

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201045009**
Release Date: 11/12/2010
Index Number: 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B04
PLR-109523-10
Date:
August 02, 2010

Taxpayer =

Former Parent =
State =
Parent =

Date 1 =
Date 2 =
Firm =
Director =
Professional =

Dear :

This is in response to the request dated February 26, 2010, that Parent submitted on Taxpayer's behalf for a ruling granting an extension of time for making an election under section 831(b) of the Internal Revenue Code. The request is made in accordance with and seeks relief pursuant to section 301.9100-3 of the Procedure and Administration Regulations.

FACTS:

Taxpayer represents as follows: Taxpayer is a property and casualty insurance provider registered in State. Parent files a consolidated federal income tax return, which includes Taxpayer's operations. Taxpayer is wholly-owned by Parent.

Prior to Date 1, Taxpayer was a member of a consolidated group of which Former Parent was the parent. On Date 1, Former Parent and an unrelated venture capital

group merged, creating Parent. Parent then became the parent of the consolidated group of which Taxpayer is a member. The merger caused Taxpayer to have a short fiscal year ending on Date 1.

Director is the individual primarily responsible for coordinating with Parent's and Taxpayer's outside tax advisors. The first time the Director became aware that Taxpayer was eligible to make the section 831(b) election was Date 2, when Professional at Firm informed Director that Taxpayer was eligible to make the election, but had never done so.

Taxpayer further represents that:

1. Taxpayer is requesting relief before the failure to make the election was discovered by the IRS;
2. Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662;
3. Taxpayer was not informed in all material respects of its qualification to make the election and the related tax consequences but chose not to file the election;
4. Taxpayer is not using hindsight in requesting relief, facts have not changed since the due date for making the election that make the election advantageous to the taxpayer; and
5. Granting Taxpayer's request to make the election will not prejudice the interests of the Government.
6. Taxpayer qualifies as an insurance company for federal income tax purposes

Taxpayer requests that it be granted an extension of time under section 301.9100-3 to make the election under section 831(b) of the Code to be taxable only on its investment income.

LAW:

Generally, insurance companies other than life insurance companies are taxable under section 831(a). However, an eligible company may pay an alternative tax provided in section 831(b) based on its taxable income investment income if it so elects. Section 831(b)(2)(A)(ii).

Section 831(b)(2)(A) does not contain a due date. The election under § 831(b)(2)(A) is listed in § 301.9100-8(a)(1) of the regulations as § 1010(f)(1) of the Technical and

Miscellaneous Act of 1988 and is available for taxable years beginning after December 31, 1986. Treas. Reg. § 301.9100-8(a)(2) prescribes the time and manner for making the election under § 831(b)(2)(A)(ii) of the Code. That section provides that the election must be made by the later of-

(A) the due date (taking into account any extensions of time to file, obtained by the taxpayer) of the tax return for the first taxable year for which the election was effective, or

(B) January 22, 1990.

Under section 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election or a statutory election (but not more than 6 months except in the case of a taxpayer who is abroad), under all the subtitles of the Code except subtitles E, G, H, and I. Section 831(b) is part of subtitle A.

Section 301.9100-2 provides an automatic extension of time for making certain elections and is inapplicable here.

Section 301.9100-3(a) provides, in pertinent part, that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 must be made under the rules of section 301.9100-3. Requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides the evidence 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 interest of the Government.

A taxpayer is deemed to have acted reasonably and in good faith under section 301.9100-3(b)(1) if the taxpayer: (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service; (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 upon the written advice of the Internal Revenue Service; 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.

Section 301.9100-3(b)(3), however, states that a taxpayer will be deemed not to have acted 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 § 1.6664-2(c)(3) of this chapter) 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. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c)(1) provides, in pertinent part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by granting the relief. The interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). The interests of the Government are also ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based solely upon the facts submitted and the representations made, Taxpayer is granted an extension of 60 days from the date of this letter to make the election allowed by section 831(b) on a return for the first open taxable year.

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; no opinion is expressed whether Taxpayer otherwise meets the requirements of section 831(b) and whether any additions to tax, interest, or other penalties apply.

This letter is based upon 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 so submitted and it is subject to verification on examination.

This ruling is directed only to Taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter should be attached to the tax return for the year for which the election is made.

Pursuant to a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representative.

Sincerely,

/S/

Donald J. Drees, Jr.
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Financial Institutions and Products)