lucy J. Alberto Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0310-90938R PTIN. P01287347 Telephone No. 212-626-4954 Fax No. 212-310-1749
Name and address Nicholas O'Brien Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0314-00281R PTIN. P02340059 Telephone No. 212-626-4946 Fax No. 212-310-1787

AbbVie Inc.
No. 32-0375147
Power of Attorney (Form 2848)
Addendum (Page 2)

Part II: Declaration of Representative

Designation	Jurisdiction	License	Signature	Date
a	NY	2928885		5/18/22
a	NY	4544649		5/18/22
a	NY	5748082		5/18/22

Form **2848**
 (Rev. January 2018)
 Department of the Treasury
 Internal Revenue Service

Power of Attorney and Declaration of Representative

OMB No. 1545-0150
For IRS Use Only
 Received by: _____
 Name _____
 Telephone _____
 Function _____
 Date / /

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address AbbVie Inc. 1 North Waukegan Road, Dept V367, Bldg AP 34-3N North Chicago, IL 60064	Taxpayer identification number(s) <p style="text-align: center;">32-0375147</p> Daytime telephone number <p style="text-align: center;">847-932-7000</p> Plan number (if applicable)
--	--

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Matthew Houchens 1 North Waukegan Road, Dept V367, Bldg AP 34-3N North Chicago, IL 60064 Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	CAF No. <u>0300-71701R</u> PTIN _____ Telephone No. <u>847-935-5793</u> Fax No. <u>847-936-3039</u> Check if new: Address <input checked="" type="checkbox"/> Telephone No. <input checked="" type="checkbox"/> Fax No. <input checked="" type="checkbox"/>
Name and address Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address (Note: IRS sends notices and communications to only two representatives.)	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address (Note: IRS sends notices and communications to only two representatives.)	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

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Income	1120	2014-2023
Excise/Withholding	720,1042	2014 - 2023
Employment/Civil Penalty	941,940, CP504	2014 - 2023

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List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): Not authorized to sign any agreements, consents, or documents.

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.


Signature

11/9/2020
Date

Vice President, Tax and Treasury
Title (if applicable)

Scott T. Reents
Print Name

AbbVie Inc.
Print name of taxpayer from line 1 if other than individual

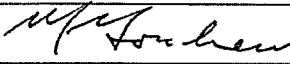
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 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
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Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation— Insert above letter (a-r).	Licensing jurisdiction (State) or other licensing authority (if applicable).	Bar, license, certification, registration, or enrollment number (if applicable).	Signature	Date
a	IL	6243145		1/8/2020

Form **2848**
 (Rev. February 2020)
 Department of the Treasury
 Internal Revenue Service

Power of Attorney and Declaration of Representative

OMB No. 1545-0150

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

Part I Power of Attorney

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Taxpayer name and address AbbVie Inc. 1 North Waukegan Road, Dept V367, Bldg AP 34-2 North Chicago, IL 60064	Taxpayer identification number(s) <p style="text-align: center;">32-0375147</p> Daytime telephone number <p style="text-align: center;">847-932-7900</p> Plan number (if applicable)
---	--

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address David L. Forst Fenwick & West LLP 801 California Street, Mountain View, CA 94041 Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. 0200-36623R PTIN _____ Telephone No. (650) 335-7254 Fax No. (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Michael D. Knobler Fenwick & West LLP 801 California Street, Mountain View, CA 94041 Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. 0312-49812R PTIN _____ Telephone No. (650) 335-7717 Fax No. (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Kristofer Hatch Fenwick & West LLP 801 California Street, Mountain View, CA 94041 (Note: IRS sends notices and communications to only two representatives.)	CAF No. NONE PTIN _____ Telephone No. (650) 335-7882 Fax No. (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address _____ (Note: IRS sends notices and communications to only two representatives.)	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income - Appeals proceeding	1120	2014

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See Line 4. *Specific Use Not Recorded on CAF* in the instructions

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):
 Access my IRS records via an Intermediate Service Provider;
 Authorize disclosure to third parties; Substitute or add representative(s); Sign a return; _____

Other acts authorized: _____

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.
 List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): _____

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative (or designated individual, if applicable), executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

Lindsey Bristow _____ 9/14/2020 _____ Vice President, Tax _____
 Signature Date Title (if applicable)

Lindsey Bristow _____
 Print name Print name of taxpayer from line 1 if other than individual

Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the IRS per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the IRS is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). **See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
 - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d–f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation— Insert above letter (a–r).	Licensing jurisdiction (State) or other licensing authority (if applicable)	Bar, license, certification, registration, or enrollment number (if applicable)	Signature	Date
a	CA	165385	<i>DSB</i>	9/10/2020
a	CA	287701	<i>MKK</i>	9/10/2020
a	CA	324078	<i>K. Hatel</i>	9/10/2020

EXHIBIT D

NEW YORK STATE

DRIVER LICENSE

USA

Mark JF. Schneider
Commissioner of Motor Vehicles

ENHANCED

ID **445 257 493**

Class **D**

ROSEN
DANIEL, ALLEN



Sex **M** Height **5'-06"** Eyes **BRO**

DOB **03/04/1969**

Expires **03/04/2029**

E **NONE**

R **B**

Issued **02/24/2021**

Daniel Rosen

MAR 69



Exhibit V

Daniel Rosen
Baker & McKenzie, LLP
452 Fifth Ave.
New York, NY 10018

Date:
March 15, 2023
Employee name:
Gail Minauro
Employee ID number:
1000259377
Telephone number:
313-234-1856
Fax number:
855-205-9335
Case number:
2023-10154
Re: PLR 200823012
TAM 200438038

Dear Daniel Rosen:

This is a final response to your Freedom of Information Act (FOIA) request dated March 9, 2023, received in our office on March 9, 2023.

You requested copies of all records in the possession, custody, or control of the Internal Revenue Service ("IRS") and the IRS Office of Chief Counsel relating to or referencing either of the following: (1) Technical Advice Memorandum 200438038 (release date Sep. 17, 2004) and (2) Private Letter Ruling 200823012 (release date June 6, 2008) (collectively, the "IRS Determinations").

We have routine agency procedure to request documents related to a written determination file available under Internal Revenue Code (IRC) Section 6110. This procedure is outlined in Revenue Procedure 2012-31. 26 CFR 601.702(d) provides that requests for records processed in accordance with routine agency procedures are specifically excluded from the processing requirements of FOIA.

You may find a copy of Revenue Procedure 2012-31 on irs.gov at: https://www.irs.gov/irb/2012-33_IRB#RP-2012-31

This sets forth instructions to submit a request for documents related to a written determination file available under IRC 6110. For more information about this, you may contact Chief Counsel at 202-317-6840.

If you have questions regarding the processing of your FOIA request, please contact the caseworker assigned to your case at the phone number listed at the top of this letter.

If you are not able to resolve any concerns you may have regarding our response with the caseworker, you have the right to seek dispute resolution services by contacting our FOIA Public Liaisons at 312-292-3297. The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency, and assisting in the resolution of disputes with respect to the FOIA.

There is no provision for the FOIA Public Liaison to address non-FOIA concerns such as return filing and other tax-related matters or personnel matters. If you need assistance with tax-related issues, you may call the IRS at 800-829-1040.

Sincerely,

A handwritten signature in black ink that reads "D. Fitti-Hafer". The signature is written in a cursive style with a small initial "D" at the beginning.

Deanna Fitti-Hafer
Disclosure Manager
Disclosure Office 13

Exhibit VI



Baker & McKenzie LLP

452 Fifth Avenue
New York, NY 10018
United States

Tel: +1 212 626 4100
Fax: +1 212 310 1600
www.bakermckenzie.com

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Ho Chi Minh City
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Taipei
Tokyo
Yangon

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& Africa**

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Dubai
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Palo Alto
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Rio de Janeiro**
San Francisco
Santiago
Sao Paulo**
Tijuana
Toronto
Valencia
Washington, DC

* Associated Firm
** In cooperation with
Trench, Rossi e Watanabe
Advogados

August 8, 2023

VIA EMAIL

Gail Minauro

Tax Law Specialist

Department of the Treasury

Privacy, Governmental Liaison and Disclosure

GLDS Support Services - Disclosure Office 13

Stop 93A

P.O. Box 621506

Atlanta, GA 30362

**Re: Freedom of Information Act Request, Dated March 9, 2023
Case Number 2023-10154**

Dear Ms. Minauro:

On July 28, 2023, we spoke regarding my Freedom of Information Act (“FOIA”) request, dated March 9, 2023 (Exhibit A), and your “final response” to that request, dated March 15, 2023 (Exhibit B). During that discussion, I explained that your final response misidentified the FOIA request as a narrow, “written determination file [request] . . . under Internal Revenue Code (IRC) Section 6110”, and that, as a result, the FOIA request should properly be processed. We then reviewed the FOIA request, which seeks records broader than those addressed under IRC Section 6110.

You indicated that you would relay our discussion to the IRS Office of Chief Counsel attorney that was assisting you on the case and respond to me either later that day or the following Monday (July 31, 2023).

As of the date of this letter, you have not responded. Please provide your response as soon as possible.

Sincerely,

Daniel A. Rosen

212 626 4272

Daniel.Rosen@bakermckenzie.com

Exhibit VII

Rosen, Daniel A.

From: Fitti-Hafer Deanna J <deanna.j.fittihafer@irs.gov>
Sent: Tuesday, August 8, 2023 12:47 PM
To: Rosen, Daniel A.
Cc: Sponheimer, Brendan; Minauro Gail L; McDade Bernard W
Subject: [EXTERNAL] RE: [EXT] FOIA Case No. 2023-10154

Mr. Rosen,

We read your request as seeking the background documents under 6110 for those written determinations. If you are seeking records other than the background file documents for those two written determinations, you may make a new FOIA request seeking documents other than the background file documents under 6110. As a note, you will receive a 6103 denial unless you provide proof that you are representing the taxpayers the written determinations concern. This is because all documents in preparation of the written determination other than those releasable under IRC 6110 are taxpayer return information and must be protected as such.

As a note, Gail Minauro's last day with my office is this Friday, so please direct further inquiries to myself or my Senior Disclosure Analyst, Bernard McDade.

Please let me know if you have any further questions.

Deanna J. Fitti-Hafer
Disclosure Manager
Disclosure Office 13
Privacy, Governmental Liaison and Disclosure
1111 Constitution Ave. NW, Room 7541-01
Washington, DC 20224
(202) 317-5143

From: Rosen, Daniel A. <Daniel.Rosen@bakermckenzie.com>
Sent: Tuesday, August 8, 2023 1:58 PM
To: Minauro Gail L <Gail.L.Minauro@irs.gov>
Cc: Sponheimer, Brendan <Brendan.Sponheimer@bakermckenzie.com>
Subject: [EXT] FOIA Case No. 2023-10154

Dear Gail,

I have attached a letter in connection with the above FOIA request. Please let me know if you have any questions.

Best regards,
Dan

Daniel A. Rosen
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
United States
Tel: +1 212 626 4100
Direct: +1 212 626 4272
Fax: +1 212 310 1672
Cell: +1 917 780 8042
daniel.rosen@bakermckenzie.com



This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Please visit www.bakermckenzie.com/disclaimers for other important information concerning this message.

Exhibit VIII

Rosen, Daniel A.

From: Rosen, Daniel A.
Sent: Thursday, August 10, 2023 8:15 AM
To: Fitti-Hafer Deanna J
Cc: Sponheimer, Brendan; Minauro Gail L; McDade Bernard W
Subject: RE: [EXT] FOIA Case No. 2023-10154

Ms. Fitti-Hafer,

Thank you for your response. The FOIA request at issue seeks records "relating to or referencing either of the following: (1) Technical Advice Memorandum 200438038 (release date Sep. 17, 2004) and (2) Private Letter Ruling 200823012 (release date June 6, 2008) (collectively, the "IRS Determinations")." That request includes, for example, intra-agency communications between IRS and IRS Office of Chief Counsel personnel, and after-release-date communications between IRS Chief Counsel personnel regarding written determinations.

Neither category (among others) are "background documents" under Section 6110 or the regulations promulgated thereunder:

- **Section 6110:** "The term 'background file document' with respect to a written determination includes the request for that written determination, any written material submitted in support of the request, and any communication (written or otherwise) between the Internal Revenue Service and persons outside the Internal Revenue Service in connection with such written determination (other than any communication between the Department of Justice and the Internal Revenue Service relating to a pending civil or criminal case or investigation) received before issuance of the written determination."
- **Treas. Reg. § 301.6110-2(g):**
 - (1) **General rule.** A "background file document" is—(i) The request for a written determination. (ii) Any written material submitted in support of such request by the person by whom or on whose behalf the request for a written determination is made, (iii) Any written communication, or memorandum of a meeting, telephone communication, or other contact, between employees of the Internal Revenue Service or Office of its Chief Counsel and persons outside the Internal Revenue Service in connection with such request or written determination which is received prior to the issuance (as such term is defined in paragraph (h) of this section) of the written determination, but not including communications described in paragraph (g)(2) of this section, and (iv) Any subsequent communication between the National Office and a district director concerning the factual circumstances underlying the request for a technical advice memorandum, or concerning a request by the district director for reconsideration by the National Office of a proposed technical advice memorandum.
 - (2) **Limitations.** Notwithstanding paragraph (g)(1) of this section, a "background file document" **shall not include** any— (i) Communication between the Department of Justice and the Internal Revenue Service or the Office of its Chief Counsel relating to any pending civil or criminal case or investigation, (ii) **Communication between Internal Revenue Service employees and employees of the Office of its Chief Counsel**, (iii) **Internal memorandum or attorney work product prepared by the Internal Revenue Service or Office of its Chief Counsel which relates to the development of the conclusion of the Internal Revenue Service in a written determination, including, with respect to a technical advice memorandum, the Transmittal Memorandum, as defined in § 601.105(b)(5)(vi)(c) of this chapter, (iv) Correspondence or any portion of correspondence between the Internal Revenue Service and any person relating solely to the making of or extent of deletions pursuant to section 6110(c), or a request pursuant to section 6110(g) (3) and (4) for postponement of the time at which a written determination is made open or subject to inspection, (v) Material relating to (A) a request for a ruling or determination letter that is withdrawn prior to issuance thereof or that the Internal Revenue Service declines to answer, (B) a request for technical advice that the National Office declines to answer, or (C) the appeal of a taxpayer from the decision of a district director not to seek technical advice, or (vi) Response to a request for technical advice which the district director declines to adopt, and the district director's request for reconsideration thereof.**

Accordingly, I ask you to reconsider your response and continue processing the FOIA request under statutory protocols.

Daniel A. Rosen

Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
United States
Tel: +1 212 626 4100
Direct: +1 212 626 4272
Fax: +1 212 310 1672
Cell: +1 917 780 8042
daniel.rosen@bakermckenzie.com



From: Fitti-Hafer Deanna J <deanna.j.fittahafer@irs.gov>
Sent: Tuesday, August 8, 2023 2:47 PM
To: Rosen, Daniel A. <Daniel.Rosen@bakermckenzie.com>
Cc: Sponheimer, Brendan <Brendan.Sponheimer@bakermckenzie.com>; Minauro Gail L <Gail.L.Minauro@irs.gov>; McDade Bernard W <Bernard.W.McDade@irs.gov>
Subject: [EXTERNAL] RE: [EXT] FOIA Case No. 2023-10154

Mr. Rosen,

We read your request as seeking the background documents under 6110 for those written determinations. If you are seeking records other than the background file documents for those two written determinations, you may make a new FOIA request seeking documents other than the background file documents under 6110. As a note, you will receive a 6103 denial unless you provide proof that you are representing the taxpayers the written determinations concern. This is because all documents in preparation of the written determination other than those releasable under IRC 6110 are taxpayer return information and must be protected as such.

As a note, Gail Minauro's last day with my office is this Friday, so please direct further inquiries to myself or my Senior Disclosure Analyst, Bernard McDade.

Please let me know if you have any further questions.

Deanna J. Fitti-Hafer
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Subject: [EXT] FOIA Case No. 2023-10154

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Best regards,
Dan

Daniel A. Rosen

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daniel.rosen@bakermckenzie.com



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Exhibit IX

Rosen, Daniel A.

From: Fitti-Hafer Deanna J <deanna.j.fittihafer@irs.gov>
Sent: Thursday, August 10, 2023 8:23 AM
To: Rosen, Daniel A.
Cc: Sponheimer, Brendan; Minauro Gail L; McDade Bernard W
Subject: [EXTERNAL] RE: [EXT] FOIA Case No. 2023-10154

Mr. Rosen,

The request has been closed and will not be reopened per my below email. Please resubmit your request and we will process it. As I said below, if you resubmit the same request below without proof of representation of the taxpayer at issue for the written determination you are requesting then you will be receiving a 6103 denial as the documents you are seeking are deemed taxpayer return documents.

Deanna J. Fitti-Hafer
Disclosure Manager
Disclosure Office 13
Privacy, Governmental Liaison and Disclosure
1111 Constitution Ave. NW, Room 7541-01
Washington, DC 20224
(202) 317-5143

From: Rosen, Daniel A. <Daniel.Rosen@bakermckenzie.com>
Sent: Thursday, August 10, 2023 10:15 AM
To: Fitti-Hafer Deanna J <deanna.j.fittihafer@irs.gov>
Cc: Sponheimer, Brendan <Brendan.Sponheimer@bakermckenzie.com>; Minauro Gail L <Gail.L.Minauro@irs.gov>; McDade Bernard W <Bernard.W.McDade@irs.gov>
Subject: RE: [EXT] FOIA Case No. 2023-10154

Ms. Fitti-Hafer,

Thank you for your response. The FOIA request at issue seeks records "relating to or referencing either of the following: (1) Technical Advice Memorandum 200438038 (release date Sep. 17, 2004) and (2) Private Letter Ruling 200823012 (release date June 6, 2008) (collectively, the "IRS Determinations")." That request includes, for example, intra-agency communications between IRS and IRS Office of Chief Counsel personnel, and after-release-date communications between IRS Chief Counsel personnel regarding written determinations.

Neither category (among others) are "background documents" under Section 6110 or the regulations promulgated thereunder:

- **Section 6110:** "The term 'background file document' with respect to a written determination includes the request for that written determination, any written material submitted in support of the request, and any communication (written or otherwise) between the Internal Revenue Service and persons outside the Internal Revenue Service in connection with such written determination (other than any communication between the Department of Justice and the Internal Revenue Service relating to a pending civil or criminal case or investigation) received before issuance of the written determination."
- **Treas. Reg. § 301.6110-2(g):**
 - (1) **General rule.** A "background file document" is—(i) The request for a written determination. (ii) Any written material submitted in support of such request by the person by whom or on whose behalf the request for a written determination is made, (iii) Any written communication, or memorandum of a meeting, telephone communication, or other contact, between employees of the Internal Revenue Service or Office of its Chief

Counsel and persons outside the Internal Revenue Service in connection with such request or written determination which is received prior to the issuance (as such term is defined in paragraph (h) of this section) of the written determination, but not including communications described in paragraph (g)(2) of this section, and (iv) Any subsequent communication between the National Office and a district director concerning the factual circumstances underlying the request for a technical advice memorandum, or concerning a request by the district director for reconsideration by the National Office of a proposed technical advice memorandum.

- (2) **Limitations.** Notwithstanding paragraph (g)(1) of this section, a “background file document” **shall not include** any— (i) Communication between the Department of Justice and the Internal Revenue Service or the Office of its Chief Counsel relating to any pending civil or criminal case or investigation, (ii) **Communication between Internal Revenue Service employees and employees of the Office of its Chief Counsel**, (iii) **Internal memorandum or attorney work product prepared by the Internal Revenue Service or Office of its Chief Counsel which relates to the development of the conclusion of the Internal Revenue Service in a written determination, including, with respect to a technical advice memorandum**, the Transmittal Memorandum, as defined in § 601.105(b)(5)(vi)(c) of this chapter, (iv) Correspondence or any portion of correspondence between the Internal Revenue Service and any person relating solely to the making of or extent of deletions pursuant to section 6110(c), or a request pursuant to section 6110(g) (3) and (4) for postponement of the time at which a written determination is made open or subject to inspection, (v) Material relating to (A) a request for a ruling or determination letter that is withdrawn prior to issuance thereof or that the Internal Revenue Service declines to answer, (B) a request for technical advice that the National Office declines to answer, or (C) the appeal of a taxpayer from the decision of a district director not to seek technical advice, or (vi) Response to a request for technical advice which the district director declines to adopt, and the district director’s request for reconsideration thereof.

Accordingly, I ask you to reconsider your response and continue processing the FOIA request under statutory protocols.

Daniel A. Rosen

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United States
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Fax: +1 212 310 1672
Cell: +1 917 780 8042
daniel.rosen@bakermckenzie.com



From: Fitti-Hafer Deanna J <deanna.j.fittihafer@irs.gov>
Sent: Tuesday, August 8, 2023 2:47 PM
To: Rosen, Daniel A. <Daniel.Rosen@bakermckenzie.com>
Cc: Sponheimer, Brendan <Brendan.Sponheimer@bakermckenzie.com>; Minauro Gail L <Gail.L.Minauro@irs.gov>; McDade Bernard W <Bernard.W.McDade@irs.gov>
Subject: [EXTERNAL] RE: [EXT] FOIA Case No. 2023-10154

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As a note, Gail Minauro’s last day with my office is this Friday, so please direct further inquiries to myself or my Senior Disclosure Analyst, Bernard McDade.

Please let me know if you have any further questions.

Deanna J. Fitti-Hafer
Disclosure Manager
Disclosure Office 13
Privacy, Governmental Liaison and Disclosure
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Best regards,
Dan

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New York, NY 10018
United States
Tel: +1 212 626 4100
Direct: +1 212 626 4272
Fax: +1 212 310 1672
Cell: +1 917 780 8042
daniel.rosen@bakermckenzie.com

**Baker
McKenzie.**

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Exhibit X



Baker & McKenzie LLP

452 Fifth Avenue
New York, NY 10018
United States

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Fax: +1 212 310 1600
www.bakermckenzie.com

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Palo Alto
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Rio de Janeiro**
San Francisco
Santiago
Sao Paulo**
Tijuana
Toronto
Valencia
Washington, DC

* Associated Firm
** In cooperation with
Trench, Rossi e Watanabe
Advogados

VIA FACSIMILE AND CERTIFIED MAIL

May 31, 2023

Internal Revenue Service
GLDS Support Services
Stop 93A
Post Office Box 621506
Atlanta, GA 30362

**Re: AbbVie Inc.
E.I. No. 32-0375147
Freedom of Information Act Request**

Dear Sir or Madam:

In accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, we request copies of certain records in the possession, custody, or control of the Internal Revenue Service (“IRS”), the IRS Independent Office of Appeals (“IRS Appeals”), and the IRS Office of Chief Counsel relating to or referencing the examination of AbbVie Inc. (“AbbVie”) for the taxable year ended December 31, 2014. Specifically, we request all records related to or referencing AbbVie’s terminated proposed combination with Shire plc (“Shire”) and AbbVie’s related \$1.635B break fee payment to Shire (collectively, the “Break Fee Issue”). This request includes, but is not limited to, the following:

1. All records related to or referencing the Break Fee Issue, including but not limited to the following items described in the Internal Revenue Manual:
 - a. Form 4318, Examination Workpapers Index, or Form 4318-OA, Examination Workpapers Index - Office Audit, and supporting records;
 - b. Form 4318-A, Continuation Sheet for Form 4318, Examination Workpapers Index, and supporting records;
 - c. Administrative and Issue Lead Sheets and Sub-Issue Lead Sheets, supporting workpapers, index systems, pro forma audits, and pro forma interviews;
 - d. Forms 9984, Examining Officer’s Activity Record;



- e. Automated workpapers and reports;
 - f. Forms 3198, Special Handling Notice;
 - g. Forms 3210, Document Transmittal;
 - h. Forms 5346, Examination Information Report;
 - i. Revenue Agent Reports (“RAR”)/Examination Reports;
 - j. Forms 4665, Report Transmittal;
 - k. Forms 3963, International Examiner’s Report; and
 - l. Special Agents’ Reports and Collateral Reports.
2. All communications related to or referencing the Break Fee Issue, including but not limited to any communications involving:
- a. Helen Hubbard (IRS Office of Chief Counsel);
 - b. Daniel Trevino (IRS Office of Chief Counsel);
 - c. Robert Martin (IRS Office of Chief Counsel);
 - d. Danielle Dold (IRS Office of Chief Counsel);
 - e. Tess deLiefde (IRS Counsel);
 - f. Donald Fields (IRS Appeals);
 - g. Nickolas Head (IRS);
 - h. John Stance (IRS);
 - i. Nancie Li (IRS);
 - j. Ismael Carreno (IRS);



- k. Nicholas Amatangelo (IRS);
- l. J. Timothy Cromley (IRS);
- m. Linda Koblarczyk (IRS);
- n. Steven Dybas (IRS);
- o. Michael Pisano (IRS);
- p. James Barrett (IRS);
- q. Chris Trivelas (IRS);
- r. Greg Shelton (IRS);
- s. James Johnson (IRS);
- t. Scott Brady (IRS);
- u. Richard Brooks (IRS);
- v. Shah Mobed (IRS);
- w. Deanna Tenovsky (IRS);
- x. Kevin Roust (IRS);
- y. Mark Klym (IRS);
- z. Tenesha Jones (IRS);
- aa. Matthew Terlouw (IRS);
- bb. Neal Connelley (IRS);
- cc. Carl Doerfler (IRS);
- dd. Peter Clark (IRS);



- ee. Joseph Sclafani (IRS);
 - ff. Donald Mallow (IRS);
 - gg. Elizabeth McHugh (IRS);
 - hh. Li Pan (IRS);
 - ii. Elizabeth Patrun (IRS);
 - jj. David McConnell (IRS);
 - kk. Junaid Manjra (IRS);
 - ll. Thomas Kramer (IRS);
 - mm. Nelofar Ali (IRS); and
 - nn. Allen Mina (IRS).
3. All records constituting the IRS Office of Chief Counsel’s legal files related to or referencing the Break Fee Issue.
 4. All records related to or referencing the retention of, and work performed by any outside experts regarding, referring, or in any way related to the Break Fee Issue.
 5. To the extent not covered by the categories of records listed above, all records contained in any IRS, IRS Appeals, or IRS Office of Chief Counsel administrative, legal or other files, or otherwise maintained by the IRS, IRS Appeals, or IRS Office of Chief Counsel, regarding, referring, or related to the Break Fee Issue.

For purposes of this request, the terms “record” and “records” are used expansively and include, by way of illustration and without limitation, all agreements, contracts, communications, letters, reports, analyses, memoranda, e-mails (and attachments), instant messages, transcripts, minutes, notes, bulletins, worksheets, schedules, notebooks, drawings, photographs, drafts, diaries, calendars, workpapers, contracts, purchase orders, telecopies, telexes, or any information stored on optical disc,



magnetic tape, microfilm or microfiche, or computer memory storage device. These terms also refer to all drafts or prior versions of records responsive to this request. All requests for records set forth herein are for records in their native electronic format, where applicable.

If it is determined that records, or any portions thereof, will not be disclosed, please provide us with the non-exempt records and with the non-exempt portions of the remaining records. In the event an exemption is claimed, please provide us with all segregable non-exempt portions of any withheld records pursuant to 5 U.S.C. § 552(b). When material is to be redacted, please “black out” rather than “white out” or “cut out” any portions for which an exemption is claimed.

If records responsive to this request have been destroyed, please identify the records destroyed, the date of destruction, and the person who destroyed the records.

Pursuant to 5 U.S.C. §§ 552(a)(6)(A)(i) and 552(b), if this request is denied either in part or in whole, please provide us with an index that specifies which exemption(s) is (are) being claimed for each portion of each record withheld. Please provide a detailed description of each record withheld, including the author(s) and any recipients, the date of its creation, its subject matter, its family members (if any), and its current physical location. In addition, please provide the reason that each record falls within the exemption claimed for it. Please also specify the number of pages in each record and the total number of pages that are responsive to this request. Such an index is required to allow us to evaluate the IRS’s claims that these records are exempt from disclosure. *See, e.g., Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

In accordance with Treas. Reg. §§ 601.702(c)(4)(i)(H) and 601.702(f), we agree to pay reasonable charges incurred to search for and duplicate the requested records. Once the materials have been assembled, please advise the undersigned of the projected copying charges.

In accordance with Treas. Reg. §§ 601.702(c)(4)(i)(E) and 601.702(c)(5)(iii)(C), I establish my identity and right to access the requested records by the previously filed Power of Attorney and Declaration of Representative on Form 2848 executed by AbbVie, attached as Exhibit A. A copy of my State of New York driver’s license is attached for photo identification as Exhibit B. AbbVie authorizes you to send any of the above-mentioned records to and/or communicate with counsel below regarding this request:



Daniel A. Rosen
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
(212) 626-4272

In accordance with Treas. Reg. § 601.702(f)(3), AbbVie is a “commercial use requester” as defined in Treas. Reg. § 601.702(f)(3)(ii)(A). As set forth in 5 U.S.C. § 522(a)(6)(A)(i), 31 C.F.R. § 1.4, and Treas. Reg. § 601.702(c)(9)(ii), we would appreciate a response to this request within twenty (20) working days of its receipt.

Please send the requested records to the address set forth above. If you have any questions concerning this request or require further identifying information, please contact the undersigned at (212) 626-4272.

Thank you in advance for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel A. Rosen".

Daniel A. Rosen
Daniel.Rosen@bakermckenzie.com

Attachments: Exhibits A and B

EXHIBIT A

Form **2848**
 (Rev. January 2018)
 Department of the Treasury
 Internal Revenue Service

**Power of Attorney
 and Declaration of Representative**

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address AbbVie Inc. 1 N. Waukegan Road North Chicago, IL 60064		Taxpayer identification number(s) 32-0375147	
		Daytime telephone number	Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Daniel A. Rosen Baker & McKenzie, LLP 452 Fifth Avenue, New York, NY 10018	CAF No. 0310-99756R PTIN P01787930 Telephone No. 212-626-4272 Fax No. 212-310-1672
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Robert H. Albaral Baker & McKenzie, LLP 1900 North Pearl Street, Suite 1500, Dallas, TX 75201	CAF No. 03-0124252R PTIN P01250061 Telephone No. 214-978-3044 Fax No. 214-965-5962
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address George M. Clarke, III Baker & McKenzie, LLP 815 Connecticut Avenue NW, Washington, D.C. 20006	CAF No. P01464225 PTIN P01464225 Telephone No. 202-835-6124 Fax No. 202-416-7124
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Joy Williamson Baker & McKenzie, LLP 1900 North Pearl Street, Suite 1500, Dallas, TX 75201	CAF No. 0309-66134R PTIN P01615727 Telephone No. 214-965-7239 Fax No. 214-965-5905
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income	1120	2014

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific Use Not Recorded on CAF**

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

Access my IRS records via an Intermediate Service Provider;

Authorize disclosure to third parties; Substitute or add representative(s); Sign a return; _____

Other acts authorized: _____

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.
List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): _____

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

 05/18/22

Vice President, Tax
Title (if applicable)

Lindsey Bristow
Print Name

AbbVie Inc.
Print name of taxpayer from line 1 if other than individual

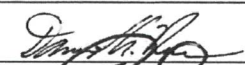



Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer’s immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). **See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
 - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation— Insert above letter (a-r).	Licensing jurisdiction (State) or other licensing authority (if applicable).	Bar, license, certification, registration, or enrollment number (if applicable).	Signature	Date
a	NY	2790442		5/18/2022
a	TX	00969175		5/18/2022
a	DC	480073		5/18/2022
a	TX	24088652		5/18/2022

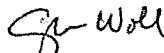

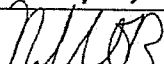
AbbVie Inc.
 No. 32-0375147
 Power of Attorney (Form 2848)
 Addendum (Page 1)

Part I: Box 2. Additional Representative(s)

Name and address Glenn Woll Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0306-21588R PTIN. P01231737 Telephone No. 212-891-3533 Fax No. 212-310-1633
Name and address Lucy J. Alberto Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0310-90938R PTIN. P01287347 Telephone No. 212-626-4954 Fax No. 212-310-1749
Name and address Nicholas O'Brien Baker & McKenzie LLP 452 Fifth Avenue New York, NY 10018	CAF. No. 0314-00281R PTIN. P02340059 Telephone No. 212-626-4946 Fax No. 212-310-1787

AbbVie Inc.
No. 32-0375147
Power of Attorney (Form 2848)
Addendum (Page 2)

Part II: Declaration of Representative

Designation	Jurisdiction	License	Signature	Date
a	NY	2928885		5/18/22
a	NY	4544649		5/18/22
a	NY	5748082		5/18/22

Form **2848**
 (Rev. January 2018)
 Department of the Treasury
 Internal Revenue Service

**Power of Attorney
 and Declaration of Representative**

OMB No. 1545-0150
For IRS Use Only
 Received by: _____
 Name _____
 Telephone _____
 Function _____
 Date / /

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address AbbVie Inc. 1 North Waukegan Road, Dept V367, Bldg AP 34-3N North Chicago, IL 60064		Taxpayer identification number(s) 32-0375147	
		Daytime telephone number 847-932-7000	Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Matthew Houchens 1 North Waukegan Road, Dept V367, Bldg AP 34-3N North Chicago, IL 60064	CAF No. 0300-71701R PTIN _____ Telephone No. 847-935-5793 Fax No. 847-936-3039
Check if to be sent copies of notices and communications <input checked="" type="checkbox"/>	Check if new: Address <input checked="" type="checkbox"/> Telephone No. <input checked="" type="checkbox"/> Fax No. <input checked="" type="checkbox"/>
Name and address	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
Check if to be sent copies of notices and communications <input type="checkbox"/>	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____
(Note: IRS sends notices and communications to only two representatives.)	Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income	1120	2014-2023
Excise/Withholding	720,1042	2014 - 2023
Employment/Civil Penalty	941,940, CP504	2014 - 2023

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Use Not Recorded on CAF

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):
 Access my IRS records via an Intermediate Service Provider;
 Authorize disclosure to third parties; Substitute or add representative(s); Sign a return; _____

 Other acts authorized: _____

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.

List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): Not authorized to sign any agreements, consents, or documents.

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.


Signature

11/9/2020
Date

Vice President, Tax and Treasury
Title (if applicable)

Scott T. Reents
Print Name

AbbVie Inc.
Print name of taxpayer from line 1 if other than individual

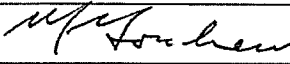
Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). **See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
 - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation— Insert above letter (a-r).	Licensing jurisdiction (State) or other licensing authority (if applicable).	Bar, license, certification, registration, or enrollment number (if applicable).	Signature	Date
a	IL	6243145		1/8/2020

Form **2848**
 (Rev. February 2020)
 Department of the Treasury
 Internal Revenue Service

Power of Attorney and Declaration of Representative

OMB No. 1545-0150

▶ Go to www.irs.gov/Form2848 for instructions and the latest information.

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address AbbVie Inc. 1 North Waukegan Road, Dept V367, Bldg AP 34-2 North Chicago, IL 60064	Taxpayer identification number(s) <p style="text-align: center;">32-0375147</p> Daytime telephone number <p style="text-align: center;">847-932-7900</p> Plan number (if applicable)
---	--

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address David L. Forst Fenwick & West LLP 801 California Street, Mountain View, CA 94041 Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. 0200-36623R PTIN _____ Telephone No. (650) 335-7254 Fax No. (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Michael D. Knobler Fenwick & West LLP 801 California Street, Mountain View, CA 94041 Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. 0312-49812R PTIN _____ Telephone No. (650) 335-7717 Fax No. (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Kristofer Hatch Fenwick & West LLP 801 California Street, Mountain View, CA 94041 (Note: IRS sends notices and communications to only two representatives.)	CAF No. NONE PTIN _____ Telephone No. (650) 335-7882 Fax No. (650) 938-5200 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address _____ (Note: IRS sends notices and communications to only two representatives.)	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)
Income - Appeals proceeding	1120	2014

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See Line 4. *Specific Use Not Recorded on CAF* in the instructions

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information): Access my IRS records via an Intermediate Service Provider; Authorize disclosure to third parties; Substitute or add representative(s); Sign a return; _____

Other acts authorized: _____

b Specific acts not authorized. My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.

List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): _____

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative (or designated individual, if applicable), executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

Lindsey Bristow _____ 9/14/2020 _____ Vice President, Tax _____
 Signature Date Title (if applicable)

Lindsey Bristow _____
 Print name Print name of taxpayer from line 1 if other than individual

Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the IRS per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the IRS is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). **See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.**
 - k Qualifying Student—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d–f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation— Insert above letter (a–r).	Licensing jurisdiction (State) or other licensing authority (if applicable)	Bar, license, certification, registration, or enrollment number (if applicable)	Signature	Date
a	CA	165385	<i>DSB</i>	9/10/2020
a	CA	287701	<i>MKK</i>	9/10/2020
a	CA	324078	<i>K. Hatel</i>	9/10/2020

EXHIBIT B

NEW YORK STATE

DRIVER LICENSE

USA

Mark JF. Schneider
Commissioner of Motor Vehicles

ENHANCED

ID **445 257 493**

Class **D**

ROSEN
DANIEL, ALLEN



Sex **M** Height **5'-06"** Eyes **BRO**

DOB **03/04/1969**

Expires **03/04/2029**

E **NONE**

R **B**

Issued **02/24/2021**

Daniel Rosen

MAR 69



Exhibit XI

INTERNAL REVENUE SERVICE



FAX TRANSMISSION
Cover Sheet

Date: July 10, 2023

To: Daniel Rosen

Address/Organization: _____

Fax Number: (212) 310-1672 Office Number: _____

From: E. Carolina Michel-Franco

Address/Organization: _____

Fax Number: _____ Office Number: _____

Number of pages: *Including cover page*

Subject: FOIA extension - 2023-15879

Very Respectfully,

E. Carolina Michel-Franco (She/Her)
Disclosure Specialist
Disclosure Office 8
Phone: 615-764-6177
E-Fax: 855- 203-7005
Mondays - Thursdays from 0600 - 1630 CST

This communication and any files transmitted with it are confidential and or privileged and intended solely for the use of the individual(s) to whom it is addressed and may contain information that is privileged,

This communication is intended for the sole use of the individual to whom it is addressed and may contain confidential information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited by the provisions of the Internal Revenue code. If you have received this communication in error, please contact the sender immediately by telephone. Thank you.

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confidential, and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient; you are hereby notified that any dissemination, distribution or reproduction of this communication is strictly prohibited.



**Department of the Treasury
Internal Revenue Service
Privacy, Governmental Liaison and
Disclosure
GLDS Support Services**

Stop 93A
PO Box 621506
Atlanta, GA 30362

Daniel Rosen
Attorney
Baker & McKenzie, LLP
452 Fifth Ave.
New York, NY 10018

Date:

June 29, 2023

Employee name:

William D Stone

Employee ID number:

1000335465

Telephone number:

662-570-6441

Fax number:

855-203-7005

Case number:

2023-15879

Re: AbbVie Inc.

Dear Daniel Rosen:

This is in response to your Freedom of Information Act (FOIA) request dated May 31, 2023, received in our office on May 31, 2023.

You asked for records “ in the possession, custody, or control of the Internal Revenue Service (“IRS”), The IRS Independent Office of Appeals (“IRS Appeals”), and the IRS Office of Chief Counsel” related to or referencing AbbVie’s terminated proposed combination with Shire plc (“Shire”) and AbbVie’s related \$1.63 B break fee payment to Shire (collectively, the “Break Fee Issue”).

I’m unable to provide the information you requested by June 29, 2023, which is the 20 business-day period required by law for us to respond.

In certain circumstances, the FOIA allows for an additional 10-day statutory extension. I need additional time to:

- Search for and, to the extent that records exist, collect requested records from other locations
- Review a large volume of records
- Consult with another agency and/or two or more Treasury components

As part of this extension, the statutory response date will be extended to July 14, 2023. Unfortunately, I will still be unable to respond to you by the extended statutory response date.

I expect to provide a final response to your request by November 22, 2023. You don’t need to reply to this letter if you agree to this extension. Please consider contacting me to arrange an alternative timeframe for processing the request or limiting the scope of your FOIA request, which may reduce the timeframe in processing your request.

Pursuant to 26 CFR § 601.702, there is no right to an administrative appeal for failure to meet the statutory 20 business-day, or additional 10 business-day, timeframes for response.

However, you do have the right to file suit for a judicial review. You can file suit after July 14, 2023. File your suit in the U.S. District Court:

- Where you reside or have your principal place of business,
- Where the records are located, or
- In the District of Columbia

Rule 4(i)(1)(C), of the Federal Rules of Civil Procedure, requires you to send the IRS a copy of the summons and complaint as well as to the Attorney General and the United States Attorney for the district in which the action is brought. You must send the IRS copies, by registered or certified mail, to:

Commissioner of Internal Revenue
Attention: CC: PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

Please be aware that extending the time for responding to your request will not delay or postpone any administrative, examination, investigation, or collection action.

I apologize for any inconvenience this delay may cause.

If you have questions regarding the processing of your FOIA request, please contact the caseworker assigned to your case at the phone number listed at the top of this letter.

If you are not able to resolve any concerns you may have regarding our response with the caseworker, you have the right to seek dispute resolution services by contacting our FOIA Public Liaisons at 312-292-3297. The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency, and assisting in the resolution of disputes with respect to the FOIA.

There is no provision for the FOIA Public Liaison to address non-FOIA concerns such as return filing and other tax-related matters or personnel matters. If you need assistance with tax-related issues, you may call the IRS at 800-829-1040.

You also have the right to contact the Office of Government Information Services (OGIS). The Office of Government Information Services, the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS

College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,

A handwritten signature in black ink, appearing to read 'JGA', written in a cursive style.

Jason Angelotti
Disclosure Manager
Disclosure Office 08