

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

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PLR-101911-19

Date:

August 09, 2019

Legend

Taxpayer =

State X =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Captive Manager =

CPA Firm 1 =

CPA Firm 2 =

Month Y =

Year 1 =

Year 2 =

Year 3 =

Dear

This letter is in response to Taxpayer's request for a ruling, pursuant to § 301.9100-3 of the Procedure and Administration Regulations, for an extension of time to make the

election under § 831(b)(2) of the Internal Revenue Code effective for the taxable year ending on Date A of Year 2.

FACTS

On Date B of Year 1, Taxpayer was incorporated in State X. Effective on Date C of Year 2, Taxpayer was authorized by the State X Department of Insurance to provide property and casualty insurance coverage as a captive insurer. In accordance with State X regulations, Taxpayer files an annual report for pure captive insurance companies with the State X Department of Insurance.

Taxpayer has engaged Captive Manager for certain consulting and administrative services on behalf of Taxpayer. Taxpayer has also engaged other parties to assist in other insurance regulatory and tax compliance services, including CPA Firm 1 and CPA Firm 2.

Prior to Date D of Year 3, Taxpayer timely filed Form 7004 (Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns) for Year 2, extending the due date of Taxpayer's Year 2 federal income tax return to Date E of Year 3. Taxpayer's Year 2 Form 1120-PC (U.S. Property and Casualty Insurance Company Income Tax Return), including an election statement to be taxed under § 831(b)(2), was prepared and signed timely, on Date F of Year 3, by CPA Firm 1. Taxpayer set the Year 2 tax return aside, intending to review, sign, and file the Form 1120-PC containing the § 831(b)(2) election prior to Date E of Year 3. However, Taxpayer inadvertently failed to file the Year 2 tax return and election statement by that date. Taxpayer discovered the unfiled tax return in Month Y of Year 3. Taxpayer subsequently took corrective action, including filing this request for relief, with the assistance of CPA Firm 2.

Taxpayer represents that it is an insurance company other than a life insurance company for federal income tax purposes. Taxpayer further represents that its request for relief was filed before the Internal Revenue Service (Service) discovered the failure to make the regulatory election. Taxpayer represents that the granting of relief by the Service will not result in a lower tax liability than Taxpayer would have had if the § 831(b)(2) election had been timely made. Taxpayer represents that it does not seek to alter a return position for which the accuracy related penalty has been or could have been imposed under § 6662 at the time Taxpayer requested relief, and the new position requires or permits a regulatory election for which relief is requested. Taxpayer also represents that it failed to file the § 831(b)(2) election inadvertently, that it has not used hindsight to seek an extension of time to make the § 831(b)(2) election, and that it always had the intent to make the § 831(b)(2) election.

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 A of Year 2.

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 insurance 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) election is prescribed by Treas. Reg. § 301.9100-8(a). Pursuant to Treas. Reg. § 301.9100-8(a)(2), the election is to be made by the due date (taking into account any extension 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). Accordingly, the election under § 831(b) 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. Reg. § 301.9100-3 to make a regulatory 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 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 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). 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) for the tax year ending on Date A of Year 2. 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 material 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, 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).

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

In accordance with the Power of Attorney on file with this office, copies of this ruling are being sent to your authorized representatives.

Sincerely,

Kathryn M. Sneade
Senior Technician Reviewer
Branch 4
(Financial Institutions and Products)

cc: