Office of Chief Counsel
Internal Revenue Service
memorandum

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subject: Statute of Limitations on 1120F SFR

DISCLOSURE STATEMENT

This advice may not be used or cited as precedent. This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

BACKGROUND

Taxpayer was formed outside the United States as part of a purported captive insurance program[1] (the "Captive Program") organized and managed by a captive insurance promoter. Taxpayer purported to elect to be treated as a domestic insurance company pursuant to IRC § 953(d). Based on that purported election, Taxpayer purported to elect

[1] In the Captive Program, participants that purchased "insurance" were referred to as "insureds" and the related captive insurance companies that reinsured the insureds' risks were referred to as "captives". These terms are adopted in this report. This report also uses the terms "insurance," "reinsurance," and "premiums" as they are used by Taxpayer and its counterparties in documents and discussions to describe the Captive Program. The use of these terms should not be interpreted to suggest that the IRS agrees that the Captive Program involved insurance within the meaning of federal tax law.

to be taxed as a small insurance company under IRC § 831(b). For Federal income tax purposes, Taxpayer filed Form 1120-PC as a domestic insurance company.

As a result of an examination of Insured, it has been determined that the amounts Insured paid to Taxpayer were not insurance premiums for Federal tax purposes because, the arrangements between Taxpayer and Insured failed to meet the risk shifting requirement, risk distribution requirement, and insurance in the commonly accepted sense requirement. And while Insured's operations did entail insurable risks, certain purported captive policies concerned business risks that should be viewed as the cost of doing business rather than insurable risks with unforeseeable occurrences. It has also been determined that Taxpayer did not qualify as an insurance company for Federal tax purposes. Further, Taxpayer has failed to establish that it ever qualified as an insurance company for Federal income tax purposes. As a result, Taxpayer never met the requirements of IRC § 953(d) to be treated as a domestic corporation and as such, for Federal income tax purposes, Taxpayer was at all times a foreign corporation.

As a foreign corporation, Taxpayer should have filed a Form 1120-F, instead of a Form 1120-PC. The Service will fill out Form 1120-F under section 6020(b).

ISSUES

1.Will the 1120F will have the same statute as the 1120PC?

2.If the 1120PC gets a statue extension, will the 1120F statute reflect the same statute as the 1120PC?

CONCLUSIONS

1. Yes, the 1120F will have the same statute as the 1120PC.

2. Yes, the statute extension would apply to both the 1120-PC and 1120-F.

LAW AND ANALYSIS

1. The 1120F will have the same statute as the 1120PC.

Case law generally provides that if a document purports to be a return, is sworn to as such, and constitutes an honest and genuine attempt to satisfy the law, its filing will start the running of the three-year period within which the IRS must assess the tax. *Zellerbach Paper Co. v. Helvering*, 293 U.S. 172 (1934), *Fowler v. Commissioner*, 155 T.C. 106 (2020). See also section 6501(g)(1) which provides that if a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return is filed, such return shall be deemed the return of the corporation for

purposes of this section. The relevant inquiry is whether the return filed sets forth the facts establishing liability. *Commissioner v. Lane–Wells Co*., 321 U.S. 219, 223 (1944)

A tax return will constitute an honest and genuine attempt to satisfy the law if the requirements of *Beard v. Commissioner*, 82 T.C. 766 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986) are met. These requirements are: (i) there must be sufficient data to calculate the tax liability; (ii) the document must purport to be a return, (iii) there must be an honest and reasonable attempt to satisfy the requirements of the tax law; (iv) and the taxpayer must execute the return under penalties of perjury.

In this case, the 1120PC purported to be a tax return, was executed under penalties of perjury and contained sufficient data to calculate the tax liability. Thus, it is likely that a court would conclude that the 1120PC return fulfilled the requirements of *Beard* and thus constituted an honest and genuine attempt to satisfy the law. Although the taxpayer should have filed a Form 1120-F instead of a Form 1120PC, the Forms 1120-F and Forms 1120PC report virtually the same information as to gross income, deductions, credits, and resulting net taxable income. *See Germantown Tr. Co. v. Comm'r of Internal Revenue*, 309 U.S. 304, 309 (1940) (fiduciary return mistakenly filed by taxpayer instead of Form 1120 “contained all of the data from which a tax could be computed and assessed…”). If the Service Center would be able to process the Form 1120-PC by transcribing the information thereon to the proper Form 1120-F, then the incorrect Form 1120-PC must contain sufficient data to calculate the taxpayer’s tax liability.

As a result, the statute of limitations applicable to the 1120PC will be applied to the 1120F

2. If the 1120PC gets a statue extension, the 1120F statute should reflect the same statute as the 1120PC.

In accordance with the conclusion above, an extension to the 1120PC statute should also apply to the 1120F.