

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No. 1000219333

Telephone Number:

Refer Reply To:
CC:FIP:B04
PLR-121062-18

Date:
December 18, 2018

Taxpayer =

Owner =

State =

Year 1 =

Year 2 =

Year 3 =

Dear :

This is in response to the letter submitted by your authorized representatives, dated May 31, 2018 requesting a ruling granting consent to revoke Taxpayer's election under § 831(b) of the Internal Revenue Code.

FACTS

Taxpayer was incorporated by Owner, a trade association, as a risk retention group under the law of State in Year 1. Taxpayer issues liability insurance to Owner's members. With its Year 2 federal income tax return, Taxpayer elected to be taxed on only its investment income pursuant to § 831(b)(2)(A) and § 301.9100-8 of the Procedure and Administration Regulations. Taxpayer now wishes to revoke this election, to avoid reporting as a "transaction of interest" under Notice 2016-66, 2016-47 I.R.B. 745, *modified by* Notice 2017-8, 2017-3 I.R.B. 423, effective for Year 3.

Taxpayer represents that it is not requesting to revoke the election as a means of eliminating tax liability, and that it will not make another election pursuant to § 831(b)(2)(A) for any of the first five taxable years following the year to which the requested revocation applies, i.e., Year 3.

LAW AND ANALYSIS

Section 831(a) imposes a tax for each taxable year on the taxable income of every insurance company other than a life insurance company.

Section 831(b) provides an alternative tax to the tax imposed by § 831(a) for certain insurance companies. The alternative tax for these companies is a tax computed for each year by multiplying the taxable investment income (defined in § 834) of the company for the taxable year by the rates imposed by § 11(b).

At the time Taxpayer elected to be taxed under § 831(b)(2)(A), § 831(b)(2)(A) provided that the alternative tax applies to every insurance company other than a life insurance company if (i) the company's net written premiums (or, if greater, direct written premiums) did not exceed \$1,200,000, and (ii) the company elects the application of the § 831(b) alternative tax for the taxable year. (The ceiling on premiums was amended for taxable years beginning after December 31, 2016, by § 333 of the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, 129 Stat. 2242, 3106.)

Section 1010(f) of the Technical and Miscellaneous Revenue Act of 1988, P.L. 100-647, 102 Stat. 3342, 3454, added the flush language following § 831(b)(2)(A)(ii), which states "The election under [§ 832(b)(2)(A)(ii)] shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of [§ 832(b)(2)(A)(i)] are met. Such election, once made, may be revoked only with the consent of the Secretary." This clarification reflects Congress's intent that the election not be used as a means of eliminating tax liability (e.g., by making the election only for years the taxpayer does not have net operating losses). S. Rep. No. 445, 100th Congress, 2d Sess. 127 (1988). Section 831(b)(3) provides that net operating losses cannot be carried to or from taxable years for which § 831(a) did not apply.

Here, Taxpayer, having made the election to be taxed under the alternative tax of § 831(b) wishes consent to revoke that election. Taxpayer represents it will not make another election pursuant to § 831(b) for any of the first five taxable years following the year to which the requested revocation applies, i.e., Year 3.

RULING

Consent to the revocation of Taxpayer's § 831(b) election is given to be effective for the Year 3 tax year provided Taxpayer does not make an election under § 831(b) for any of the first five taxable years following Year 3.

The ruling contained in this letter is based on 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 request for ruling and it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including, but not limited to, whether Taxpayer qualifies as an insurance company under § 831(c), whether Taxpayer was eligible to be taxed under § 831(b), or whether Taxpayer is or has been a participant in a transaction of interest.

This ruling is directed only to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any federal income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Rebecca L. Baxter
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Financial Institutions & Products)