

INTERNAL REVENUE SERVICE

Number: **200133029**

Release Date: 8/17/2001

UIL Nos. 0831.02-00; 9100.00-00

CC:FIP:4/PLR-103302-01

May 18, 2001

Legend:

Company =

Country X =

Corp. Y =

Accounting Firm =

Individual A =

Individual B =

Law Firm =

Dear

This is in reply to a letter dated January 11, 2001, submitted on behalf of Company, requesting under § 301.9100-3 of the Procedure and Administration Regulations, an extension of time for making an election under § 831(b)(2)(A)(ii) of the Code. Additional information was submitted in letters dated February 27 and April 25, 2001.

Company was formed under the laws of Country X on September 10, 1999 and made a timely election to be taxed as a domestic corporation under § 953(d)(1)(D) effective for its short tax year ending December 31, 1999. Company engages in non-life direct and reinsurance business. Company insures Corp. Y and its affiliates for a variety of corporate liability insurance including, excess employment practices liability coverage, excess medical malpractice coverage and numerous corporate disability policies. Company states that for purposes of the risk-shifting analysis it insures unrelated party risks. Company represents that it qualifies as a property and casualty insurance company taxable under part II of subchapter L.

In January 2000, Company engaged Accounting Firm, an organization consisting of certified public accountants, to perform tax administration and reporting work for Company, including the preparation of Company's 1999 tax returns. Accounting Firm advised Company

that it satisfied all of the statutory requirements to qualify as a tax-exempt insurance company under § 501(c)(15). Accounting Firm prepared a 1999 Form 990 (Return of Organization Exempt From Income Tax) dated April 25, 2000, which it signed as preparer. Company's 1999 Form 990 (which was due on May 15, 2000) was then submitted to the appropriate Service Center. On September 22, 2000, the Service Center sent Company a letter stating that it had no record that Company had been recognized as exempt and (among other things) asking for a copy of any determination letter that Company might have. In connection with Company's effort to secure a determination letter from the Service, on November 10, 2000, Individual A (the actuary for Company) received a copy of the audit report for Company which was prepared by Accounting Firm. From the audit report, Individual A discovered that for the 1999 short year Company's net written premium, in fact, exceeded the \$350,000 statutory limit for qualification under § 501(c)(15).¹ Individual A immediately contacted Individual B, an attorney in Law Firm, and together Individual A and Individual B determined that an election under § 831(b) should have been made, but the time period had passed. Immediately thereafter, Company engaged Law Firm to review the application for relief under § 301.9100-3.

It is represented that Accounting Firm's engagement to provide Company tax advice was not limited in any way and the members of that firm were not reviewing the work of any other individual or entity. Further, it is represented that Accounting Firm was supplied all relevant information by Company on a timely basis.

Company represents that the granting of relief by the Service will not result in Company having a lower tax liability than Company would have had if the election were made timely.

Generally, insurance companies other than life insurance companies are taxable under § 831(a) on their taxable income. However, certain eligible companies pay an alternative tax provided in § 831(b) based only on their taxable investment income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by § 831(b). That election is made on a timely filed return.

Under § 301.9100-(c) of the Procedure and Administration Regulations the Commissioner may grant a reasonable extension of time under the rules set forth in § 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-2 provides an automatic extension of time for making certain elections.

Section 301.9100-3(a) provides, in pertinent part, that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the

¹ Accounting Firm subtracted unearned premiums of approximately \$102,000 from a premium amount of \$410,000 to determine that Company's net written premiums were approximately \$308,000. Accounting Firm should not have subtracted the unearned premiums.

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.

Section 301.9100-3(b)(1) provides that except as provided in § 301.9100-3(b)(3)(i) through (iii), 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 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 Internal Revenue Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1) provides in pertinent part, that 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.

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Company is granted an extension of time until 60 days following the date of this letter to make the election to be subject to the alternative tax provided in § 831(b) for the tax year December 31, 1999.

Except as expressly provided above, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or reference in this letter. Specifically, no opinion has been requested and no ruling granted as to whether Company is an insurance company under part II of subchapter L.

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.

Acting Associate Chief Counsel
(Financial Institutions & Products)
By: Mark Smith
Chief, Branch 4

cc