

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-124474-16

Date:
January 11, 2017

Legend:

Taxpayer =

Company =

State =

Year 1 =

Manager =

Date 1 =

Dear :

This letter is in response to Taxpayer's request, pursuant to §301.9100-3 of the Procedure and Administration Regulations, requesting an extension of time to make the election under section 831(b)(2) of the Internal Revenue Code (the "Code").

FACTS

Taxpayer is a member of Company, which is organized as a series LLC in accordance with the laws of State. Taxpayer maintains a calendar-year accrual basis of accounting for both book and tax purposes. The premiums written each year by Taxpayer do not exceed \$1.2 million.

Taxpayer represents that it qualified as an insurance company under section 831(c) in Year 1, even though it had not initially received its license from State in Year 1.

Taxpayer obtained its insurance license on Date 1. The license was retroactive to Year 1.

Taxpayer failed to make an election pursuant to section 831(b) with its initial federal tax return for Year 1. Taxpayer represents that it relied upon Manager to inform it of the proper timing of making an election under section 831(b), and that Manager failed to do so. Taxpayer further represents that Manager also failed to instruct Taxpayer to file for an extension of time in which to file its Year 1 federal tax return, and that if Taxpayer had done so, it could have made a timely section 831(b) election when it ultimately filed its Year 1 federal tax return. Taxpayer discovered this error after hiring tax professionals who informed them of the filing requirements that were necessary to make an election under section 831(b).

Taxpayer requested relief under §301.9100-3 before the failure to make the regulatory election was discovered by the Internal Revenue Service.

LAW AND ANALYSIS

Section 831(a) provides that taxes, computed as provided in section 11, are imposed for each taxable year on the taxable income of every insurance company other than a life insurance company. Section 831(c) provides that, for purposes of section 831, the term “insurance company” has the meaning given to such term by section 816(a). Under section 816(a), the term “insurance company” means any company more than half the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. Section 831(b) allows certain small companies to elect to be subject to tax on their taxable investment income only. The election applies to the taxable year for which the company made it and, as long as the company continues to qualify, for all subsequent taxable years unless revoked with the consent of the Secretary.

The time and manner to make the election under section 831(b) is prescribed by §301.9100-8. Accordingly, the election under section 831(b) is a regulatory election. Treas. Reg. §301.9100-1(b). Pursuant to §301.9100-8(a)(2), the election is to be made by the due date (taking into account any extensions of time to file obtained by the taxpayer) of the tax return for the first taxable year for which the election is to be effective by attaching a statement to the tax return containing the information specified in §301.9100-8(a)(3).

Under §301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in §§301.9100-2 and 301.9100-3 to make a regulatory election. An extension of time to make an election is not a determination that the taxpayer is otherwise eligible to make the election. Treas. Reg. §301.9100-1.

Requests or extensions of time for regulatory elections that do not meet the requirements of §301.9100-2 (automatic extension) must be made pursuant to §301.9100-3. Under §301.9100-3(a), relief will be granted only when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government. Under §301.9100-3(b)(1), a taxpayer is deemed to have acted reasonably and in good faith if it:

- (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 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.

Under §301.9100-3(b)(3), a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer:

- (i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested;
- (ii) Was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
- (iii) Uses hindsight in requesting relief.

The Commissioner will grant a reasonable extension of time to make a 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). The interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made. Treas. Reg. §301.9100-3(c)(1)(i).

Based solely on the facts submitted and the representations made, we conclude that Taxpayer satisfies the requirements of §§301.9100-1 and 301.9100-3, and that Taxpayer qualifies for an extension of time to make the election under section 831(b)(2)(A)(ii). Taxpayer requested relief under these provisions before the failure to make the regulatory election was discovered by the Service. Based on Taxpayer's representations, Taxpayer is deemed to have acted in good faith. The interests of the Government are not prejudiced because the election affects the tax liability of only Taxpayer, and Taxpayer will not have a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayer would have had if the election had been timely made (taking into account the time value of money).

RULING

Under §301.9100-3, Taxpayer is granted an extension of time until 90 days following the date of this letter to make the election provided by section 831(b)(2)(A)(ii) effective for Year 1. The election should be made in a written statement filed with the appropriate service center. A copy of this letter should be attached to the section 831(b) election.

CAVEATS

The rulings contained in this letter are based upon 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 rulings, and it is subject to verification on examination.

Except as provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspect of Taxpayer. Specifically, no ruling is made as to whether Taxpayer qualifies as an insurance company under section 831(c), and granting the extension under §301.9100-1(a) should not be construed as a determination that Taxpayer is eligible to make the election provided by section 831(b)(2)(A)(ii). Also, no ruling is granted with respect to Taxpayer's entity classification for federal income tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

James A. Polfer
Senior Technician Reviewer, Branch 4
(Financial Institutions & Products)