



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Receiver =
Insurance Company =
State Court =
State =

Dear :

This letter responds to the request of Receiver of Insurance Company dated August 23, 2005, for a ruling that Insurance Company will suffer no adverse federal income tax consequences under section 501(c)(15) of the Internal Revenue Code ("Code") with regard to the final distributions to creditors and the closing of its receivership estate.

Facts

Insurance Company is an insolvent insurance company being liquidated under the supervision and control of the court-appointed statutory Receiver. Prior to being placed in receivership, Insurance Company offered insurance policies providing professional liability insurance to physicians.

In a letter dated September 11, 1996, Insurance Company was recognized as exempt from federal income tax as an organization described in section 501(c)(15) of the Code for tax years when its policy claims exceed its reserves and when its net written premiums (or, if greater, its direct written premiums) do not exceed the \$350,000 limit prescribed by that section.

Receiver represents that it has conducted the liquidation of Insurance Company in accordance with State's comprehensive statutory scheme for the liquidation of insolvent insurers and with the supervision and approval of State Court. In particular, Receiver represents that Insurance Company, as an insolvent insurance company under State's control, has not issued any insurance contracts and has only administered claims during the period of its receivership. Receiver further represents that Insurance Company has effectively ceased operations except for final distributions and plans to distribute its remaining assets pursuant to applicable State law.

Ruling Requested

Receiver seeks a ruling 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 recent amendments, former 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) 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)(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 whether Insurance Company meets the new requirements of section 501(c)(15) of the Code, as amended by the Act. Receiver represents that Insurance Company is an insurance company (as defined in section 816(a) of the Code) other than a life insurance company. Receiver represents that Insurance Company, as an insolvent insurance company, has not issued any insurance contracts and has only administered non-life insurance claims during its period of receivership. Moreover, pursuant to Insurance Company's Form 990 for the taxable year, Insurance Company did not receive any premiums and did not issue any insurance contracts. Because more than 50% of its gross receipts does not consist of premiums, Insurance Company does not meet the new requirements of amended section 501(c)(15)(A) of the Code for its taxable years beginning after December 31, . Thus, 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 and, therefore, continues to qualify for recognition of exemption. 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, . In order to meet the previous statutory language of section 501(c)(15) of the Code, 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. From through , Receiver represents that Insurance Company entered into a series of 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) beginning in . Pursuant to Insurance Company's Form 990 for the 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. Based on the representations and information included in the submission, for its taxable year which includes April 1, , Insurance Company is a non-life insurance company, and its net written premiums do not exceed \$350,000. Accordingly, Insurance Company satisfies the requirements of section 206(e)(2)(A) of the Act for companies in receivership or liquidation.

Under section 206(e)(2)(B) of the Act, we must then determine whether on April 1, , 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, , Insurance Company was in receivership, liquidation, or similar proceeding under the supervision of State Court. In

, Insurance Company was placed in receivership by State Court due to its financial condition. Approximately one year later, Insurance Company was placed in liquidation by State Court due to its significant insolvency. Insurance Company has represented, warranted, and provided documentation that establishes that it has been in receivership and liquidation by order of State Court since 1990. 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, , 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) of the Act for companies in receivership or liquidation.

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, . Accordingly, Insurance Company continues to qualify as exempt from federal income tax under section 501(a) as an organization described in section 501(c)(15).

Insurance Company 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) of the Act. 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.

This ruling does not address whether Insurance Company is subject to federal tax under any other provision of the Code. Specifically, the ruling does not address Insurance Company’s federal income tax consequences regarding final distributions to creditors and the closing of its estate in receivership.

This ruling is based on the understanding that there will be no material changes in the facts and representations upon which it is based.

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 this ruling may not be used or cited by others as precedent.

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,

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

Enclosure
Notice 437

cc: