

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.

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Refer Reply To:

CC:FIP:4

PLR-132611-16

Date:

April 14, 2017

Legend

Taxpayer	=
State	=
Month A	=
Date B	=
Year 1	=
Individual	=
CPA	=
External Business Administrator	=

Dear :

This letter is in response 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 as a corporation in Month A of Year 1 under the laws of State and was licensed as an insurance company in State. External Business Administrator was engaged to assist with the formation of a captive insurance company, Taxpayer, and to provide administrative services. Individual is an officer of Taxpayer.

Taxpayer engaged CPA to prepare tax returns and provide accounting services. Based upon discussions with CPA and External Business Administrator, Individual approved the decision to make an election under § 831(b) for Taxpayer's first tax year ending on Date B of Year 1. Individual directed CPA to make the election. CPA indicated that he would make such election in a timely fashion, in connection with the preparation of Taxpayer's initial return.

Taxpayer filed a timely request for an extension of time to file its Form 1120-PC, U.S. Property and Casualty Income Tax Return, for the tax year ending on Date B of Year 1. Pursuant to this extension, Taxpayer timely filed its initial tax return for the tax year ending on Date B of Year 1. CPA inadvertently omitted the § 831(b) election statement from the originally filed return.

Upon learning of the error, CPA prepared an amended return (differing from the original return only by the attachment of the election statement). Taxpayer then submitted the amended return, and the letter ruling requesting relief pursuant to Treas. Reg. § 301.9100-3.

Taxpayer represents that upon granting of the requested extension, Taxpayer will not have a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayer would have had if the election had been timely filed (taking into account the time value of money). Further Taxpayer represents that it requested relief before the failure to make the election was discovered by the Internal Revenue Service.

Taxpayer represents that it qualifies as a property and casualty insurance company under Part II of Subchapter L of the Internal Revenue Code.

RULING REQUESTED

Taxpayer requests a ruling that, in accordance with Treas. Reg. §§ 301.9100-1 and 301.9100-3, Taxpayer be granted a reasonable period of time to make the election under § 831(b)(2)(A) for the taxable year ending on Date B of Year 1.

LAW AND ANALYSIS

Section 831(a) provides that taxes, computed as provided in § 11, are imposed for each taxable year on the taxable income of every insurance company other than a life insurance company. However, § 831(b) allows certain small companies to elect 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 the § 831(b)(2)(A) election is prescribed by Treas. Reg. § 301.9100-8(a)(1). Accordingly, the election under § 831(b) is a regulatory election. Treas. Reg. § 301.9100-1(b). 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 effective by attaching a statement to the tax return containing the information specified in Treas. Reg. § 301.9100-8(a)(3).

Under Treas. Reg. § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory or statutory election. Treas. Reg. § 301.9100-2 does not provide relief for a taxpayer to make an election under § 831(b)(2)(A) for any of the years for which relief is sought. Treas. Reg. § 301.9100-3(a) provides that a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer “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)(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 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 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 Treas. Reg. § 301.9100-3(b)(3), a taxpayer is deemed not to have acted reasonably and 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 § 6662 at the time the taxpayer requests relief 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.

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(1)(i).

Treas. Reg. § 301.9100-1(a) cautions that granting an extension of time to make the 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 § 831(b)(2)(A). 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 of 90 days following the date of this letter to make the election provided by § 831(b)(2)(A) for the tax year ending on Date B of Year 1. The election should be made in a written statement filed with the appropriate service center. A copy of this letter should be attached to the § 831(b) election.

CAVEATS

The ruling contained in this letter is based upon the 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 materials submitted in support of the ruling request, and 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 of Taxpayer. Specifically, no ruling is made as to whether Taxpayer qualifies as an insurance company under § 831(c) and the granting of 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).

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that this ruling 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,

ALEXIS A. MACIVOR
Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Financial Institutions & Products)