

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number

Refer Reply to

CC:INTL:B01: - PLR-111458-99

Date:

August 23, 1999

Taxpayer =
Year 1 =
Date 1 =
Amount 1 =
Amount 2 =
Amount 3 =
Amount 4 =
Amount 5 =
Amount 6 =
Ratio A =
Ratio B =
Ratio C =
Ratio D =

Dear ;

This responds to your letter dated June 1, in which you requested a ruling that premiums received by taxpayer on policies of insurance or reinsurance of United States risks are exempt from the insurance excise tax imposed by section 4371 of the Internal Revenue Code of 1986.

The ruling contained in this letter is predicated upon facts and representations submitted by, or on behalf of, taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. This office has not verified any of the above material submitted in support of the request for rulings. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayer, a resident of the Federal Republic of Germany, is a stock company that writes property and casualty insurance.

Taxpayer represents that it is engaged in an active trade or business in Germany and that the premium income from U.S. insureds is derived in connection with, or is incidental to, that trade or business. Therefore, taxpayer contends that it qualifies for

benefits under Article 28(l)(c) of the Convention.

The IRS considers premiums received by a foreign insurer or reinsurer to be derived in connection with, or incidental to, the active conduct of a trade or business in Germany if the average of the following three ratios exceeds 25 percent and each ratio is equal to at least 20 percent¹:

1. The ratio of the average value that the assets of the insurer or reinsurer used or held for use in the active conduct of a trade or business in Germany during the taxable year bears to the value of all its assets. For Year 1, you represent that taxpayer had gross assets in Germany valued at Amount 1 and total assets valued at Amount 2. Therefore, the ratio of German assets to all of taxpayer's assets was Ratio A percent.
2. The ratio that gross premiums received by the insurer or reinsurer for policies on risks situated in Germany bear to total gross premiums received by the insurer or reinsurer. For Year 1, you represent that gross premiums received by taxpayer of risks in Germany were Amount 3 and that gross premiums received on all risks were Amount 4. Therefore, the ratio of gross premiums on risks in Germany to total gross premiums was Ratio B percent.
3. The ratio that the insurer or reinsurer's payroll and commission expense paid to employees and agents for services performed in Germany bears to the insurer or reinsurer's worldwide payroll and commission expense. For Year 1, you represent that taxpayer's payroll and commission expense for services performed in Germany was Amount 5 and that worldwide payroll and commission expense was Amount 6. Therefore, the ratio of payroll and commission expense for services performed in Germany to payroll and commission expense for worldwide services was Ratio C percent.

The average of the three ratios is Ratio D percent. Therefore, taxpayer satisfies the requirements of Article 28(l)(c) of the Convention.

Pursuant to paragraph (8)(a) of the enclosed Agreement, taxpayer's liability for Federal Excise Tax, as agreed upon, including liability resulting from reinsurance of U.S. risks with persons not entitled to exemption under the Convention or another convention, will commence on Date 1, the date of taxpayer's ruling request. The letter of credit required by paragraph (5)(a) of the enclosed Agreement, in the amount of \$75,000, must be in effect within 30 days of the date the Agreement is finally signed on the Commissioner's behalf.

Any person otherwise required to remit the Federal excise tax on foreign insurance or reinsurance policies issued by you pursuant to section 46.4371-1(a) of the

¹ See Rev. Proc. 92-39, sec. 3.06, 1992-20 I.R.B. 24 (May 18, 1992).

Excise Tax Regulations may rely upon a copy of this letter and/or a copy of the approved Closing Agreement as authority that they may consider premiums paid to you on and after

Date 1, as exempt under the United States-Germany Tax Convention from the Federal excise tax.

This is a ruling and is directed only to the taxpayer named above. Section 6110(j)(3) of the Internal Revenue Code provides that this ruling may not be used or cited as precedent by any other taxpayer. Furthermore, this ruling does not address the issues of whether taxpayer is an insurance company or whether premiums paid to taxpayer are deductible under section 162 of the Internal Revenue Code.

Sincerely yours,

W. EDWARD WILLIAMS
Senior Technical Reviewer
Branch 1
Associate Chief Counsel (International)

Enc: Copy of approved Closing Agreement
Copy for section 6110 purposes

cc: Assistant Commissioner (International)
Attn: Chief , Examination Division
950 L'Enfant Plaza
Washington, D.C. 20024