

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:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B04
PLR-111980-14

Date:
August 27, 2014

Legend

Company =

County X =

Individual =

Law Firm =

CPA =

Manager =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date A =

Date B =

Date C =

Date D =

Date E =

Dear :

This is in response to a letter received by our office submitted on behalf of Company by its authorized representative, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations (1) to make the election under section 953(d) of the Internal Revenue Code (Code) to be treated as a domestic corporation for federal income tax purposes commencing on the first day of Company's taxable year for Year 1; and (2) to make the election provided by section 831(b) of the Code for the alternative tax for certain small insurance companies for Year 1.

The ruling contained in this letter is based upon information and representations submitted by Company 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

Company was formed under the laws of Country X on Date A of Year 1 and was issued its insurance license on Date B of Year 1. On Date C of Year 1 Company first issued directly written insurance policies. Company represents that it qualifies as a property and casualty insurance company under Part II of subchapter L for federal income tax purposes if it is treated as a domestic company. All of the stock of Company is owned by Individual who is Company's treasurer.

In the course of forming and initiating the operations of Company, it retained the services of Manager. The primary services provided by Manager included monitoring Company compliance with the Country X regulations, maintaining statutory insurance records for inspection by the Country X insurance regulators, ensuring due diligence records are accurate and up to date, and executing insurance contracts issued by Company. Manager's responsibilities did not include monitoring Company's compliance with federal income tax laws. That responsibility was borne by Company's law firm, Law Firm, and accountant, CPA.

Legal counsel for Company since inception has been Law Firm. CPA was Company's accountant from inception through the end of Year 3. Company engaged CPA to prepare Company's Form 1120-PC, *U.S. Property and Casualty Company Income Tax Return*, for Year 1. All other matters connected with Company's compliance with federal income tax laws, including the preparation of the section 953(d) election were the responsibility of Law Firm. Initially, it was anticipated that Company's section 953(d)

election would be prepared by Law Firm. However, in connection with the preparation of the initial Form 1120-PC for Year 1, CPA offered to prepare the section 953(d) election statement and the Law Firm agreed to let CPA do so.

The Year 1 Form 1120-PC was timely filed on Date D of Year 2. (Company represents that no income taxes are due for Year 1.) The elections under both section 953(d) and the section 831(b) were attached to Company's Form 1120-PC. However, the CPA did not mail the section 953(d) election to the specific Internal Revenue Service (Service) address required by Rev. Proc. 2003-47, 2003-2 C.B. 55. The error was discovered by Law Firm on or about Date E of Year 4 and within a reasonable time thereafter Company filed this request for relief.

LAW AND ANALYSIS

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 C.B. 55, respectively. These rules provide that the election must be filed by the due date prescribed in section 6072(b) (including extensions) for an income tax return that is due if the election becomes effective. Section 4.04(2), Rev. Proc. 2003-47. In addition, an electing corporation must use the calendar year as its annual accounting period for federal income tax purposes, unless it joins in the filing of a consolidated return and adopts the parent corporation's tax years. Section 1, Notice 89-79.

Insurance companies other than life insurance companies are taxable under section 831. However, certain insurance companies can elect to pay an alternative tax provided in section 831(b) on only their investment income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by section 831(b). Pursuant to section 301.9100-8(a)(1), this election must be made by the due date (taking into account any extension 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 a 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 or 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 section 301.9100-3(a), relief will be granted only 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 interests of the Government.

Under section 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 is discovered by the 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 written advice of the 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 section 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 a regulatory election or was not aware of all relevant facts.

Under section 301.9100-3(c)(1), 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 the granting of 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).

Based solely on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Company's section 953(d) election was not filed at the address specified in Rev. Proc. 2003-47 and accordingly is not considered timely. Company, through Individual, is deemed to have acted reasonably in good faith under section 301.9100-3(b) and the interests of the Government are not prejudiced under section 301.9100-3(c).

RULINGS

Company 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 federal income tax purposes effective for the tax year ending on Date C, Year 1. Further, Company 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 Date C, Year 1.

The granting of an extension of time is not a determination that Company is otherwise eligible to make the election under section 953(d) or section 831(b) (e.g., no opinion is express or implied as to whether Company is an insurance company for federal income tax purposes).

Notwithstanding that an extension of time is granted under section 301.9100-3 to make the elections under sections 953(d) and 831(b), penalties and interest that would otherwise be applicable, if any, continue to apply with respect to the income for the tax year ended on Date C, Year 1.

A copy of this letter should be associated with Company's sections 953(d) and 831(b) elections.

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.

No opinion has been requested and no opinion 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 is being furnished to your authorized representative.

Sincerely,

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