

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:FIP:B04  
PLR-112790-09

Date:  
August 12, 2009

Legend

X =  
Y =  
Z =  
Date A =  
Year B =  
Year C =  
Year D =  
Year E =  
Year F =

Dear :

This is in reply to a letter dated February 26, 2009, submitted on behalf of X, requesting an extension of time for making an election under I.R.C. § 831(b). The request is made in accordance with and seeks relief pursuant to Treas. Reg. § 301.9100-3.

Information submitted with the letter indicates that X is a captive insurance company. Z is X's President, Treasurer, and sole shareholder. For all of the years at issue, X represents that it relied upon the advice and tax preparation services of Y. As X's tax preparer, Y, determined that for Years C through F, X qualified as an insurance company exempt from tax under I.R.C. § 501(c)(15) rather than an insurance company taxable under I.R.C. § 831(b). It is represented that for Years C through F, Y prepared and advised X to file Form 990, Return of Organization Exempt From Income Tax. For Years C through F, X filed Forms 990.

It is further represented that as of Date A, Z owned more than 50% of the outstanding shares of stock of other corporations (not insured by X). Based on such ownership, X and the other corporations are part of the same sister-brother controlled group as defined under I.R.C. § 501(c)(15)(C). It is further represented that the gross receipts of

the controlled group of which X was a member for Years C through F exceeded \$600,000.00. Accordingly, X was not eligible to be treated as an insurance company exempt from tax under I.R.C. § 501(c)(15) because the gross receipts in each of the taxable years at issue of the control group of which X was a member exceeded \$600,000.00.

X discovered the failure during Year B while soliciting bids from accounting firms for accounting and tax related matters. One bidder suggested that X did not qualify for an exemption under I.R.C. § 501(c)(15) and rather, should file as an insurance company taxable under I.R.C. § 831. Upon learning of the potential problem, X retained the services of an attorney. This request for ruling followed.

Y submitted an affidavit with the letter representing, among other facts, that for the tax years at issue Y: (1) was qualified to prepare returns and competent to advise X; (2) believed that X qualified for tax exempt status under I.R.C. § 501(c)(15); (3) was not aware that X was a member of a controlled group whose gross receipts were in excess of \$600,000.00; (4) had not provided accounting services to Z individually or to any entity owned by Z other than X; (5) did not inquire of X or Z whether Z held stock in any other corporation; (6) did not advise X or Z of the provisions under I.R.C. § 501(c)(15) relating to “controlled groups”; and (7) did not advise X to make an election pursuant to I.R.C. § 831(b)(2)(A) to be taxed on its taxable investment income prior to the filing of the returns.

For Years C through F, X represents that it was eligible to make the small business election for non-life insurance companies under I.R.C. § 831(b)(2)(A). However, X failed to make such an election by the due date of its return for Year C pursuant to Treas. Reg. § 301.9100-8(a)(2)(i).

X further represents that the granting of relief by the Internal Revenue Service will not result in a lower tax liability than X would have had if the election were made timely.

Insurance companies other than life insurance companies are taxable under I.R.C. § 831(b) on their taxable income. However, certain companies can elect to pay an alternative tax provided in I.R.C. § 831(b)(2)(A) only on their taxable investment income. I.R.C. § 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by I.R.C. § 831(b). That election must be made on a timely tax return, including extensions, for the first taxable year for which the election is effective. Treas. Reg. § 301.9100-8(a)(2)(i).<sup>1</sup>

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<sup>1</sup> Year D is the first year that X requests relief to make the election under I.R.C. § 831(b)(2)(A) by reason of the applicability of I.R.C. § 6501(g)(2) to Year C.

Under Treas. Reg. § 301.9100-1(c), the Commissioner may grant a reasonable extension of time pursuant to Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election or statutory election (but not more than 6 months except in the case of a taxpayer abroad), under all subtitles of the Code except subtitles E, G, H and I.

Treas. Reg. § 301.9100-2 provides an automatic extension of time for making certain elections. Based on the facts presented, Treas. Reg. § 301.9100-2 does not apply to the instant matter.

Treas. Reg. § 301.9100-3 provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 must be made pursuant to Treas. Reg. § 301.9100-3. Relief will be granted under Treas. Reg. § 301.9100-3 when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

A taxpayer is deemed to have acted reasonably and in good faith under Treas. Reg. § 301.9100-3(b)(1) 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 the 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.

The Commissioner will grant a reasonable extension of time to make the 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).

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time until 60 days following the date of this letter to make the election to be subject to the alternative tax provided in § 831(b)(2)(A) for Year D. The election will continue for Years E and F.

Notwithstanding that an extension of time is granted under Treas. Reg. § 301.9100-3 to make the election under I.R.C. § 831(b)(2)(A), additions, penalties and interest that would otherwise be applicable, if any, continue to apply with respect to the income tax returns for the Years D, E, and F.

A copy of this ruling letter should be associated with X's returns for Years D, E, and F.

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

No ruling has been requested and none is expressed as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representative.

Sincerely,

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DONALD J. DREES, JR.  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Financial Institutions & Products)