



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Attn: Mandatory Review, MC 4920 DAL
1100 Commerce St.
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: JANUARY 12, 2009

Number: 200915058
Release Date: 4/10/2009

LEGEND

UIL:501.15-00

ORG = Organization name XX = Date Address = address

ORG
ADDRESS

Employer Identification Number:
Person to Contact/ID Number:
Contact Numbers:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear _____ :

In a determination letter dated February 28, 20XX, you were held to be exempt from Federal income tax under section 501(c)(15) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(15) of the Code. Accordingly, your exemption from Federal income tax is revoked effective January 1, 20XX. This is a final adverse determination letter with regard to your status under section 501(c)(15) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On September 12, 20XX, you signed Form 6018-A, *Consent to Proposed Action*, agreeing to the revocation of your exempt status under section 501(c)(15) of the Code.

You have filed taxable returns on Form[s] 1120-PC, *U.S. Property and Casualty Insurance Company Income Tax Return*, for the year[s] ended December 31, 20XX & 20XX with us. For future periods, you are required to file Form 1120-PC with the appropriate service center indicated in the instructions for the return.

You have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a

petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

Vicki L. Hansen
Acting Director, EO Examinations



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1100 Commerce Street
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

July 15, 2008

LEGEND

ORG = Organization name XX = Date Address = address POA = POA

ORG
ADDRESS

Taxpayer Identification Number:
Forms:
Tax Year(s) Ended:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

Dear _____ :

We have enclosed a copy of our report of examination explaining why we believe an adjustment of your organization's exempt status is necessary.

We have also enclosed Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues, and Publication 3498, *The Examination Process*. These publications include information on your rights as a taxpayer, including administrative appeal procedures within the Internal Revenue Service.

If you request a conference with Appeals, we will forward your written statement of protest to the Appeals Office, and they will contact you. For your convenience, an envelope is enclosed. If you and Appeals do not agree on some or all of the issues after your Appeals conference, the Appeals Office will advise you of its final decision.

If you elect not to request Appeals consideration but instead accept our findings, please sign and return the enclosed Form 6018-A, *Consent to Proposed Adverse Action*. We will then send you a final letter modifying or revoking your exempt status under I.R.C. § 501(c)(15). If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and send a final letter advising of our determination.

In either situation outlined in the paragraph above (execution of Form 6018-A or failure to respond within 30 days), you are required to file federal income tax returns for the tax period(s) shown above, for all years still open under the statute of limitations, and for all later years. File the federal tax return for the tax period(s) shown above with this agent within 60 days from the date of this letter, unless a request for an extension of time is

granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free and ask for Taxpayer Advocate Assistance.

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Form 6018-A
Report of Examination
Envelope

cc: POA

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG.		Year/Period Ended 12/31/20XX

LEGEND

ORG = Organization name XX = Date Address = address City = city
 XYZ = State Country = country Tower-1, Tower-2, Tower-3 & Tower-4 =
 1st, 2nd, 3rd & 4th Towers Owner-1, Owner-2, Owner-3 & Owner-4 = 1st, 2nd, 3rd
 & 4th Owner Trustee-1 = 1st Trustee CO-1, CO-2, CO-3, CO-4, CO-5, CO-6,
 CO-7, CO-8, CO-9, CO-10, CO-11, CO-12, CO-13, CO-14, CO-15, CO-16, CO-17, CO-
 18, CO-19, CO-20 & CO-21 = 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th,
 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, & 21st COMPANIES

ISSUES

1. Does ORG. qualify for tax exempt status under Internal Revenue Code (IRC) Section 501(c)(15), for the years beginning January 1, 20XX?
2. If ORG. does not qualify for tax exempt status for years beginning January 1, 20XX, what are the tax consequences?
3. If the tax exempt status is revoked, how will it affect future years?

FACTS

ORG. (ORG) was formed in the City, in the Country, on February 4, 19XX. Its Memorandum of Association listed the following objects:

- Undertake and carry on the business of professional malpractice hospital, comprehensive general liability, product liability, accident, employers' liability, fidelity guarantee, third party, burglary, theft, fire, accident, marine, storm, earthquake, flood, war risk, insurrection, riot, civil, commotion, strike, vehicle, aviation, ship, steam, boiler, plate glass, workers' compensation
- Insurances against or upon the contingency or injury, damage or loss to persons by accident or misadventure
- Insurances to protect employers and principals against liability on account of injury, loss or damage, either sustained or caused by workmen, servants, employee or agents in their employment or acting on their behalf
- Insurances of factories, warehouses, premises, houses, tenements, merchandise and all other property and effects, real and person, against loss or damage by fire, explosion, lightning, storm, tempest, flood, aircraft and things dropped therefrom...
- To reinsure, counter-insure or co-insure any of the risk undertaken by the company

Share Capital of the Company is \$\$ divided into \$ shares of \$\$ each par value. There would be any where from one to seven directors.

On May 31, 20XX ORG made a 953(d) election to be taxed as a domestic organization. On the election they stated the following shareholders:

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG.		Year/Period Ended 12/31/20XX

- Trustee-1 Trustee 1/3
- CO-1 1/3
- CO-2 1/3

Form 1024, Application for Recognition of Exemption under Section 501(a) was filed by the organization, seeking tax exempt status under Internal Revenue Code (IRC) 501(c)(15). Its purpose as stated in the application form was as follows:

to provide warranty and guaranty insurance protection with respect to certain of the commercial operations of CO-3, for the benefit of CO-3 its customers in the telecommunications industry and other entities engaged in similar or related businesses.

The application form stated that there would be \$ shares authorized, \$1 par value, shares issued and outstanding.

Based on the information in the application form, the Service issued a determination letter, dated February 28, 20XX, granting tax exempt status to ORG under IRC 501(c)(15).

ORG entered into Policy No., Two Year Indemnification Policy. The Policy was from May 20XX through April 30, 20XX. The policy provided the following information:

ORG, (the "Company") a Country , Company duly licensed, is held and firmly bound unto CO-4, f/k/a CO-3, an XYZ corporation (CO-4) and its affiliates (all as identified and designated on Schedule A attached), CO-5, A XYZ Corporation (CO-5) and CO-6, a XYZ Corporation (CO-6) as Beneficiary pursuant to and in accord with the terms and provisions herein set forth and contacted.

Whereas, CO-4 has entered into agreements for construction work with CO-7 for telecommunications tower system design, engineering, construction and/or maintenance to be performed at various locations.

As Whereas, the obligation for performance of the remaining services and warranties under the Contracts must be guaranteed and assured in order to collect and receive all remaining outstanding invoices and retainage due CO-4 from CO-7.

As Whereas, CO-5 financed by means of a sale/leaseback the complete Facilities and has certain exposures and responsibilities, directly and indirectly as a result of and in connection with said financing structure.

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And Whereas, CO-6 operates and maintains the subject tower facility for the benefit of the identified owners and various present and future users or lessees of the subject tower facilities.....

Therefore, for and in consideration of a premium of \$\$, the company hereby warrants and guarantees to CO-4 on its behalf and on behalf of its affiliates and designees, specifically but not limited to, CO-5 and CO-6 as follows;

- All workmanship and materials rendered or delivered shall conform to the drawings, submittals, and specifications as to kind, qualify, function and characteristic of materials and workmanship specified by the CO-7 Owner pursuant to and in accord with the terms and provisions of the subject plans, design and specifications act and shall remain in good condition and shall be free from any fault or defect for 2 years from the date thereof.
- Company shall indemnify and hold harmless CO-4, its owners, affiliates, agents, directors, and employees against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, cost of defense, and attorney fees to the extent the arise from or in connection with:
 - Furnishing, performance or use of any material supplied by CO-4 or its affiliates or subcontractors...
 - Defects in workmanship rendered pursuant to and in accorded with the provisions of the subject plans, designs and specifications.
- Obligation of the Company shall be limited to an amount not to exceed 70% of any claim of loss or damage.

Per Schedule A of Policy , the following was listed:

CO-4, f/k/a CO-3 Affiliates and Designees

- CO-5 CO-8.
- CO-9 CO-6
- CO-10 CO-15
- CO-11 CO-16
- CO-12 CO-17
- CO-13 CO-18
- CO-14

CO-7

- CO-19
- CO-20
- CO-21

Tower Structures

- Tower-1 Address, City, XYZ

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG.		Year/Period Ended 12/31/20XX

- Tower-2 Address, City, XYZ
- Tower-3 Address, City, XYZ
- Tower-4 Address, City, XYZ

Tower Site Owners

- Owner-1
- Owner-2
- Owner-3
- Owner-4

No other business has been conducted other than the policy mentioned above. No new business has been solicited; no new policies have been issued.

Form 990 was filed for the 20XX tax year. The following is a breakdown of the Gross Receipts received by ORG for the year ending December 31, 20XX, and the percentage of Gross Premiums to Gross Receipts for the same year per Notice 2006-42.

ORG	20XX
Premiums-	
Total Premiums	
Interest Income	
Total Gross Receipts	
Percentage- Gross Premium/Reinsurance Income to Gross Receipts	

The amount shown as premiums above was determined by making an adjustment to the unearned premium account for premiums that were paid in a prior year and earned in this year. An election under IRC 831(b) has never been filed. As of the writing of this report, there has never been a filing of the election, either with the filing of the Forms 990 or separately.

No tax return has been filed for the 20XX tax year as of this writing.

LAW AND ANALYSIS

1. Does _____ qualify for tax exempt status under Internal Revenue Code (IRC) Section 501(c)(15) for the years beginning January 1, 20 ?

Internal Revenue Code section 501(c)(15)(A) exempts from Federal income tax insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if-

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- (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, or
- (ii.) in the case of a mutual insurance company-
 - (I) the gross receipts of which for the taxable year do not exceed \$150,000 and,
 - (II) more than 35 percent of such gross receipts consist of premiums.

Clause (ii) shall not apply to a company if any employee of the company, or a member of the employee's family (as defined in section 2032(A)(e)(2), is an employee of another company exempt from taxation by reason of this paragraph (or would be so exempt but for this sentence).

Sec. 206, Clarification of Exemption from Tax for Small Property and Casualty Insurance Companies, of the Pension Funding Equity Act of 2004, P.L. 108-218, amended section 501(c)(15)(A) to change the definition of small property and casualty insurance companies (insurance companies other than life insurance companies) exempt from income taxes to: (1) a company whose gross receipts for the taxable year do not exceed \$600,000, and over half such gross receipts consist of premiums (currently, whose net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed \$350,000); or (2) a mutual insurance company (a) whose gross receipts for the taxable year do not exceed \$150,000 and more than 35 percent of which consist of premiums and (b) none of whose employees (or member of the employee's family) is an employee of another company exempt from tax under section 501(c)(15). These changes were applicable after December 31, 2003.

Notice 2006-42, IRB, 2006-19 provides guidance as to the meaning of "gross receipts" for purposes of section 501(c)(15)(A) of the Internal Revenue Code. This notice advises taxpayers that the Service will include amounts received from the following sources during the taxable year in "gross receipts" for purposes of § 501(c)(15)(A):

- A. Premiums (including deposits and assessments), without reduction for return premiums or premiums paid for reinsurance;
- B. Items described in § 834(b) (gross investment income of a non-life insurance company); and
- C. Other items that are properly included in the taxpayer's gross income under subchapter B of chapter 1, subtitle A, of the Code.

Thus, gross receipts include both tax-free interest and the gain (but not the entire amount realized) from the sale or exchange of capital assets, because those items are described in § 834(b). Gross receipts do not, however, include amounts other than premium income or gross investment income unless those amounts are otherwise included in gross income. Accordingly, the term gross receipts does not include contributions to capital excluded from gross income under § 118, or salvage or reinsurance recovered accounted for as offsets to losses incurred under § 832(b)(5)(A)(i).

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Name of Taxpayer ORG.		Year/Period Ended 12/31/20XX

Section 834(b)(1)(D) of the Internal Revenue Code includes under gross receipts the gains from the sale or exchanges of capital assets to the extent provided in subchapter P (section 1201 and following, relating to capital gains and losses).

Section 834(c)(6) of the Internal Revenue Code allows a deduction for Capital Losses to the extent provided in subchapter P (section 1201 and following) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders.

Based on the changes in the limitations under Internal Revenue Code (IRC) Section 501(c)(15)(A), and the operation of during 20 , it was determined from the chart above that did not qualify for tax exempt status for the years beginning January 1, 20 . was able to meet the gross receipts requirement of under \$600,000 (\$) however; they could not meet the requirement of more than 50% of Gross Premiums to Gross Receipts (%). Since their gross premiums to gross receipts percentage (%) did not exceed the 50% requirement, did not qualify for tax exempt status for years starting January 1, 20 .

Since was a stock company, it did not have the ability to try to meet the second set of requirements that are for mutual companies only.

Section 206(e) of the Pension Funding Act of 2004, P.L. 118-218 provides the effective date of the new requirements for exemption under IRC 501(c)(15). It states:

EFFECTIVE DATE-

(1) **IN GENERAL-** Except as provided in paragraph (2), the amendments made by this section shall apply to **taxable years beginning after December 31, 2003.**

(2) **TRANSITION RULE FOR COMPANIES IN RECEIVERSHIP OR LIQUIDATION-** 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.

 was not involved in a court ordered liquidation during 20 . Therefore, Section 206(e)(2) does not apply to this organization.

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Name of Taxpayer ORG.		Year/Period Ended 12/31/20XX

Therefore, for the years beginning January 1, 20 , did not qualify for tax exempt status under IRC 501(c)(15).

2. If does not qualify for tax exempt status for years beginning January 1, 20 , what are the tax consequences?

Since did not qualify for tax exempt status under IRC Section 501(c)(15) for the years beginning January 1, 20 , tax exempt status should be revoked for years beginning January 1, 20 . filings of the Forms 990 were incorrect. should have filed Form 1120-PC for years beginning January 1, 20 .

IRC 831 discusses tax on insurance companies other than life insurance companies.

IRC 831(a) states as a general rule, "Taxes computed as provided in section 11 shall be imposed for each taxable year on the taxable income of every insurance company other than a life insurance company."

IRC 831(b) provides an alternative tax for certain small companies. It states in IRC 831(b)(1) that, in general, "In lieu of the tax otherwise applicable under subsection (a), there is hereby imposed for each taxable year on the income of every insurance company to which this subsection applies a tax computed by multiplying the taxable investment income of such company for such taxable year by the rates provided in section 11(b)."

IRC 831(b)(2) discusses the companies to which this subsection applies.

- (A) In general. This subsection shall apply to every insurance company other than life (including interinsurers and reciprocal underwriters) if-
- (i) the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed \$1,200,000, and
 - (ii) such company elects the application of this subsection for such taxable year.

The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (1) are met. Such election, once made, may be revoked only with the consent of the Secretary.

Regulations (Regs.) 301.9100-8(a)(2) discusses the time for making elections. Under (i) it states in general that except as otherwise provided in this section, the elections described in paragraph (a)(1) of this section, must be made by the later of-

- (A) 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 effective, or

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(B) January 22, 1990 (in which case the election generally must be made by amended return)

Regs. 301.9100-8(a)(1) mentioned above includes IRC 831(b)(2)(A).

Regs. 301.9100-8(a)(3) describes the manner of making elections. It states, " Except otherwise provided in this section, the elections described in paragraph (a)(1) of this section must be made by attaching a statement to the tax return for the first taxable year for which the election is to be effective."

Based on the Code and Regulation sections above, is not entitled to the relief under 831(b), for years under examination and for any future year, until they decide to file the election. The election has never been filed, either with the Form 990 or separately. Any election filed now or in the future would only be effective for the year the election was filed and all subsequent years. The election can not be made retroactive.

3. If the tax exempt status is revoked, how will it affect future years?

The tax exempt status should be revoked for the years beginning January 1, 20 . Form 1120-PC is required for each year and all future years where does not qualify for exemption. If meets the requirements under IRC 501(c)(15) in future years, it may be allowed to file the Form 990 for each year they qualify, as a self-declared entity. Otherwise, Form 1120-PC would be required. Any year in the future that the Form 1120-PC is required, is allowed to make an election under IRC 831(b). Once the election is made, it is effective for the year the election was made and for all future years that the Form 1120-PC is required. The election can not be made retroactive.

TAXPAYER'S POSITION

Unknown at the time of this writing

SUMMARY

It is the Governments position, based on the above facts, law and analysis, that the tax exemption status of ORG for the years beginning January 1, 20XX, should be revoked based on not meeting the qualifications for exemption under IRC 501(c)(15). Form 1120-PC would be required to be filed for any year where ORG does not qualify for exemption under IRC 501(c)(15).