

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-133992-14

Date:

July 08, 2015

In Re:

LEGEND

Taxpayer =

State =

Individual =

ManagementCo =

CPAFirm1 =

Date1 =

Year1 =

Date2 =

Date3 =

Month4 =

CPAFirm2 =

Date5 =

Date6 =

Year2 =

Dear :

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

FACTS

Taxpayer was formed on Date1, Year1, as a series business of a limited liability company under the limited liability company act of State and is licensed by State to issue property and casualty insurance contracts. Taxpayer represents that, for Year1, it filed a separate Federal income tax return in compliance with published guidance and, therefore, must make its own tax elections.

Individual is the sole owner of Taxpayer.

ManagementCo, an independent insurance management company, manages and provides administrative services and prepares statistical reports for Taxpayer.

Taxpayer hired independent legal and actuarial advisors, and an outside accounting firm, to provide insurance regulatory and tax services. Taxpayer engaged CPAFirm1 to handle all Federal tax matters.

The due date for Taxpayer's Federal income tax return for Year1 ("Return") was Date2, Year2. CPAFirm1 timely filed a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, prior to Date2, Year2; accordingly, with the extension, the due date for the Return became Date3, Year 2.

In Month4, Year2, Taxpayer engaged CPAFirm2 and notified CPAFirm1 that Taxpayer no longer needed its services for the Return. On Date5, Year2, ManagementCo contacted Individual to ensure that the Return had been filed on behalf of Taxpayer by the Date3 due date. Individual was unaware of the due date and ascertained that neither CPAFirm1 nor CPAFirm2 had filed the Return. CPAFirm2 prepared the Return which was filed on Date6, Year2. Because the Return was filed after the due date, with the extension, Taxpayer could not make a § 831(b) election effective for Year1.

Taxpayer relied exclusively on CPAFirm1 and CPAFirm2 to meet its Federal income tax reporting requirements. Individual is not a tax expert and did not know that Taxpayer's Return was due on, and the requirement to make the election by, Date3. 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 had if it had filed the election timely.

REQUESTED RULING

Taxpayer requests a ruling under Treas. Reg. § 301.9100-3 granting an extension of the time from making the election provided by § 831(b)(2)(A)(ii).

LAW and ANALYSIS

In general, § 831(a) applies to tax insurance companies, other than life insurance companies, on their taxable income. However, § 831(b) provides certain small companies 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.

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. § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in Treas. Regs. §§ 301.9100-2 and 301.9100-3 to make a regulatory or statutory election.

Treas. Reg. § 301.9100-2 does not provide relief for Taxpayer to make an election under § 831(b)(2)(A)(ii) for any of the Years for which relief is sought. Requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 must be made under Treas. Reg. § 301.9100-3. Treas. Reg. § 301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence 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 regulatory election was discovered by the Service;

- Failed to make the election because of intervening 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.

Under Treas. Reg. § 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 aware of all relevant facts.

Under Treas. Reg. § 301.9100-3(b)(3), a taxpayer is deemed to have not acted reasonably and in good faith if it:

- Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;
- Was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
- Uses hindsight in requesting relief.

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. Treas. Reg. § 301.9100-3(c)(1).

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)(1)(i).

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.

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 Treas. Reg. § 831(b)(2)(A)(ii). Taxpayer is deemed to have acted in good faith, as defined by Treas. Reg. § 301.9100-3(b), and the grant of relief will not prejudice the interests of the Government.

RULING

Accordingly, under Treas. Reg. § 301.9100-3, Taxpayer is granted an extension of time until 90 days following the date of this letter to make the election provided by § 831(b)(2)(A)(ii) effective for Year1.

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 provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspect of this or other transactions or item of income. Specifically, no ruling is made as to whether Taxpayer qualifies as an insurance company under § 831(c) and granting the extension under Treas. Reg. § 301.9100-1(a) should not be construed as a determination that Taxpayer is eligible to make the election provided by § 831(b)(2)(A)(ii). Also, no ruling is granted with respect to Taxpayer's entity classification for federal income tax purposes.

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 representative.

Sincerely,

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

cc: