

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:FIP:B04

PLR-131792-12

Date:

January 17, 2013

### Legend:

Taxpayer =

Year =

Date A =

Date B =

Foreign Country =

Trust =

Law Firm =

Accounting Firm =

Individual =

Date C =

Date D =

Date E =

Month A =

Dear \_\_\_\_\_ :

This is in response to a request submitted on behalf of Taxpayer for a ruling granting an extension of time for making the election under § 831(b) of the Internal Revenue Code pursuant to § 301.9100-3 of the Procedure and Administration Regulations, to be effective for Year.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

#### FACTS

Taxpayer represents that it was incorporated on Date A and licensed to issue various property and casualty insurance contracts on Date B under the laws of Foreign Country. Taxpayer represents that it qualifies as an insurance company for federal income tax purposes making it eligible to have the option to elect to be taxed pursuant to § 831(b). All of the stock of Taxpayer is owned by Trust, which is an irrevocable trust.

Law Firm was retained to provide legal counsel on the formation and operation of Taxpayer, while Accounting Firm, and specifically Individual, a certified public accountant, was retained to prepare Taxpayer's tax returns. On Date C, Law Firm filed a Foreign Insurance Company Election under Section 953(d) statement for Taxpayer.

On Date D, Law Firm sent a reminder memorandum to Accounting Firm regarding the time for requesting an extension of time for Taxpayer to file a Year income tax return. Due to an oversight, Accounting Firm did not timely request an extension. On Date E, Accounting Firm discovered the error and during Month A, Taxpayer filed a Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return, and this request for relief under § 301.9100-3.

Taxpayer represents that granting relief by the Internal Revenue Service will not result in a lower tax liability than Taxpayer would have had if the section 831(b) election was timely made.

#### LAW and ANALYSIS

Insurance companies other than life insurance companies are taxable under § 831. However, certain insurance companies can elect to pay an alternative tax provided in § 831(b) on only their taxable investment income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by § 831(b).

Pursuant to § 301.9100-8(a)(2)(i), this election must be made by the due date (taking into account any extensions of time to file obtained by the taxpayer) for the first taxable year for which the election is effective.

Under section 301.9100-1(c), the Commissioner may grant reasonable extension of time pursuant to sections 301.9100-2 and 301.9100-3 to make a regulatory election (but no more than 6 months except in the case when the taxpayer is abroad), under all subtitles of the Code except subtitles E, G, H and I. Section 831(b) is part of subtitle A.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 (automatic extension) must be made pursuant to section 301.9100-3. Under § 301.9100-3(a), relief 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 be prejudice the interests of the government.

Under § 301.9100-3(b)(1), a taxpayer is deemed to have acted reasonably and in good faith 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 on the 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.

Under § 301.9100-3(b)(2), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

Under § 301.9100-3(c)(1), the interests of the government are not prejudiced if the tax liability in the aggregate for all taxable years affected by the election will not be lower by granting the relief than if the election had been timely made (taking into account the time value of money).

Based solely on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-1 and 302.9100-3 have been satisfied. Taxpayer requested relief under these provisions before the failure to make the regulatory election was discovered by the Service, and Taxpayer reasonably relied on a qualified tax professional.

**RULING**

Taxpayer is granted an extension of time until 60 days following the date of this letter to make the election to be subject to the alternative tax provided in § 831(b)(2)(A) for Year.

#### CAVEATS

Notwithstanding that an extension of time is granted under § 301.9100-3 to make an election under § 831(b)(2)(A), additions, penalties and interest that would otherwise be applicable, if any, continue to apply with respect to the tax return for Year.

No ruling has been requested, and no opinion is expressed (or implied) whether Taxpayer is engaged in the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies; or whether Taxpayer qualifies as an insurance company under § 831(c) for Year. (See § 301.9100-1(a) which provides that the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the extension.)

A copy of this ruling letter should be attached with Taxpayer's federal income tax return.

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

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

Sincerely,

JOHN E. GLOVER  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Financial Institutions and Products)