



May 30, 2008

VIA ELECTRONIC DELIVERY

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2008-47)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Recommendations for Treasury and IRS 2008-2009 Guidance Priority List
under Notice 2008-47

Dear IRS Chief Counsel:

On behalf of the Biotechnology Industry Organization ("BIO"), we request that Treasury and the IRS include on its 2008-2009 Guidance Priority List two positions taken by the IRS in a "Coordinated Issue Paper" (the "CIP") addressing the tax treatment of upfront, milestone, and royalty payments pursuant to collaboration agreements (LMSB-04-1007-073).

BIO recommends the inclusion of a project in your Guidance Plan Priority List providing guidance regarding the proper tax treatment of contingent sales based royalty payments in a collaboration agreement. We believe that the CIP is incorrect in concluding that contingent sales based royalties paid or incurred under a collaboration agreement are capitalizable under IRC section 263A and urge further consideration of this issue from a tax policy perspective. A taxpayer's adoption of the simplified production method that was designed to provide administrative relief to both taxpayers and the government should not result in the disparate treatment of these royalties as compared to the utilization of a facts and circumstances capitalization approach under Section 263A.

Moreover, as part of such a guidance project, BIO urges Treasury and the IRS to add guidance on whether the receipt of nonrefundable upfront fees, technology access

fees, and milestone payments could be deferred over a longer period of time than currently allowed under the existing Revenue Procedure. Rev. Proc. 2004-34 currently allows taxpayers that receive payments for the license of intellectual property to elect to recognize an amount into taxable income in the year of receipt that is equivalent to the amount recognized for financial statement purposes. The balance of the amount is required to be recognized in the subsequent year. This mis-match of income and the resulting future R&D expenses may result in significant tax obligations in one year without the ability to offset the deductions that are funded by these license payments.

BIO believes that Rev. Proc. 2004-34 could be modified to permit deferral of such amounts on the same basis as recognized under Generally Accepted Accounting Principles (GAAP) for financial statement purposes. Such a modification would better match the tax treatment to the payor side of the transaction, better conform to book treatment of such fees and payments, and result in a more rationale tax policy result.

Thank you in advance for your consideration of this request and we look forward to continuing to work with Treasury and the IRS on tax issues of importance to the biotechnology industry. Should you have any questions regarding the foregoing, please do not hesitate to contact Paul Poteet, Director for Federal Government Relations, or Shelly Mui-Lipnik, Director for Capital Formation and Financial Services Policy, at (202) 962-9200.

Sincerely

/s/

Alan F. Eisenberg
Executive Vice President
Emerging Companies and Business Development
Biotechnology Industry Organization (BIO)