

## Internal Revenue Service

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Washington D.C. 20224

Person to Contact

Telephone Number

Reply Refer To:

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Date: January 8, 1999

Legend:      Taxpayer =  
                 State      =  
                 Target     =  
                 Date 1     =  
                 Year 1      =  
                 Years 3 - 7 =  
                 Year 8      =  
                 Amount 1 =  
                 Amount 2 =  
                 Date 2     =  
                 Amount 3 =  
                 Amount 4 =

Dear .

This is in response to your letter of Date 1 requesting consent to Taxpayer's revocation of its election under § 831(b) of the Internal Revenue Code to be taxed on only its investment income.

Taxpayer is a small mutual insurance company located in State, and taxable under § 831 of the Code. It is a debit mutual insurance company selling fire insurance on contents of residences, fire insurance on dwellings, and burglary and theft insurance.

Code § 831 provides generally that insurance companies, other than life insurance companies, are taxed on their taxable income. Section 831(b) allows certain small non-life companies to be taxed on their taxable investment income only. That election is provided in § 831(b)(2)(A)(ii), and a company is eligible to make it if, as provided in § 831(b)(2)(A)(i), its net written premiums (or, if greater, direct written premiums) for the taxable year exceed \$350,000 but do not exceed \$1,200,000. Once the election is made, it may be revoked only with the consent of the Secretary.

Taxpayer made the § 831(b) election with the filing of its Year 1 U.S. Property and

Casualty Insurance Company Income Tax Return. At that time, Taxpayer sold only contents fire insurance limited to Amount 1. In an effort to reduce expenses, on Date 2, Taxpayer merged with Target with Taxpayer surviving. Target had not made the election under § 831. Target, a substantially larger company, sold fire insurance on dwellings in the amount of Amount 2, fire insurance on contents in the amount of Amount 3, and burglary and theft insurance in the amount of Amount 4. After the merger, Taxpayer continued to issue policies based on the coverages Target previously offered. As a result, Taxpayer was exposed to larger underwriting risks and incurred larger losses. In addition, the hoped for savings in expenses failed to materialize.

Section 1010(f) of the Technical and Miscellaneous Revenue Act of 1988 added the flush paragraph following § 831(b)(2)(A)(ii), which states: "The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary."

In making that change, Congress indicated that in adopting the amendment it intended that the election not be used as a means of eliminating tax liability (e.g. by making the election only for years when the taxpayer did not have net operating losses). Rather, it intended that the election be a simplification measure for small companies. H.R. Rep. No. 795, 100<sup>th</sup> Cong., 2d Sess. 121 (1988); S. Rep. No. 445, 100<sup>th</sup> Cong., 2d Sess. 127 (1988).

Taxpayer represents that, as a result of the merger with Target, the character of its business has changed significantly since Year 1; its gross written premium income has more than doubled; and, its taxable investment income has increased more than tenfold. Taxpayer also represents its tax liabilities in each of Years 3 - 7 were higher than those liabilities would have been had its election under § 831(b) not been in effect.

In view of the foregoing, Taxpayer requests that consent be granted to the revocation of its § 831(b) election.

Taxpayer understands that § 831(b) prohibits a net operating loss from being carried over from years in which a § 831(b) election was in effect to the year (or to subsequent years) for which the revocation is effective.

Taxpayer has represented that it will not make an election under § 831(b) to be taxed on only its investment income for any of the first five taxable years following the year to which this Consent relates.

Consent is granted to the revocation of that election to be effective commencing for Year 8.

No opinion is expressed under other sections of the Code and income tax regulations that may also be applicable. This ruling is directed only to the taxpayer that requested it.

Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax returns to be filed by Taxpayer with respect to the taxable year with respect to which this Consent is granted, and the next succeeding five taxable years.

Sincerely yours,

Assistant Chief Counsel  
(Financial Institutions and Products)

By: (signed) MS  
Mark Smith  
Chief, Branch 4