

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

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PLR-134547-14

Date:

May 19, 2015

In Re:

### LEGEND

Taxpayer =

Series =

State =

Individual =

Company =

ManagementCo =

CPAFirm1 =

CPAFirm2 =

Date1 =

Date2 =

TaxYear1 =

TaxYear2 =

TaxYear3 =

TaxYear4 =

Dear :

This is in reply to Taxpayer's request, pursuant to Treas. Reg. § 301.9100-3 of the Procedure and Administration Regulations, for an extension of time to make the election under § 831(b)(2)(A)(ii) of the Internal Revenue Code.

### FACTS

Taxpayer was formed on Date1, TaxYear1, as a series of a limited liability company, Series, under the limited liability company act of State and is licensed by State to issue property and casualty insurance contracts. Taxpayer was required to file a separate Federal income tax return in compliance with published guidance. Therefore, it must make its own tax elections.

Taxpayer was formed to provide insurance coverage to Company and other affiliated operating companies that are ultimately owned by Individual. ManagementCo, a third-party administrator, performed day-to-day administrative and operational functions.

Under the terms of the series agreement between Taxpayer and Series, Series was responsible for Taxpayer's compliance with "all applicable law and regulation." Series appointed CPAFirm1 as professional advisors. Taxpayer represents that Taxpayer believed that Series, CPAFirm1, or ManagementCo was responsible for ensuring compliance with Taxpayer's Federal income tax filing obligations. Taxpayer later engaged CPAFirm2 as an independent certified public accounting firm.

The due date for Taxpayer's Federal income tax return for TaxYear1 ("TY1 Return") was March 15, TaxYear2. On behalf of Taxpayer, none of Series, CPAFirm1, or ManagementCo filed either a Form 1120-PC, *U.S. Property and Casualty Insurance Company Tax Return*, or a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, on or prior to March 15, TaxYear2. Taxpayer represents that the TY1 Return was untimely filed on Date 2, TaxYear4.

The due date for Taxpayer's Federal income tax return for TaxYear2 ("TY2 Return") was March 15, TaxYear3. On behalf of Taxpayer, ManagementCo prepared and filed a timely Form 7004 for TaxYear2 on or prior to March 15, TaxYear3. Taxpayer represents that the TY2 Return was untimely filed on Date 2, TaxYear4.

The due date for Taxpayer's Federal income tax return for TaxYear3 ("TY3 Return") was March 15, TaxYear4. On behalf of Taxpayer, ManagementCo prepared and filed a

timely Form 7004 for TaxYear3 on or prior to March 15, TaxYear4. On extension, CPAFirm2 filed a timely TY3 Return on Date 2, TaxYear4.

Individual engaged CPAFirm2 with respect to its TY1 Return, TY2 Return, and TY3 Return. In June TaxYear 4, Taxpayer determined that no Form 7004 had been filed for TaxYear1 and that no TY1, TY2, or TY3 Returns had been filed on its behalf. CPAFirm2 prepared and filed the TY1, TY2, and TY3 Returns on Date 2, TaxYear4. Because the TY1, TY2, and TY3 Returns were filed after their due dates, Taxpayer could not make a § 831(b) election effective for TaxYear1, TaxYear2, or TaxYear3.

Taxpayer relied exclusively on Series, CPAFirm1, and ManagementCo to meet its Federal income tax filing obligations. Individual is not a tax expert and did not know that Taxpayer's TY1, TY2, and TY3 Returns were not filed. Therefore, Taxpayer requests the relief of an extension of time to file the election.

Taxpayer's failure to make the election has not been discovered by the Service.

Taxpayer represents that granting relief will not result in a lower tax liability than it would have paid had it filed the election timely.

#### REQUESTED RULING

Taxpayer requests a ruling under Treas. Reg. § 301.9100-3 granting it an extension of time to make the election provided by § 831(b)(2)(A)(ii) effective for TaxYear1 and subsequent taxable years.

#### LAW

In general, non-life insurance companies are subject to tax on their taxable income under § 831(a). However, § 831(b) provides certain small companies (i.e., companies, including members of their control groups, that do not have the greater of net written premiums or direct written premiums for the taxable year in excess of \$1,200,000) an election to be subject to tax on their taxable investment income only. The election applies to the taxable year for which the company made it and, as long as the company continues to qualify, for all subsequent taxable years unless revoked with the consent of the Secretary.

Under Treas. Reg. § 301.9100-1(c), the Commissioner may grant a reasonable extension of time (but no more than six months except in the case of a taxpayer who is abroad) under the rules set forth in Treas. Regs. §§ 301.9100-2 and 301.9100-3 to make a regulatory or statutory election.

The automatic 6 or 12-month extension under Treas. Reg. § 301.9100-2 does not apply to a § 831(b) election.

The time and manner to make this election is not prescribed by statute but rather is prescribed by Treas. Reg. § 301.9100-8. Pursuant to Treas. Reg. § 301.9100-8(a)(2), the election is to be made by 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 is to be effective by attaching a statement to the tax return containing the information specified in Treas. Reg. § 301.9100-8(a)(3). Accordingly, the § 831(b)(2)(A)(ii) election is a regulatory election. Treas. Reg. § 301.9100-1(b).

Under Treas. Reg. § 301.9100-3(a), certain extension requests require the taxpayer to establish to the satisfaction of the Commissioner that it "acted reasonably and in good faith" and that "the grant of relief will not prejudice the interests of the Government."

Under Treas. Reg. § 301.9100-3(b), a taxpayer is deemed to have acted reasonably and in good faith if it:

- Requested relief before the failure to make the election was discovered by the Service;
- Failed to make the election because of events beyond the taxpayer's control;
- 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 need for the election;
- Reasonably relied on written advice from the Service; or
- 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.

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). Treas. Reg. § 301.9100-3(c).

Treas. Reg. § 301.9100-1(a) cautions that granting an extension of time to make an election is not a determination that the taxpayer is otherwise eligible to make the election.

## ANALYSIS

Based solely on Taxpayer's representations, and the additional information required under Treas. Reg. § 301.9100-3(e), Taxpayer qualifies for an extension of time to make the election under § 831(b)(2)(A)(ii). Taxpayer is deemed to have acted in good faith, as defined by § 301.9100-3(b) and the grant of relief will not prejudice the interests of the Government because Taxpayer will not have a lower tax than if the election had been timely made.

RULING

Accordingly, under § 301.9100-3, Taxpayer is granted an extension of time until 60 days following the date of this letter to make the election provided by § 831(b)(2)(A)(ii) effective for TaxYear1 and subsequent taxable years.

CAVEATS

The rulings contained in this letter are based upon information and representations submitted by the 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 request for rulings, it is subject to verification on examination.

Except as expressly provided above, no opinion is expressed or implied concerning the Federal income tax consequences of any other aspects of any transaction or item of income and no ruling granted as to whether Taxpayer qualifies as an insurance company under Part II of subchapter L or as to Taxpayer's entity classification for Federal income tax purposes.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See § 11.04 of Rev. Proc. 2014-1, 2014-1 I.R.B. 1, 50. However, when the criteria in § 11.06 of Rev. Proc. 2014-1, 2014-1 I.R.B. 1, 51, are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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

In accordance with a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,

Sarah Lashley  
Assistant to the Branch Chief, Branch 4  
Office of Associate Chief Counsel  
Financial Institutions & Products