

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:B4

PLR-129357-17

Date:

March 23, 2018

Legend

Taxpayer =

State A =

Foreign Country B =

State C =

Date M =

Date N =

Date O =

Date P =

Date Q =

Date R =

Individual Y =

Individual Z =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

External Business Manager =

CPA Firm =

Consulting Firm =

New External Business Manager =

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 initially incorporated and licensed under the laws of State A on Date M of Year 1. Effective Date N of Year 2 Taxpayer reincorporated as an insurance company under the laws of Foreign Country B. Effective Date O of Year 7 Taxpayer became re-domiciled in the United States and became a State C corporation. Taxpayer is licensed as a captive insurance company under the laws of State C.

When Taxpayer was incorporated under the laws of Foreign Country B, Taxpayer was taxed as a domestic corporation pursuant to a § 953(d) election to be treated as a U.S. entity. For Year 4 through Year 8, Taxpayer filed Forms 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return. Since its initial incorporation as a captive insurance company under the laws of State A until the present, Taxpayer has not made a § 831(b)(2)(A) election to be taxed under the alternative tax for small insurance companies.

From Year 2 to mid-Year 7, Taxpayer hired External Business Manager as its captive insurance manager. External Business Manager, on behalf of Taxpayer, engaged CPA Firm to provide tax provision and tax compliance services for Year 3 to Year 6, including the preparation of Taxpayer's U.S. federal income tax returns on Forms 1120-PC. On Date P of Year 7 in a communication transmitting Taxpayer's tax provision work papers for Year 6 to External Business Manager, Individual Y, an employee of CPA Firm, informed Individual Z an employee of External Business Manager that Taxpayer was eligible to make the election under § 831(b)(2)(A). Individual Y stated that it was clear that Taxpayer qualified under § 831(b) as a small insurance company, and as a result that Taxpayer could make an election to be taxed solely on its investment income. In a follow-up correspondence on Date Q of Year 7 Individual Y again informed Individual Z about the election, that Taxpayer was now in a position to make the § 831(b)(2)(A) election. Individual Z, however, left the employ of External Business Manager prior to the filing of Taxpayer's Form 1120-PC for the calendar Year 6 and the question of whether or not to make the election under § 831(b)(2)(A) was dropped. Taxpayer represents that at no time did CPA Firm or External Business Manager discuss the election under § 831(b)(2)(A) with Taxpayer.

In mid-Year 7, Consulting Firm was engaged by Taxpayer and External Business Manager was replaced by New External Business Manager. New External Business

Manager reviewed Taxpayer's federal income tax return for calendar Years 4, 5 and 6 and noted that Taxpayer was eligible to make the election under § 831(b)(2)(A). New External Business Manager notified Consulting Firm and Consulting Firm, in turn, brought the § 831(b)(2)(A) election to the attention of Taxpayer in early Year 8.

In Year 8, Taxpayer filed an amended Form 1120-PC for Year 4 to make an election under § 831(b)(2)(A)(ii). The Service rejected the amended return because the period of limitation on filing a claim for refund or credit under § 6511(a) had expired.

On Date R of Year 9, Taxpayer filed amended Forms 1120-PC for calendar Year 5 and Year 6. On these amended returns, Taxpayer computed its U.S. federal income tax liability consistent with the relief being sought in this request for ruling being granted (that is, consistent with making a § 831(b)(2)(A)(ii) election effective for calendar Year 5 and thereafter).

Taxpayer represents that it qualifies as a property and casualty insurance company under Part II of Subchapter L of the Internal Revenue Code and that it qualifies as a company eligible to make the election under § 831(b)(2)(A)(ii) for Year 5. Additionally, 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) and Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time of this request. Further, Taxpayer represents that it requested relief before the failure to make the election was discovered by the Internal Revenue Service. Moreover, Taxpayer represents that it is not using hindsight in requesting this relief.

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. 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. § 301.9100-3(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(c)(1).

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 § 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 until 90 days following the date of this letter to make the election provided by § 831(b)(2)(A) for the tax year ending on December 31 of Year 5. 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 § 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)

cc: