

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

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Date:
June 16, 2010

TY:

LEGEND

Taxpayer =

LLC =

CPA =

Country A =

Date B =

Date C =

Date D =

Date E =

Date F =

Date G =

Year J =

Year K =

Individual M =

Individual N =

Dear :

This is in response to a letter received by our office on June 25, 2009, and supplemental correspondence dated August 28, 2009 and December 22, 2009, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to (1) make the election provided by section 953(d) of the Code to be treated as a domestic corporation for U.S. tax purposes commencing on the first day of Taxpayer's Year K tax year and (2) make the election provided by section 831(b) to be subject to the alternative tax for certain small insurance companies for Year K and all subsequent tax years.

The rulings contained in this letter are based upon the information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the factual information, representations, and other data submitted may be required as part of the audit process.

Taxpayer is a Country A corporation, formed on Date B to provide property and casualty insurance. LLC, a Delaware limited liability company, is the sole owner and manager of Taxpayer. LLC is owned 50% by Individual M and 50% by Individual N, both U.S. taxpayers.

Taxpayer's Year J federal information return and subsequent federal income tax returns were prepared by Taxpayer's tax advisor, CPA. Taxpayer filed a Form 990 on or about Date C for the Year J tax year because Taxpayer believed it qualified for exemption from tax under section 501(c)(15); however, Taxpayer never filed Form 1124 (application for tax-exempt status). In an affidavit, CPA represents that a copy of Taxpayer's section 953(d) election to be treated as a domestic corporation for U.S. tax purposes, effective as of the first day of Taxpayer's Year J tax year, was attached to its Year J return; however, he failed to separately file the election with the IRS Service Center in Plantation, FL in a timely manner, as required by Rev. Proc. 2003-47, 2003-2 C.B. 55. CPA filed the section 953(d) election on or about Date D; however, the election was rejected because it was not timely filed.

CPA also admits that he failed to file Taxpayer's Year K federal income tax return, to which another section 953(d) election, effective as of the first day of Taxpayer's Year J tax year, was attached. Taxpayer's Year K return, which was never filed, also contained an election to be subject to the alternative tax for small insurance companies, described in section 831(b), for the Year K tax year and all subsequent years.

CPA filed another section 953(d) election, effective as of the first day of Taxpayer's Year J tax year, on or about Date F; the election was again rejected because it was not timely filed. All of Taxpayer's subsequent federal income tax returns reflected, and were filed under the assumption, that section 953(d) and 831(b) elections

had been properly and timely made. In addition, Taxpayer's audited financial statements for the tax years ended Date E through Date G, prepared by CPA, erroneously stated that such elections were in effect.

An officer of Taxpayer has represented that Taxpayer (1) relied on a qualified tax professional who failed to properly and timely make the elections provided by sections 953(d) and 831(b), (2) intended at all times to make the elections, (3) believed that the elections had been properly and timely made, and (4) does not seek to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662.

The substantive and procedural rules for making a section 953(d) election are contained in Notice 89-79, 1989-2 C.B. 392, and Rev. Proc. 2003-47, 2003-2 C.B. 55, respectively. Section 4.04(2) of Rev. Proc. 2003-47 provides that, for a section 953(d) election to be effective for a taxable year, the original election statement must be filed by the due date prescribed in section 6072(b) (including extensions) for the U.S. income tax return (in this case, Form 1120PC) that is due if the election becomes effective. None of Taxpayer's attempts to make a section 953(d) election resulted in a timely election being made.

Generally, insurance companies other than life insurance companies are taxable under section 831(a) on their taxable income. However, certain eligible companies pay an alternative tax, provided in section 831(b), based only on their taxable investment income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by section 831(b) for the taxable year. The statute does not contain a due date. Treas. Reg. § 301.9100-8(a)(2) prescribes the time and manner for making the section 831(b) election; it provides that the election must be made by the due date (including extensions) of the tax return for the first taxable year for which the election is effective.

Treas. Reg. § 301.9100-8(a)(3) also provides that if the tax return has not been filed prior to making the election under section 831(b)(2)(A)(ii), the election must be made by attaching a statement to the tax return for the first taxable year for which the election is to be effective. If such tax return is filed prior to the making of the election, the statement must be attached to an amended tax return of the first taxable year for which the election is to be effective. Taxpayer's section 831(b) election was not timely made in accordance with these provisions. In any event, because Taxpayer's section 953(d) election to be taxed as a domestic corporation was rejected, Taxpayer was not entitled to make the section 831(b) election.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has the discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. § 301.9100-3, to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. §301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1) provides that, except as provided in Treas. Reg. § 301.9100-3(b)(3), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief before the failure to make the regulatory election is discovered by the IRS; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the IRS; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably or in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of Treas. Reg. § 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested, (ii) was informed in all material respects of the required election and related tax consequences but chose not to file the election, or (iii) uses hindsight in requesting relief.

Rev. Proc. 2003-47 fixes the time to make the section 953(d) election and Treas. Reg. § 301.9100-8(a)(2) fixes the time to make the section 831(b) election. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time to make the elections, provided that Taxpayer satisfies the standards set forth under Treas. Reg. § 301.9100-3(a).

Based solely on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3 with respect to the elections under sections 953(d) and 831(b). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 953(d), in accordance with the rules set forth in Notice 89-79 and Rev. Proc. 2003-47, to be treated as a domestic corporation for U.S. tax purposes effective for the tax year ended on

December 31, Year K. Further, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 831(b) for the tax year ended on December 31, Year K.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the elections under sections 953(d) or 831(b). Treas. Reg. § 301.9100-1(a).

Notwithstanding that an extension of time is granted under Treas. Reg. § 301.9100-3 to make the section 953(d) and section 831(b) elections, penalties and interest that would otherwise be applicable, if any, continue to apply with respect to the income tax return for the Year K tax year and subsequent tax years.

A copy of this ruling letter should be included with Taxpayer's section 953(d) and section 831(b) elections.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being sent to Taxpayer's authorized representative.

Sincerely,

Jeffery G. Mitchell
Senior Technical Reviewer, Branch 2
Office of the Associate Chief Counsel
(International)