

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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March 11, 2019

Taxpayer =  
Year 1 =  
Year 2 =  
Year 3 =  
State =  
Captive Management Company =

Dear :

This letter is in response to Taxpayer's request for a ruling granting an extension of time for making an election under § 831(b)(2)(A) of the Internal Revenue Code pursuant to § 301.9100-3 of the Procedure and Administrative Regulations, to be effective for the tax year ending on December 31, Year 1.

### FACTS

Taxpayer represents that it was established in State and qualified as a non-life insurance company for federal income tax purposes in Year 1. Though Taxpayer did not receive its insurance license from State until Year 2, the license was applied retroactively through Year 1. Taxpayer reinsures health, welfare, and pharmaceutical benefits.

Taxpayer hired Captive Management Company to obtain its State insurance license and coordinate tax compliance. Captive Management Company represents it failed to file

Taxpayer's Year 1 tax return because it assumed Taxpayer would be unable to file its return until it received its insurance license. The license was not received until after the Year 1 filing due date. Had the Year 1 return been filed on time, Taxpayer would have made the § 831(b) election.

In Year 3, Captive Management Company hired tax professionals and was informed of the filings and elections that should have been made in Year 1. Taxpayer is now seeking a ruling to permit the § 831(b) election to be filed with the late return for the year ended December 31, Year 1.

Taxpayer's request for relief was filed before the Internal Revenue Service discovered the failure to make the regulatory election. The granting of relief by the Internal Revenue Service will not result in a lower tax liability than Taxpayer would have had if the § 831(b) election had been timely made. Taxpayer 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 requests relief, and the new position requires or permits a regulatory election for which relief is requested. Taxpayer failed to file the election inadvertently. Taxpayer has not used hindsight to seek an extension of time to make the election. Taxpayer always had the intent to make the § 831(b) election.

## LAW AND ANALYSIS

Insurance companies other than life insurance companies are taxable under § 831. However, certain insurance companies can elect to pay an alternative tax provided in § 831(b) on only their taxable investment income. Section 831(b)(2)(A)(iii) requires that a company elect the application of the alternative tax imposed by § 831(b). Pursuant to § 301.9100-8(a)(2)(i), this election must be made by the due date (taking into account any extensions of time to file obtained by the taxpayer) for the first taxable year for which the election is effective.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time pursuant to §§ 301.9100-2 and 301.9100-3 to make a regulatory election. Under § 301.9100-3(a), relief will be granted when the 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.

Under § 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 the complexity of the return or issue), the taxpayer was

unaware of the necessity for the election; (iv) reasonably relied on the 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 § 301.9100-3(c)(1)(i), the interests of the government are prejudiced if granting relief would result in the 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). Section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayers' receipt of a ruling granting relief under this section.

Section 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.

## RULING

Based solely on Taxpayer's representations and the additional information required under § 301.9100-1(e), Taxpayer is granted an extension of time until 90 days following the date of this letter to make the election to be subject to the alternative tax provided in § 831(b)(2)(A) for Year 1.

## CAVEATS

The ruling contained in this letter is based upon information and representations Taxpayer submitted, accompanied by penalty of perjury statements executed by appropriate parties. This office has not verified any of the material submitted in support of the ruling request and it is subject to verification on examination.

Notwithstanding that an extension of time is granted under § 301.9100-3 to make an election under § 831(b)(2)(A), additions, penalties and interest that would otherwise be applicable, if any, continue to apply with respect to the tax return for Year 1.

No ruling has been requested, and no opinion is expressed (or implied) whether Taxpayer is engaged in the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies; or whether Taxpayer qualifies as an insurance company under § 831(c) for Year 1.

A copy of this ruling letter should be attached with Taxpayer's federal income tax return.

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

Pursuant to a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representatives.

Sincerely,

Rebecca L. Baxter  
Senior Technician Reviewer, Branch 4  
(Financial Institutions & Products)

cc: