

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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PLR-118356-18

Date:

November 30, 2018

Taxpayer =

Subsidiary =

Date A =

CPA Subsidiary =

Date B =

State =

External Business =

Manager

Date C =

Date D =

Dear

This letter is in response to Taxpayer's request, pursuant to § 301.9100-3 of the Procedure and Administration Regulations, on behalf of Subsidiary for an extension of time to make the election under § 831(b)(2)(A) of the Internal Revenue Code effective for the tax year ending on Date A.

### FACTS

Taxpayer is the parent corporation and lead member of a consolidated return group which reports its federal income tax on a calendar year basis. Subsidiary is a wholly owned subsidiary of Taxpayer and a member of Taxpayer's consolidated group. Taxpayer represents that Subsidiary qualifies as a non-life insurance company for federal income tax purposes. CPA Subsidiary provides auditing, tax and a number of

other professional services and is also wholly owned by Taxpayer and is a member of Taxpayer's consolidated return group.

On Date B, Subsidiary was incorporated and licensed in State to issue various direct insurance coverages. Taxpayer and Subsidiary engaged CPA Subsidiary to advise on all aspects of tax compliance. Taxpayer also engaged External Business Manager to assist in the formation and management of Subsidiary.

In the course of forming and initiating the operations of Subsidiary, Taxpayer and its officers always intended that Subsidiary be a § 831(b) captive insurance corporation. There was a miscommunication between CPA Subsidiary and External Business Manager, resulting in Subsidiary's failure to timely make a § 831(b) election for the tax year ended on Date A.

On Date C, CPA Subsidiary became aware of the failure to include an § 831(b) election statement with Taxpayer's tax return, which was timely filed on Date D.

## 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). 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 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).

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 statutory or 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 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), Subsidiary qualifies for an extension of time to make the election under § 831(b)(2)(A). Subsidiary 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, Subsidiary 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 Date A. 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 Subsidiary 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

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