

**Internal Revenue Service**

Number: **201031001**  
Release Date: 8/6/2010  
Index Number: 831.00-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:FIP:B04  
PLR-103031-10  
Date:  
April 29, 2010

Taxpayer =  
  
State A =  
Date 1 =  
B Court =  
Commissioner of C =  
  
Date 2 =  
n states =  
Date 3 =  
Date 4 =  
Date 5 =  
Tax Years D =  
p dollars =  
Date 6 =

Dear \_\_\_\_\_ :

This is in response to the letter submitted by your authorized representatives dated January 6, 2010, requesting a ruling that Taxpayer qualifies as an insurance company that is eligible to elect the application of § 831(b) of the Internal Revenue Code (the "Code") for 2009.

## Facts

Taxpayer is a corporation domiciled in State A. On Date 1, the B Court entered an order finding Taxpayer to be insolvent and placed Taxpayer into rehabilitation under the control of the Commissioner of C. On Date 2, the B Court terminated the rehabilitation, placed Taxpayer in liquidation, and appointed the Commissioner of C to marshal Taxpayer's assets and to liquidate its liabilities.

Before being placed in liquidation, Taxpayer was licensed to engage in the property and casualty insurance business in n states. Taxpayer issued among other types of policies, excess and umbrella insurance policies for commercial operations, automobile physical damage and liability insurance, and commercial multi-peril insurance.

Since Taxpayer was placed in liquidation, its primary activity has related to the effort to liquidate claims. Many of Taxpayer's policies covered large manufacturing companies that were the subject of massive environmental, asbestos, and other product liability claims. The liabilities associated with those claims are uncertain as a result of high severity, slow emergence, and legislative and judicial processes.

In a determination letter dated Date 3, the Internal Revenue Service (the "Service") held Taxpayer to be exempt from federal income tax under § 501(c)(15) of the Code. The tax exemption was in effect from Date 4 through Date 5, and for Tax Years D, Taxpayer filed Forms 990.

Taxpayer did not meet the new requirements under § 501(c)(15) of the Code after it was amended by the Pension Funding Equity Act of 2004, Pub. L. 108-281, sec. 206, 118 Stat. 596, 610-611 (2004) (the "PFEA"); therefore, Taxpayer lost its tax-exempt status January 1, 2008. For the 2008 tax year, Taxpayer filed a Form 1120-PC, which reflected a net operating loss.

As of December 31, 2008, Taxpayer had liabilities in excess of assets of approximately p dollars. In addition, at no time during the period Taxpayer has been in liquidation through the present could Taxpayer's investment activity be considered in excess of its requirements to pay claims. As a company in liquidation, Taxpayer has no written premiums during 2009. Plus, Taxpayer does not own, directly or indirectly, more than 50% of the stock of any other company.

On Date 6, the B Court approved a liquidation closing plan for Taxpayer's estate. The current plan is for Taxpayer to distribute the bulk of its remaining assets within the current year.

### Ruling Requested

Taxpayer requests a ruling that it qualifies as an insurance company that is eligible to elect the application of § 831(b) of the Code for 2009.

### Law and Analysis

Section 831(a) of the Code imposes a tax for each taxable year on the taxable income (as determined under § 832) of every insurance company other than a life insurance company (commonly referred to as property and casualty insurance companies). Section 831(b) provides an alternative to the tax imposed in §831(a) for certain small companies. Under § 831(b) a company may elect to be taxed only on its taxable investment income if it is a property and casualty insurance company, and its net written premiums (or, if greater, its direct written premiums) do not exceed \$1,200,000. For purposes of determining the amount of a company's net written premiums or direct written premiums under § 831(b), premiums received by all members of a controlled group of corporations of which the company is part are taken into account. Section 831(b)(2)(B) of the Code.

The PFEA clarified that for purposes of § 831 of the Code, a company is an "insurance company" if more than half of its business during the taxable year is issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. Pension Funding Equity Act of 2004, Pub. L. 108-281, sec. 206, 118 Stat. 596, 611 (2004); section 831(c) of the Code; section 816(a) of the Code. The legislative history of Sec. 206 of the PFEA, Congress stated "[i]t is not intended that a company whose sole activity is the run-off of risks under the company's insurance contracts be treated as a company other than an insurance company, even if the company has little or no premium income." H.R. Conf. Rep. No. 108-457, 2d Sess. 50-51 (2004).

Based on Taxpayer's representations and assuming Taxpayer is not a member of a controlled group under § 831(b)(2)(B), Taxpayer is held to be an insurance company that is eligible to elect the application of § 831(b) of the Code for 2009.

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.

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

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

*/S/*

Sheryl B. Flum  
Branch Chief, Branch 4  
(Financial Institutions & Products)