

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: , Team Manager, LB&I:
, Revenue Agent, LB&I:

from: , Associate Area Counsel (LB&I)
, Attorney (LB & I)

subject: – Sec. 172(f)(1) Rebuttal

DISCLOSURE STATEMENT

This writing may contain privileged information or attorney work product. Any unauthorized disclosure of this writing may have an adverse effect on our ability to protect the protected information. If disclosure is determined to be necessary, please contact this office for our views.

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

ISSUES

1. Whether the Taxpayer should prevail on its argument that the legal fees it incurred in contesting or investigating workers compensation claims and other expenses not deducted from applicants' indemnity benefits were required to be paid under state workers compensation acts and, accordingly, qualify as specified liability losses ("SLL") under I.R.C. § 172(f).
2. Whether the Taxpayer should be allowed to treat both legal fees incurred in contesting or investigating workers compensation claims and other expenses not deducted from applicants' indemnity benefits as SLL, so that the Taxpayer will be on an "equal footing" with employers who purchase workers compensation insurance policies which cover administrative costs?

CONCLUSIONS

1. No, the Taxpayer has not established that: (1) the provisions of the state workers compensation acts on which it relies required the Taxpayer to pay the legal fees incurred in contesting or investigating workers compensation claims and the other expenses not deducted from the applicants' indemnity benefits; and (2) the Taxpayer has not established that the acts (or failures to act) giving rise to such legal fees and expenses occurred at least three years before the beginning of the taxable year as required by section 172(f)(1)(B)(ii)(I) ("the three-year rule").

2. No, premiums paid to purchase workers compensation insurance, which covers administrative costs, normally do not qualify as SLL, so it is not necessary to treat the legal fees and other expenses incurred by the Taxpayer as SLL to place it on an "equal footing" with employers who purchase workers compensation insurance.

FACTS¹

The Taxpayer was the largest producer in the United States. The Taxpayer's principal manufacturing activities at one time were conducted within the United States and, in Canada. In addition, the Taxpayer operated supply companies which produced components for its primary manufacturing operations, while also generating outside sales.

, the Taxpayer filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. , a plan of liquidation was confirmed by the bankruptcy court. As part of the plan of liquidation, the Taxpayer and its subsidiaries were dissolved, and their rights, assets and obligations were transferred to the ("Trust"). The order also appointed , to act as the trustee of Trust.

The Taxpayer is self-insured for workers compensation. The Taxpayer uses the accrual method of accounting.

Workers compensation acts provide two general categories of benefits for applicants: indemnity benefits and medical benefits. Medical benefits cover medical care and medical treatments, including any required surgery. Indemnity benefits compensate for the applicants' loss of wages and also provide benefits for disability.

¹ Our understanding of the facts of this case is limited to the information that you have provided 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 you should contact our office immediately.

For the tax year ended (“ ”), the Taxpayer sustained a net operating loss (“NOL”) in the amount of \$. Of this amount, the Taxpayer claims \$ may be carried back from to the taxable year ended , under section 172(b)(1)(C) as a SLL. The purported SLL is composed of deductions for product liability losses and deductions for workers compensation benefits and costs associated with workers compensation claims. The costs associated with the workers compensation claims pertain to workers compensation cases in the states of California, Oregon, and Washington.

The Internal Revenue Service (“Service”) issued a Notice of Proposed Adjustment (“NOPA”) to the Taxpayer for in which it has proposed, inter alia, to disallow SLL treatment for the following amounts: (1) deductions in the aggregate amount of \$ for payments made by the Taxpayer for legal fees incurred in contesting or investigating workers compensation claims; and (2) certain payments made by the Taxpayer for expenses in the aggregate amount of \$ that were neither payments for legal fees incurred by the Taxpayer in contesting or investigating workers compensation claims nor payments for expenses deducted from the applicants’ indemnity benefits. Exhibits A and B provide details concerning the legal fees and other expenses, respectively, that were paid by the Taxpayer for which the Service has proposed to disallow SLL treatment.

The payments for which the Service proposed to disallow SLL treatment were not made for administrative or legal fees paid or assumed by California’s Self-Insurer’s Security Fund.

The only expenses which the Service has determined fail to qualify as SLL for any workers compensation cases to which the laws of Oregon apply are “Defense Counsel” fees and “allocated other” expenses. (See Exhibits A and B attached.)

The expenses which the Service has determined fail to qualify as SLL for any workers compensation case to which the laws of Washington State apply were paid by the Taxpayer and were not incurred for any attorney’s fees.² (See Exhibits A and B attached.) Such expenses were not incurred as a result of a default by the Taxpayer on its obligations under Washington’s workers compensation act.

The Taxpayer has not established that the acts or failures to act giving rise to any of the legal fee liabilities or other expense liabilities in question satisfy the three-year rule.

The Taxpayer has responded to the NOPA. You have asked whether any of the “Taxpayer’s Arguments” affect the advice that we rendered on . The “Taxpayer’s Arguments” are set forth below.

² They were paid for “Copy Medical Records,” “Bill Review Fees - Allocated” and other expenses of an unidentified type.

Taxpayer's Arguments

- (1) The Taxpayer argues that the legal fees and related costs it incurred in contesting or investigating workers' compensation claims were required to be paid by state workers compensation laws and, accordingly, they may be treated as SLL.

The Taxpayer argues that the workers compensation laws of California, Oregon, and Washington required the Taxpayer to pay the attorney fees and legal costs that it incurred and paid that were associated with the workers compensation claims. Specifically, the Taxpayer states:

In California, a self-insured employer is required by law to make a security deposit with the state each year to secure liabilities incurred for the payment of workers compensation obligations created by the state workers compensation law. *Cal. Labor Code § 3701, par. (a)*. Those liabilities include the compensation paid to claimants as well as claims administration costs, including legal costs. *Cal. Labor Code § 3700.1, par. (e)*. Subsequently, the state returns any security amount to the employer that will not be required for the payment of future claims or administrative costs, including legal fees. *Cal. Labor Code § 3701.3*. In other words, self-insured employers are required by law to pay legal costs related to workers compensation claims.

Similar to California, the state of Washington requires self-insurers to post security. The state keeps all amounts that will be needed for workers compensation claims and for administrative costs, including legal fees. *R.C.W. § 51.14.060, par. (2)*. In Oregon, a self-insured employer is required to pay the attorney fees for hearings, reviews and appeals when a claim is not required to be disallowed or reduced. *O.R.S. § 656.382, par. (2)*. Other states have similar statutes.

- (2) The Taxpayer also argues that the other expenses paid by the Taxpayer were required to be paid by state workers compensation laws and, accordingly, they may be treated as SLL

The Taxpayer argues that the workers compensation laws of California, Oregon, and Washington required the Taxpayer to pay the case management fees, bill review fees, and other administrative costs associated with workers compensation claims. Specifically, the Taxpayer states:

In California, a self-insured employer is required by law to make a security deposit with the state each year to secure liabilities incurred for the payment of workers compensation obligations created by the state

workers compensation law. *Cal. Labor Code § 3701, par. (a)*. Those liabilities include the compensation paid to claimants as well as claims administration costs. *Cal. Labor Code § 3700.1, par. (e)*.

Subsequently, the state returns any security amount to the employer that will not be required for the payment of future claims or administrative costs. *Cal. Labor Code § 3701.3*. In other words, self-insured employers are required by law to pay administrative costs related to workers compensation claims.

Similar to California, the state of Washington requires self-insurers to post security. The state keeps all amounts that will be needed for workers compensation claims and for administrative costs. *R.C.W. § 51.14.060, par. (2)*. In Oregon, the expense of processing claims, as well as the cost of compensating workers, is the responsibility of the self-insured employer. *O.R.S. § 656.262, par. (1)*. Other states have similar statutes.

- (3) The Taxpayer argues that treating the legal fees and administrative costs as SLL would place self-insured employers, such as itself, on “equal footing” with employers who purchase workers compensation insurance.

The Taxpayer’s argument rests on the premises that: (1) workers compensation insurance premium payments clearly satisfy the requirements of section 172(f); and (2) such payments are sufficient to cover not only compensation to claimants, but also administrative costs, including attorneys’ fees. The Taxpayer’s argument is that under the rationale of the Third Circuit Court of Appeals in In re Harvard Industries, Inc., 568 F.3d 444 (3rd Cir. 2009), the attorneys’ fees and administrative costs paid by a self-insured employer, which are covered by premiums paid by employers who purchase workers compensation insurance, should be treated as SLL .

Specifically, the Taxpayer relies on the following analysis In re Harvard Industries, Inc.:

No insurance company would survive for long without covering its administrative costs. Those costs allow it to process and pay the claims that are the very purpose of purchasing an insurance policy. We see no justification in law or policy to allow these deductions for the actuarially derived cost of premiums and disallow the administrative costs attendant to every insurance policy merely because those costs are assessed and billed as they were here.

568 F.3d at 457.

LAW

Section 172(f)

Section 172(a) allows as a deduction for a taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year.

Section 172(c) defines the term “net operating loss” as the excess of the deductions allowed by Chapter 1 of the Internal Revenue Code (“the Code”) over the gross income.

Section 172(b)(1)(A) provides that, generally, a net operating loss for any taxable year is carried back to each of the 2 taxable years preceding the taxable year of such loss and carried forward to each of the 20 taxable years following the year of the loss.

Under section 172(b)(1)(C), in the case of a taxpayer that has a specified liability loss (as defined in section 172(f)) for a taxable year, the specified liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss.

Section 172(f) defines a specified liability loss as the sum of certain deductions to the extent taken into account in computing the net operating loss for the taxable year. In addition to deductions associated with product liability, these deductions include any amount allowable as a deduction under Chapter 1 of the Code (other than under I.R.C. § 468(a)(1) or 468A(a)) which is in satisfaction of a liability under a Federal or State law requiring—

- (I) the reclamation of land,
- (II) the decommissioning of a nuclear power plant (or any unit thereof),
- (III) the dismantlement of a drilling platform,
- (IV) the remediation of environmental contamination, or
- (V) a payment under any workers compensation act (within the meaning of I.R.C. § 461(h)(2)(C)(i)).

Section 172(f)(1)(B)(ii) provides that a liability shall be taken into account under section 172(f)(1)(B) only if (I) the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, and (II) the taxpayer used an accrual method of accounting throughout the period or periods during which such act (or failure to act) occurred.

Section 172(f)(2) provides that the amount of the specified liability loss for any taxable year shall not exceed the amount of the net operating loss for such taxable year.

Deductions allowed for liabilities for premiums for workers compensation insurance do not generally qualify as SLL because they do not satisfy the three-year rule.

State Laws Relied on by the Taxpayer

California

An employer who chooses to self-insure its workers compensation liability under California's workers compensation act must secure a certificate of consent to self-insure from the Director of Industrial Relations ("DIR"). Cal. Lab. Code § 3700(b) (West 2011).

A private self-insuring employer must secure incurred liabilities for the payment of compensation and the performance of obligations under Chapter 4 of Division 4 of the California Labor Code by a security deposit. Cal. Lab. Code § 3701(a) (West 2011). "The minimum deposit shall be 125 percent of the private self-insurer's estimated future liability for compensation to secure payment of compensation plus 10 percent of the private self-insurer's estimated future liability for compensation to secure payment of all administrative and legal costs relating to or arising from the employer's self-insuring." Cal. Lab. Code § 3701(b) (West 2011). As noted by the Taxpayer, the term "incurred liabilities for the payment of compensation" includes "an estimate of the amount necessary to provide for the administration of claims, including legal costs." Cal. Lab. Code § 3700.1(g) (West 2011). Thus, part of the security deposit secures administrative and legal costs. Self-Insured's Sec. Fund v. Gallagher Bassett Services, Inc., No. C 06-02828 JSW, 2007 WL 2990465 (N.D. Cal. 2007).

The DIR may only accept as security "cash, securities, surety bonds, or irrevocable letters of credit in any combination the [DIR] ... deems adequate security." Cal. Lab. Code § 3701(d) (West 2011). The DIR must return to a private self-insured employer all amounts that are not required to assure "the administration of the employer's self insuring, including legal fees." Cal. Lab. Code § 3701.3 (West 2011).

Cal. Lab. Code § 3744 (West 2011) provides that the Self-Insurer's Security Fund³ has the right and obligation to obtain from an insolvent self-insurer or an insolvent self-insurer's security deposit reimbursement for reasonable administrative and legal costs paid or assumed by the Self-Insurer's Security Fund. In addition, if the DIR determines that a self-insured employer has failed to pay workers' compensation as required, the security deposit must be utilized to administer and pay such workers' compensation obligations. Cal. Lab. Code § 3701.5(a) (West 2011).

³ Cal. Lab. Code § 3741(d) (West 2011) defines the term "Fund" as "the Self-Insurers' Security Fund established pursuant to Section 3742" for purposes of Cal. Lab. Code §§ 3740 – 3747.

Oregon

Or. Rev. Stat. 656.382(1) (2013) provides, in pertinent part, as follows:

If an ... self-insured employer refuses to pay compensation due under an order of an Administrative Law Judge, board or court, or otherwise unreasonably resists the payment of compensation, ..., the employer ... shall pay to the attorney of the claimant a reasonable attorney fee as provided in subsection (2) of this section....

Or. Rev. Stat. 656.382(2) (2013) provides:

If a request for hearing, request for review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court is initiated by an employer ... and the Administrative Law Judge, board or court finds that the compensation awarded to a claimant should not be disallowed or reduced ... the employer ... shall be required to pay to the attorney of the claimant a reasonable attorney fee in an amount set by the Administrative Law Judge, board or the court for legal representation by an attorney for the claimant at and prior to the hearing, review on appeal or cross-appeal.

Or. Rev. Stat. 656.262(1) (2013) provides, in pertinent part, that processing of claims and providing compensation for a worker shall be the responsibility of the insurer or self-insured employer.⁴

Washington

“Washington State has abolished workplace injury torts and established Title 51 RCW, the workers’ compensation statutes. RCW 51.04.010.” Tobin v. Dep’t of Labor & Indus., 239 P.3d 544, 546 (Wash. 2010).

Wash. Rev. Code § 51.14.020(1) (2013) provides that an employer may qualify as a self-insurer by establishing to the satisfaction of the Director of Labor and Industries (“Director”) that he or she has sufficient financial ability to make certain the prompt payment of all compensation under Title 51 of the Revised Code of Washington and all assessments which may become due from such employer.

Wash. Rev. Code § 51.14.020(2)(a) (2013) provides, in pertinent part, as follows;

⁴ The Taxpayer has not directed us to a definition of the term “processing of claims.” We have only been able to locate a definition for the term “process claims” in an Oregon workers compensation administrative rule. Specifically, Or. Admin. R. 436-050-0005(21) (2013) defines the term “process claims” as “the determination of compensability and management of compensation by an Oregon certified claims examiner.”

A self-insurer may be required by the [D]irector to supplement existing financial ability by depositing in an escrow account in a depository designated by the [D]irector, money and/or corporate or governmental securities approved by the [D]irector, or a surety bond written by any company admitted to transact surety business in this state, or provide an irrevocable letter of credit issued by a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington filed with the department. The money, securities, bond, or letter of credit shall be in an amount reasonably sufficient in the [D]irector's discretion to insure payment of reasonably foreseeable compensation and assessments but not less than the employer's normal expected annual claim liabilities and in no event less than one hundred thousand dollars.

If the Director is satisfied with the financial ability of the employer, the employer may qualify as self-insured without establishing an escrow account. Johnson v. Tradewell Stores, Inc., 630 P.2d 441, 446 (Wash. 1981).

Wash. Rev. Code § 51.14.060(2) (2013) provides, in pertinent part, as follows:

The [D]irector shall be authorized to fulfill the defaulting self-insured employer's obligations under this title from the defaulting self-insured employer's deposit or from other funds provided under this title for the satisfaction of claims against the defaulting self-insured employer. The defaulting self-insured employer is liable to and shall reimburse the [D]irector for the amounts necessary to fulfill the obligations of the defaulting self-insured employer that are in excess of the amounts received by the [D]irector from any bond filed, or securities or money deposited, by the defaulting self-insured employer The amounts to be reimbursed shall include all amounts paid or payable as compensation under this title together with administrative costs, including attorneys' fees,

Wash. Rev. Code § 51.52.120(1) (2013) limits attorney fees for representation of a worker or his or her beneficiary before the Department of Labor and Industries ("Department") to "thirty percent of the increase in the award secured by the attorney's services." Wash. Rev. Code § 51.52.120(2) (2013) discusses the award of attorney fees for workers or their beneficiaries who prevail before the Board of Industrial Insurance Appeals ("Board") (Singletary v. Manor Healthcare Corp., 271 P.3d 36, 363 (Wash. Ct. App. 2012)), and limits the fee to a reasonable amount fixed by the Board, taking into consideration the fees allowed for services before the Department. Wash. Rev. Code § 51.52.130 (2013) governs the award of attorney fees for workers or their beneficiaries who prevail before the superior or appellate court. Id.

Analysis of In re Harvard Industries, Inc.

In *In re Harvard Industries, Inc.*, 568 F.3d 444 (3rd Cir. 2009), the Third Circuit had to determine whether additional insurance premiums paid by an employer to cover the insurer's administrative costs qualified as SLL under section 172(f). The policies which the employer described as "retrospective insurance plans" had expired before the additional insurance premiums were paid. The bankruptcy court and district court had both concluded that retrospective premium adjustments were correctly treated as SLL. However, the bankruptcy court had excluded the portion of the retrospective premium adjustments charged to cover the insurer's administrative costs from the SLL, but the district court disagreed.

The Third Circuit affirmed the district court's ruling, thus treating the portion of the additional premium payments charged to cover administrative costs as SLL. The Third Circuit stated its rationale for affirming the district court on this issue as follows:

No insurance company would survive for long without covering its administrative costs. Those costs allow it to process and pay the claims that are the very purpose of purchasing an insurance policy. We see no justification in law or policy to allow these deductions for the actuarially derived cost of premiums and disallow the administrative costs attendant to every insurance policy merely because those costs are assessed and billed as they were here.

DISCUSSION AND ANALYSIS

State law

For the deductions for the legal fees and other expenses incurred by the Taxpayer to qualify as SLL, the Taxpayer must establish that:

- (1) the amounts allowable as deductions are in satisfaction of liabilities under a Federal or State law requiring a payment under a workers compensation act (within the meaning of section 461(h)(2)(C)(i)); and
- (2) the act (or failure to act) giving rise to such liability occurred at least 3 years before the beginning of California.

The requirement that self-insured employers secure with a deposit estimated future contingent liability for administrative costs and legal costs relating to, or arising from, self-insuring does not result in actual liabilities by a self-insured employer under California's workers compensation act. Accordingly, a security deposit made based on a future estimate of contingent liabilities is irrelevant in determining whether a taxpayer had allowable deductions that are in satisfaction of a liability under a Federal or State law requiring a payment under a workers compensation act.

In fact, a self-insured employer cannot make any payments out of the security deposit that it posts. It “loses all right, title, and interest in, and any right to control, all assets or obligations posted or left on deposit as security.” Cal. Lab. Code section 3701 (flush language) (West 2011). The deposit is posted as security to cover the obligations of the self-insured employer in the event of a default. In re Lorber Indus. of California, 564 F.3d 1098,1100 (9th Cir. 2009). If the self-insured employer defaults on its workers’ compensation obligations, it is the Self-Insurer’s Security Fund who can use the security deposit to pay the employer’s workers’ compensation obligations. See In re Lorber Industries, 564 F.3d at 1100; Cal. Lab. Code §§ 3701.5 and 3743.

The expenses relating to, or arising from, the California workers compensation cases for which the Service is proposing to disallow SLL treatment were paid by the Taxpayer. The payments were not, and could not have been, made out of the Taxpayer’s security deposit required to be posted by it as a self-insured employer. Specifically, the Taxpayer had not defaulted on its workers compensation obligations before the payments were made, so as to allow the Self-Insurer’s Security Fund to use the security deposit posted by the Taxpayer to pay its employer’s workers’ compensation obligations. Accordingly, the facts do not demonstrate that the provisions of California law relied on by the Taxpayer regarding the security deposit posted by a self-insured employer obligated the Taxpayer to pay the expenses for which SLL treatment is proposed to be disallowed and, therefore, the Taxpayer has not proved that any of the legal costs or other expenses allowable as deductions were in satisfaction of liabilities requiring a payment under California’s workers compensation act, as required by section 172(f)(1)(B)(i)(V) .

As a caveat, we note that this advisory opinion does not address whether any of the legal costs or other expenses would qualify as SLL, if the legal costs or other expenses were paid out of the security deposit that the Taxpayer, as a private self-insured employer, was required to post under California’s workers compensation act.

Oregon

The legal fees pertaining to Oregon workers compensation cases for which the Service has proposed to disallow SLL treatment were “Defense Counsel” fees – fees charged by the Taxpayer’s attorney. Thus, the Oregon workers compensation act provision which the Taxpayer has cited in support of its position that a self-insured employer must pay attorney fees is inapposite, since, when it applies, a self-insured employer is required to pay the claimant’s attorney fees, not fees charged by its own attorney.

Exhibit B does not indicate whether any of the other expenses pertaining to Oregon workers compensation cases were paid to satisfy the Taxpayer’s responsibility with respect to the “processing of claims.” See also footnote 4, regarding the meaning of “processing of claims.”

Based on the above, we conclude that the Taxpayer has not established that any of the legal fees and other expenses allowable as deductions were in satisfaction of liabilities requiring a payment under Oregon's workers compensation act, as required by section 172(f)(1)(B)(i)(V).

Washington

The expenses relating to, or arising from, Washington workers compensation cases for which the Service proposes to disallow SLL treatment were paid directly by the Taxpayer. The Taxpayer had not defaulted on its workers compensation obligations when the payments were made and, thus, the Director had not paid any amounts to fulfill any obligations of the Taxpayer. Accordingly, the facts do not demonstrate that the provisions of Washington law that the Taxpayer relies on which require the reimbursement of the Director for compensation, together with administrative fees, including attorney fees, by a defaulting self-employed insurer relate to the expenses paid by the Taxpayer. Therefore, the Taxpayer has not proved that any of the deductions proposed to be disallowed as SLL were in satisfaction of liabilities requiring a payment under Washington's workers compensation act, as required by section 172(f)(1)(B)(i)(V).

As a caveat, we note that this advisory opinion does not address whether any of the expenses allowable as deductions would qualify as SLL, if the expenses were paid out of the Taxpayer's deposit or other funds provided for the fulfillment of its obligations under Washington's workers compensation act in the event that the Taxpayer defaulted on such obligations.

Three-Year rule

Even if the Taxpayer established that any of the legal fees or other expenses for which the Service has proposed to disallow SLL treatment were paid in satisfaction of liabilities requiring a payment under a state workers compensation act, the Taxpayer would still be required to show: (1) which acts or failures to act established its legal liability to pay such expenses; and (2) that such acts or failures to act occurred at least 3 years before the beginning of . As the Ninth Circuit stated, "[i]t is, therefore, not simply an expense incurred with respect to an obligation under ... law but an act 'giving rise' to the liability that qualifies as a specified liability under the statute." Sealy Corp. v. Commissioner, 171 F.3d 655, 657 (9th Cir. 1999). Since the Taxpayer has not established that the acts or failures to act which gave rise to the liabilities for legal fees and other expenses occurred at least 3 years before the beginning of , the legal fees and other expense liabilities may not be treated as qualifying as SLL.

The Taxpayer's Argument Based on the Rationale of the Harvard Industries Case Rests on a Misunderstanding of the Treatment of Workers Compensation Insurance Premiums under Section 172(f)

The Taxpayer argues that it stands to reason that, as a self-insured employer, its payments for attorneys' fees and administrative costs should satisfy the requirements of section 172(f) for SLL, because the premiums paid by employers for workers compensation insurance clearly satisfy the requirements of section 172(f) for SLL, and those premiums cover administrative costs, including attorneys' fees.

Payments for premiums for workers compensation insurance normally do not qualify for section 172(f) SLL treatment, because the three-year rule is not satisfied. An argument may be made that there is an exception for experience-related premiums, such as those that were at issue in the In re Harvard Industries, Inc. case, which are retrospectively adjusted up or down based on the difference between the actual amount paid out on claims and actuarial assumptions of the amount of claims that would be paid. However, the Taxpayer's argument based on the rationale of the In re Harvard Industries, Inc. case should be rejected, since employers who purchase workers compensation insurance are not normally entitled to SLL treatment for the premiums. Please call attorney _____ at _____ if you have any questions regarding the foregoing, or if you need any further assistance.

EWAN D. PURKISS
Acting Area Counsel
(Communications, Technology & Media: Oakland)

By: /s/ _____

General Attorney (_____)
(Large Business & International)

Attachments (2)