

Financial Services - Insurance Tax Bulletin

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Roadside assistance provider can be taxed as an insurance company

Recently, the IRS ruled that a company in the business of providing roadside assistance coverage to policyholders of unrelated property and casualty insurers qualifies to be taxed as an insurance company under Section 831.

PLR 201229008 involves a Taxpayer who provides motorists with roadside assistance under risk and non-risk-based contracts. These services are provided through a network of independent contractor towing operators and locksmiths paid on a fee-for-service basis, with risk-based contracts solicited directly and through credit card issuers and other channels. Fleet services are also provided under non-risk contracts.

In general, under Code Section 831(a), a tax is imposed on the taxable income of every insurance company other than life insurance companies. Although the Code and regulations fail to define “insurance” or “insurance contract,” the U.S. Supreme Court previously established through case law that: (1) both risk shifting and risk distribution must be present (*Helvering v. LeGierse*, 312 U.S. 531 (1941)); (2) the risk transferred must be risk of economic loss (*Allied Fidelity Corp. v. Commissioner*, 572 F.2d 1190, 1193 (7th Cir. 1978)); (3) the risk must contemplate the fortuitous occurrence of a stated contingency, *Commissioner v. Treganowan*, 183 F.2d 288, 290-291 (2d Cir. 1950); and, (4) the risk must not be merely an investment or business risk, Rev. Rul. 2007-47. In addition, the arrangement must constitute insurance in the commonly accepted sense.

In this ruling, the IRS concluded that because Taxpayer accepted a very large number of unrelated, independent, homogeneous risk-based roadside assistance contracts, the taxpayer achieved the requisite risk distribution, and that the contracts constitute insurance for federal income tax purposes.

PwC Observation

The IRS has concluded similarly in previous rulings.

For further information, please feel free to contact Anthony DiGilio at (703) 918-4812 or contact your local insurance tax professional.

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