

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number

Refer Reply to:

CC:INTL:B1/PLR-118585-99

Date:

May 30, 2000

Taxpayer =

Dear

This responds to your letter dated November 15, 1999, as supplemented by your letter dated January 12, 2000. You request a ruling that premiums received by taxpayer on policies of insurance or reinsurance of United States risks are exempt from the insurance excise tax imposed by section 4371 of the Internal Revenue Code of 1986.

The ruling contained in this letter is predicated upon facts and representations submitted by, or on behalf of, taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. This office has not verified any of the above material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

Taxpayer, an insurance company which was created in 1988, is a resident of France and seeks to qualify for benefits under the United States-France Income Tax Convention on the basis of Article 30(2)(a). Under this Article, a resident of a Contracting State will be entitled to all the benefits of the Convention if:

- (i) such resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or investment company);
- (ii) the income is connected with or incidental to the trade or business in the first-mentioned State; and
- (iii) the trade or business is substantial in relation to the activity in the other State that generated the income.

Article 30(2)(b) of the United States-France Income and Capital Tax Convention provides that a taxpayer's trade or business will be deemed substantial in relation to the

activity in the other state if for the Taxpayer's preceding taxable year each of the following ratios equals at least 7.5% and the average of the ratios exceeds 10%:

- (i) the ratio of the value of assets used or held for use in the conduct of the trade or business of the resident in the first mentioned-State to the value of assets used or held for use in the conduct of the activity in the other State;
- (ii) the ratio of the gross income derived from the conduct of the trade or business of the resident in the first mentioned State to the gross income derived from the conduct of the activity in the other State;
- (iii) the ratio of payroll expense of the trade or business of the resident in the first mentioned State for Services performed in that State to the payroll expense of the activity in the other State for Services performed in that other State

The Taxpayer has submitted information under penalties of perjury which establishes it is engaged in the active conduct of a trade or business in France, and that the income derived is connected with or incidental to the trade or business in France.

The Taxpayer has also submitted information under penalties of perjury which establishes that ratio (i) equals 100%, that ratio (ii) equals 99.56%, and that ratio (iii) equals 100%, for an average of the three ratios of 99.85%. Taxpayer has thus submitted information establishing that it satisfies the test in Article 30(2)(b), and thus the trade or business in France is substantial in relation to the activity in the United States. Therefore, Taxpayer meets the limitation on benefits test in Article 30(2)(a) of the Convention.

Pursuant to paragraph (8)(a) of the enclosed Agreement, taxpayer's liability for Federal Excise Tax, as agreed upon, including liability resulting from reinsurance of U.S. risks with persons not entitled to exemption under the Convention or another convention, will commence October 15, 1999. The letter of credit required by paragraph (5)(a) of the enclosed Agreement, in the amount of \$75,000, must be in effect within 30 days of the date the Agreement is finally signed for the Commissioner.

Any person otherwise required to remit the Federal excise tax on foreign insurance or reinsurance policies issued by you pursuant to section 46.4371-1(a) of the Excise Tax Regulations may rely upon a copy of this letter and/or a copy of the approved Closing Agreement as authority that they may consider premiums paid to you on and after October 15, 1999 as exempt under the United States-France Income Tax Convention from the Federal excise tax.

This is a ruling and is directed only to the taxpayer named above. Section 6110(j)(3) of the Internal Revenue Code provides that this ruling may not be used or cited as precedent by any other taxpayer. Furthermore, this ruling does not address the issues of whether taxpayer is an insurance company or whether premiums paid to taxpayer are deductible under section 162 of the Internal Revenue Code.

Sincerely,

W. EDWARD WILLIAMS
Senior Technical Reviewer
Branch 1
Associate Chief Counsel (International)

Enclosures:

Copy of approved Closing Agreement
Copy for section 6110 purposes

cc:

CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS

Under Section 7121 of the Internal Revenue Code, "Taxpayer"), Tax Identification Number Revenue make the following closing agreement:

("French insurer or reinsurer" or and the Commissioner of Internal

WHEREAS, under the business profits article (Article 7 of the United States - France Income and Capital Tax Treaty signed August 31, 1994, and brought into force December 30, 1995 and effective for taxable years beginning on or after December 30, 1995 (the "Treaty")), exempts insurance or reinsurance premiums paid to a resident of France from the federal excise tax imposed by Section 4371; 4372; 4373; and 4374 ("Section 4371 et seq.") of the Internal Revenue Code of 1986 as amended, (the "Code") only to the extent that the French insurer or reinsurer does not reinsure such risks with a person not entitled to exemption from such tax under the Treaty or another:

WHEREAS, Sections 3.02, 3.03, and 3.04 of Rev. Proc. 92-39, 1992-1 C.B. 860 provide that the person required to remit the tax should consider the policy exempt only if, prior to filing the return for the taxable period, such person has knowledge that the French insurer or reinsurer has entered into a closing agreement to be liable as a United States taxpayer for federal excise tax due under Section 4371 on premiums from policies reinsured with reinsurers that are not entitled to exemption from the excise tax under the Treaty or any other convention and on premiums paid or accrued when the French insurer or reinsurer did not qualify under the Treaty for exemption from the excise tax imposed by Section 4371 et seq. of the Code;

WHEREAS, the French insurer or reinsurer represents that it is and will continue to be eligible for benefits under the Treaty; and

WHEREAS, the French insurer or reinsurer wishes to have its policies of insurance or reinsurance considered exempt from tax under the Treaty; **IT IS HEREBY DETERMINED AND AGREED THAT:**

(1) Taxpayer shall, for purposes of this closing agreement, be liable as a United States Taxpayer for the federal excise tax due under Section 4371 et seq. of the Code on premiums from policies reinsured with reinsurers that are not entitled to exemption from the excise tax under the Treaty or any other convention and from policies issued or outstanding when the Taxpayer did not qualify under the Treaty for exemption from the excise tax imposed by Section 4371 et seq. of the Code.

(2) (a) Returns of federal excise tax due under and pursuant to this closing agreement and Sections 4371 et seq. of the Code shall be made by Taxpayer, or by Taxpayer's authorized representative on Taxpayer's behalf, by filing Form 720, Quarterly Federal Excise Tax Return, for each return period covered by this closing agreement.

(b) If Taxpayer reinsurers, in whole or in part, a policy of insurance or reinsurance with any person(s) not entitled to exemption from the excise tax under the Treaty or any other convention or if Taxpayer issues or has outstanding a policy or policies when the Taxpayer did not qualify under the Treaty for exemption from the excise tax imposed by Section 4371 et seq. of the Code, the tax reportable on the return, Form 720, shall be computed on the basis of the percentage of such policy reinsured or on the basis of the premium accrued or received during the time period when Taxpayer did not qualify for exemption under the Treaty. For purposes of the preceding sentence, Taxpayer may consider a reinsurer to be entitled to exemption from the excise tax under the Treaty or another convention if the reinsurer is a party to a closing agreement with the Internal Revenue Service ("IRS" or the "Service") under this Treaty or another convention, or the reinsurer provides evidence that it is a resident of the United States or of a

country with which the United States has in effect a Convention that waives the excise tax without an explicit "anti-conduit" clause.

(c) Forms 720 shall be filed with the Director, Internal Revenue Service Center, Philadelphia, Pennsylvania 19255, U.S.A.

(d) Taxpayer, or Taxpayer's authorized representative, shall make the required federal tax deposits of the Federal excise tax in such manner and at such times as are prescribed by regulations and explained in the instructions for Form 720.

(3) Taxpayer agrees that for purposes of examination of the Federal excise tax liability pursuant to this closing agreement and for purposes of verifying the Taxpayer's entitlement to benefits under the Treaty, Taxpayer will maintain for a period of six years from the end of each taxable period to which this closing agreement applies accounts and records of items of insurance and reinsurance that will be made available upon written request by the IRS at the place mutually agreed upon by the Service and Taxpayer. Taxpayer will also maintain for six years and make available for inspection records to establish eligibility for Treaty benefits. Taxpayer will be allowed 60 days, or other period of time determined as reasonable by the Assistant Commissioner (International), within which to make available its accounts and records.

(4) If it is determined that there is an underpayment in respect of any excise tax determined to be due pursuant to this closing agreement and Section 4371 et seq. of the Code, the IRS shall issue a statement of notice and demand for the tax due plus any interest and applicable penalties. Notice of any underpayment shall be sent to the Taxpayer at the name and address shown on the Form 720, if a Form 720 was filed for the period which an underpayment is determined by the IRS, or otherwise to the Taxpayer's registered address in France. Payment of all additional amounts due shall be made in accordance with the terms specified in the statement of notice and demand. Collection of such amounts not, paid per notice and demand shall be in accordance with paragraph 5 hereof.

(5) (a) As security for payment of tax, Taxpayer shall cause an irrevocable letter of credit to be issued by a United States bank that is a member of the Federal Reserve System, or by a United States branch or agency of a foreign bank that is on the National Association of Insurance Commissioners list of banks from which letters of credit may be accepted, in favor of the IRS in the amount of \$75,000 (seventy five thousand United States dollars) or such amount as may from time to time be mutually agreed upon by Taxpayer and the Service. Such letter of credit must be in effect within 30 days of the date that the Closing Agreement is signed for the Commissioner of Internal Revenue.

(b) Such letter of credit may be drawn upon after and to the extent that:

- (i) The Service issues a statement of notice and demand for any tax due shown on a Form 720 (original, amended, or substitute for return) that is not paid with such return; or
- (ii) Any proposed additional excise tax liability sustained by the IRS Regional Director of Appeals having jurisdiction over such matter if the time for filing a protest of such proposed liability has expired, provided that the statement of notice and demand has been issued as provided in paragraph 4 hereof.

(c) If, after the conditions in paragraph 5(b) hereof have been met, the tax, interest, and any applicable penalties, are not paid in accordance with the terms of the statement of notice and demand, collection of

such amounts will be made by resorting to such letter of credit, to the extent thereof, before any levy or proceeding in court for collection is instituted against Taxpayer.

(d) If such letter of credit is drawn upon, it must be reinstated to \$75,000, or an amount as may have been agreed upon by the District Director and Taxpayer, within 60 days after the date drawn upon.

(6) (a) Solely by reason of the execution by Taxpayer and the Commissioner of this closing agreement, any person otherwise required to remit the Federal excise tax on foreign insurance or reinsurance premiums pursuant to Section 46.4374-1(a) of the Excise Tax Regulations may consider premiums paid to Taxpayer after the effective date of this agreement as exempt under the Treaty from the Federal excise tax.

(b) Taxpayer agrees that the Commissioner, or his or her authorized delegate, may disclose Taxpayer's name as an insurer or reinsurer that qualifies for exemption from the excise tax under the Treaty by publication or otherwise.

(7) (a) This closing agreement shall include, as an attachment hereto, a statement from the Competent Authority of France, as defined in Article 3 of the Treaty, certifying

that Taxpayer is a resident of France as defined in Article 4 of the Treaty and a statement from the Taxpayer that the Taxpayer is not disqualified from receiving benefits under the Treaty by reason of Article 30 of the Treaty. Taxpayer shall submit such information in its statement as will establish its entitlement to benefits under the Treaty.

(b) The statement from the Competent Authority of France certifying that the Taxpayer is a resident of France shall be effective for a period of three calendar years beginning with the year of receipt. Taxpayer agrees to renew the certificate of residency every three years, and its own certification of eligibility for benefits under the Treaty every year, on or before the expiration date of the original certificate. Taxpayer agrees to provide an original and one copy of the re-certification along with a photocopy of this closing agreement to:

Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224, U.S.A.
Attn: CC: INTL: 1

Taxpayer also agrees to notify the Competent Authority of France and the IRS of any change that results in its disqualification from receiving Treaty benefits.

(8) (a) This closing agreement shall be effective as of October 15, 1999. This agreement shall thereafter continue in effect unless terminated as provided in subparagraph (b) of this paragraph.

(b) This agreement may be terminated by either Taxpayer or the Commissioner by giving the other written notice of the notifying party's intent to terminate. The decision to terminate is solely at the discretion of the party giving such notice. This agreement shall be terminated on the last day of the return period immediately following the return period within which the written notice of termination is given.

(c) Taxpayer hereby agrees to file a return, Form 720, marked "Final Return" for the taxable period within which this agreement terminates pursuant to paragraph (8)(b) hereof and to furnish a duplicate of such "Final Return" to:

Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224, U.S.A.
Attn: CC: INTL: I

(d) Taxpayer agrees that the letter of credit issued pursuant to paragraph 5 hereof shall remain in effect for a period of not less than 60 days after the "Final Return" has been filed in accordance with subparagraph (c) hereof, or until the examination of Taxpayer's returns is completed and any additional tax due has been paid, whichever is later.

WHEREAS, the determinations set forth above are hereby agreed to by said taxpayer;

NOW THIS CLOSING AGREEMENT WITNESSETH, that the said taxpayer and said Commissioner of Internal Revenue hereby mutually agree that the determinations set forth shall be final and conclusive, subject, however, to reopening in the event of fraud, malfeasance, or misrepresentation of material fact, and provided that any change or modification of applicable statutes or tax conventions will render this agreement ineffective to the extent that is dependent upon such statutes or tax conventions.

IN WITNESS WHEREOF the above parties have subscribed their names to these presents, in triplicate.

Signed this 8 day Of NOVEMBRE, 1999.

By Directeur Financier

Commissioner of Internal Revenue

By Associate Chief Counsel International
Dated this 15th day of May, 2000

By for Assistant Commissioner (International)
Dated this 16th day of May, 2000