



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **200705030**
Release Date: 2/2/07
UIL: 501.15-00
Date: November 9, 2006
SE:T:EO:RA:T3

Contact Person:
Identification Number:
Telephone Number:
Employer Identification Number:

Legend:

Receiver =
Insurance Company =
State Court =
State =

Dear :

We have considered your ruling request dated September 26, 2006, requesting a determination that Insurance Company will suffer no adverse Federal tax consequences under section 501(c)(15) of the Internal Revenue Code ("Code") with regard to Receiver's final creditor distributions and the closing of the receivership estate.

Facts

Insurance Company is an insolvent insurance company being liquidated under the supervision and control of the court appointed statutory receiver. In 1992 the State Court placed Insurance Company in receivership due to its financial condition. Receiver has been selling assets, pursuing litigation, and transferring Insurance Company liabilities. Receiver represents that it plans to complete final distributions and close the receivership estate by the end of the current year.

After the initiation of receivership, Insurance Company no longer operated a for-profit life insurance and annuity business. Instead, Receiver began winding up Insurance Company's affairs by transferring its insurance policies to third-party insurers. The guaranty funds of several states funded the 1992 and 1993 transfers.

As a result of the policy transfers, Receiver represents that it no longer qualifies as a life insurance company under section 816(a) of the Code. Insurance Company applied as a tax-exempt organization under section 501(c)(15) of the Code. Insurance Company was recognized as exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(15) commencing January 1, 1995 for tax years when Insurance Company's policy claims exceed its reserves, and when Insurance Company's net written

premiums (or if greater, direct written premiums) did not exceed the \$350,000 limit as prescribed by section 501(c)(15) of the Code.

Receiver represents that the final distributions of Insurance Company assets will be made in accordance with State's comprehensive statutory scheme for liquidating insolvent insurers. The State Court is responsible for overseeing and approving the receivership distributions. Receiver also represents that Insurance Company has not issued any insurance contracts and has only administered claims since it was recognized as being exempt from federal income tax under section 501(c)(15) of the Code. Since receiving exemption, Receiver liquidated all of Insurance Company's remaining assets and completed litigation of Insurance Company claims. Accordingly, Receiver is prepared to make final distributions to Insurance Company creditors.

Ruling Requested

Receiver seeks a ruling to the effect that Insurance Company will suffer no adverse federal income tax consequences under section 501(c)(15) of the Code with regard to the final distributions to creditors and the closing of its receivership estate.

Law and Analysis

Section 501(a) of the Code provides that an organization described in section 501(c) of the Code is exempt from federal income tax.

Prior to 2004, section 501(c)(15)(A) of the Code provided that an insurance company, other than a life insurance company, was tax-exempt if its net written premiums (or, if greater, its direct written premiums) did not exceed \$350,000.

The Pension Funding Equity Act, P.L. 108-218, ("Act") was enacted on April 10, 2004. Section 206 of the Act made several changes to section 501(c)(15) of the Code that, in general, are effective for taxable years beginning after December 31, 2003. Specifically, the Act amended section 501(c)(15) of the Code to provide for the exemption of: (A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if -(i) the gross receipts for the taxable year do not exceed \$600,000, and (ii) more than 50% percent of such gross receipts consist of premiums.

The Act provides a special transition rule with respect to certain insurance companies in receivership or liquidation. Section 206(e)(2) of the Act provides, "In the case of a company or association which (A) for the taxable year which includes April 1, 2004, meets the requirements of section 501(c)(15)(A) of the Internal Revenue Code of 1986, as in effect for the last taxable year beginning before January 1, 2004, and (B) on April 1, 2004, is in a receivership, liquidation, or similar proceeding under the supervision of a State court, the amendments made by this section shall apply to taxable years beginning after the earlier of the date such proceeding ends or December 31, 2007."

We must determine which version of section 501(c)(15) of the Code should apply to Insurance Company. Specifically, we must determine whether Insurance Company meets the requirements of the transition rule for companies in receivership or liquidation under section 206(e)(2) of the Act. This determination is a two-step process.

Under section 206(e)(2)(A) of the Act, we must first determine whether for the taxable year which includes April 1, 2004, Insurance Company meets the requirements of section 501(c)(15)(A) of the Code as in effect for its last taxable year beginning before January 1, 2004. In order to meet the previous statutory language of section 501(c)(15), Insurance Company must be an insurance company other than life, and its net written premiums (or, if greater, direct written premiums) must not exceed \$350,000. Receiver represents that Insurance Company entered into a series of 1992 and 1993 transactions to transfer its life insurance and annuity policies and corresponding assets relative to the respective policyholder liabilities to other insurance companies. As a result of these transactions, Receiver represents that Insurance Company no longer met the definition of a life insurance company under section 816(a). The Service sent a determination letter in 1996 confirming Insurance Company's section 501(c)(15) status. Pursuant to Insurance Company's Form 990 for the 2003 taxable year, Insurance Company was in the midst of liquidation, was still administering non-life insurance claims, and did not have net or direct written premiums exceeding \$350,000. Accordingly, Insurance Company met the previous statutory language of section 501(c)(15) for its last taxable year before January 1, 2004. Based on Insurance Company's representations and Form 990s, Insurance Company satisfies the requirements of section 206(e)(2)(A).

Under section 206(e)(2)(B) of the Act, we must then determine whether on April 1, 2004, Insurance Company was "in a receivership, liquidation, or similar proceeding under the supervision of a State court." Insurance Company is an insolvent insurance company, and Receiver represents that on April 1, 2004, Insurance Company was in receivership, liquidation, or similar proceeding under the supervision of State Court. In 1992, Insurance Company was placed in receivership by State Court due to its financial condition. Approximately six months later, Insurance Company was placed in liquidation by State Court due to its significant insolvency. Insurance Company has represented, warranted, and provided documentation which establishes that it has been in receivership and liquidation by order of State Court since 1992. Furthermore, Receiver is subject to the orders of State Court and final distributions are subject to approval by State Court. Based on the representations and information included in the submission, on April 1, 2004, Insurance Company was "in a receivership, liquidation, or similar proceeding under the supervision of a State court." Accordingly, Insurance Company satisfies the requirements of section 306(e)(2)(B) for companies in receivership or liquidation.

After establishing that the prior provisions of section 501(c)(15) of the Code apply to Insurance Company, we must determine whether Insurance Company continues to qualify for exemption. The Service's determination letter recognized Insurance Company's exempt status under section 501(c)(15), provided that (i) Insurance Company's policy claims exceed its reserves and (ii) Insurance Company's net written premiums (or if greater, direct written premiums) did not exceed the \$350,000 limit as prescribed by section 501(c)(15). Receiver's representations and a review of Insurance Company's 2001 through 2004 Form 990s confirm that Insurance Company held no written premiums and policy claims easily exceeded its reserves. Therefore, in accordance with the Service's prior determination, Insurance Company continues to qualify for section 501(c)(15) exemption.

Ruling

Since Insurance Company has established that it meets both requirements of section 206(e)(2) of the Act, Insurance Company qualifies for the transition rule for companies in receivership or liquidation under the Act. Therefore, the Act's amendments to section 501(c)(15) of the Code do not apply to Insurance Company until taxable years beginning after

the earlier of the date Insurance Company's liquidation ends or December 31, 2007. Accordingly, Insurance Company continues to qualify as exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(15).

In addition to certain clarifications being made, the requirements for qualification as an insurance company under 501(c)(15) of the Code, as amended by section 206 of the Act, have changed. Insurance Company and Receiver may rely on this ruling only during the period in which the transition rule for companies in receivership or liquidation is in effect under section 206(e)(2). As such, Insurance Company should wind up all affairs by December 31, 2007. Any final distributions made after December 31, 2007 will not fall within the protection of this ruling.

This ruling is based on the understanding that there will be no material changes in the facts and representations upon which it is based. Except as we have ruled herein, we express no opinion as to the tax consequences of the transactions under other sections of the Code and Income Tax Regulations.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Because it could help resolved questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

/s/

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437