

Office of Chief Counsel  
Internal Revenue Service

# memorandum

CC:FIP:B4:PRENO-112442-05  
JEGlover

date:

to: Manager, Technical Guidance & Quality Assurance  
SE:T:EO:RA:G

from: Donald J. Drees, Jr.  
Sr. Tech. Reviewer  
CC:FIP:B4

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subject: **Request for Technical Assistance**  
**Taxpayer:** [REDACTED]

In connection with your evaluation whether for the taxable year [REDACTED] Taxpayer was an organization described by § 501(c)(15) of the Internal Revenue Code, you asked our assistance on the question whether Taxpayer qualified as an insurance company for that year. Supplied with your request is the Form 886-A prepared by the examination team. [REDACTED]

1. that the "insurance contracts" Taxpayer claimed to have issued were likely not in force during [REDACTED]; regardless, the contracts did not constitute insurance;

2. that Taxpayer had no premium income during [REDACTED], hence it earned a substantial amount of its income from investment activities;

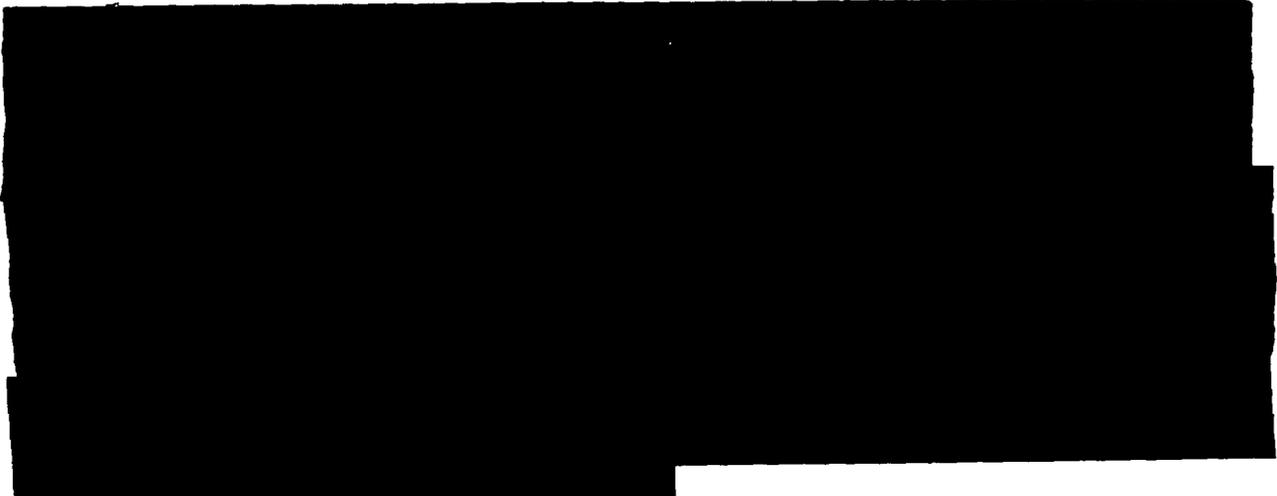
3. that Taxpayer failed to use its capital and efforts primarily to earn income from insurance activities as evidenced by its overcapitalization, lack of marketing activity, failure to utilize actuarial methodology, absence of claims, and informality of conduct.

[REDACTED] we have some comments on the underlying conclusions.

1. Taxpayer may be able to demonstrate that the contracts were in force during [REDACTED]. The copy of the contracts provided to us includes a signed declarations page dated [REDACTED]. Additionally, assuming [REDACTED] law is applied to interpret the contracts, Taxpayer may be able to show that such law would recognize the contracts.

PMTA: 01393

With respect to the contracts' qualification as insurance, we caution against asserting that risk-shifting is not present. Under Rev. Rul. 2002-90, 2002-2 C.B. 985, an insurance risk can be shifted between commonly-owned entities.



In general, we concur with the conclusion that the contracts do not constitute insurance for federal income tax purposes.

2. In keeping with the conclusion that the contracts do not constitute insurance for federal income tax purposes, we concur with your conclusion that Taxpayer did not receive *premium* income during [REDACTED]. Our jurisdiction is limited to issues affecting insurance; we offer no opinion whether this conclusion means that the amounts applied as a credit against outstanding Taxpayer's debt should not be viewed as *income* during [REDACTED].

3. [REDACTED] conclusion that Taxpayer did not use its capital and efforts primarily to earn income from insurance activities during [REDACTED].



We offer no comment on the questions of § 7805(b) relief or unrelated business income because these matters are not within our jurisdiction.

If you have any questions or wish to discuss this further, please contact John Glover at (202) 622-7442.