R.V.I. Guaranty Co. and the Concept of “Fortuity”

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Sheryl B. Flum, Jean M. Baxley and Drake Jenkins discuss the Tax Court decision in R.V.I. Guaranty Co. not to adopt the IRS’s consistently asserted position of the elements of “fortuity.” For insurance companies, the question then, as the authors note, is whether the IRS revises or sticks with its current concept of fortuity.

In September 2015, the Tax Court held in R.V.I. Guaranty Co.1 that certain residual value policies were insurance for U.S. federal income tax purposes. The case illustrates the typical exercise that both the government and taxpayers go through when determining whether a contract is insurance for tax purposes. The core inquiry when addressing the status of a contract as insurance or not is whether the contract possesses the characteristics of insurance, such as insurance risk, risk transfer and risk distribution. In particular, for a contract to cover “fortuitous” events. This article provides an overview of the case’s background and then discusses two arguments the government has previously employed when analyzing whether an arrangement entails fortuity. The government’s arguments in RVI mirrored its previous arguments, but the Tax Court rejected them. Given this defeat, it remains to be seen whether the government revises how it defines “fortuity.”
A. RVI—Factual Background

RVI Guaranty (“RVIG”) was incorporated in Bermuda in 1989 and through 2006 (the tax year at issue) was regulated under the Insurance Act 1978 of Bermuda. In 1999, RVIG elected under Code Sec. 953(d) to be treated as a domestic insurance company.

RVIA (an indirect subsidiary of RVIG) is a property and casualty insurance company domiciled in Connecticut. It commenced business in 1995 and, during 2006, was licensed to conduct an insurance business in Connecticut, New York, Pennsylvania, Ohio, Texas, Illinois and Georgia. RVIA is required to make various filings with those jurisdictions and with the National Association of Insurance Commissioners.

During 2006, RVIA exclusively issued residual value insurance policies (the “RVI policies”). RVIA issued these policies to unrelated insureds who leased assets or financed the leasing of assets. The risk facing these insureds, which they sought to mitigate, was the risk of an excessive loss in the value of the leased assets. At the inception of any lease, the insured anticipated that the leased assets would depreciate during the lease term down to an expected residual value (“Expected Residual Value”) due to normal wear and tear. But other factors could cause the assets to decline in value more than expected—excess wear and tear, recession, high interest rates, price deflation or risks particular to a certain type of property (e.g., commercial real estate might drop in value because of urban blight in a particular neighborhood). To protect against such risks, the insureds purchased RVI policies. Each RVI policy indemnified the insured against loss in the event that the assets had an actual value at the lease’s termination (“Actual End Value”) that was lower than the insured value (“Insured Value”). Typically, the Insured Value was slightly below the Expected Residual Value. Thus, the insured retained the risk for the initial layer of loss (between the Expected Residual Value and the Insured Value), and RVI indemnified the insured against the remaining risk of loss (between the Insured Value and a lower Actual End Value).

RVIA issued three types of policies: (1) FASB policies, which were designed with Insured Value levels just high enough to allow the lessor to apply direct financing lease accounting under SFAS 13; (2) primary policies, for which the Insured Value is not tied to lease accounting; and (3) hybrid policies, under which each asset is covered by both FASB and primary coverage. Pricing for coverage under an RVI policy ranged from 50 cents to $4 per $100 of insurance protection. The insured typically paid a single upfront premium for coverage.

The court gave the following example of a typical RVI policy: An automobile with an initial purchase price of $20,000 is leased for three years, and its Expected Residual Value upon lease termination is $10,000. RVI might insure the automobile for 90 percent of the Expected Residual Value (so the Insured Value would be $9,000). If, at lease termination, the automobile had an Actual End Value of $8,500, the RVI policy would indemnify the lessor for $500, assuming the lessor satisfied all terms and conditions of coverage. The lessor would bear the $1,000 initial layer of loss (i.e., the difference between the Expected Residual Value of $10,000 and the Insured Value of $9,000). In some cases, RVIA had the contractual right to physically settle the policies (i.e., to purchase the insured assets when the policy expired).

B. Insurance Risk vs. Noninsurance Risk: Analogies and Inevitability

a. The Government’s Financial Products Analogies

i. Put options and the RVI policies

As the U.S. Supreme Court stated in Helvering v. Le Giese, for a contract to be an insurance contract, it must involve an “insurance risk.” In RVI, the government focused on this issue in its opening brief:

The task in this case is to find the key distinctions between insurance and a financial contract that is not insurance. Those distinctions reveal that [the RVI policies are] not insurance. By definition, insurance requires “insurance risk.” Insurance risk is that particular risk that is passed from the insured to the insurer.

The authorities reveal three indicia of insurance risk that distinguish it from other kinds of risk. The three indicia are interrelated components of the single concept of “insurance risk” … The three indicia are:

1. The risk covered arises from a fortuitous event.
2. The risk is not speculative or investment risk.
3. The risk is a pure risk in that there is no possibility of profiting from the risk: only loss or no loss can result.

As the government’s brief noted, insurance risk is often defined as what it is not: it is not “speculative” or “business” or “investment” risk. Generally, from the standpoint of the insured, there can be no profit from insurance risk; the only possible outcomes are loss or no loss. Speculative risk, on the other hand, is merely investment risk, and it can produce profit or loss.
In *RVI*, the government argued that:

[I]nsurance risk is subject to fortuity and the law of large numbers, whereas speculative and investment risks are subject to market risk … The RVI policies cover the risk that, due to market forces, the covered asset values drop more than expected. The risk to [RVI] stems exclusively from speculation about future asset values. What is typically thought of as a casualty that would trigger insurance coverage (such as death, fire, or default on an obligation) is not a triggering event under the [RVI policies] … The risk to [RVI] is whether it correctly priced the [policies] so that it can make a profit after it makes payments to its customers. The question is not whether market forces will affect asset prices, but by how much, and whether [RVI] correctly calibrated the [Insured] Values in relation to the consideration it charged for the [policies].

So the government has posed one of the major questions presented in *RVI*: Do the RVI policies entail “insurance risk” when the risk that is covered arises from market forces that are almost certain to occur, but where the amount of the covered loss is unknowable when the policies are entered into?

One method the government used in *RVI* to argue that the RVI policies do not cover insurance risk was to analogize the policies to put options. Generally, a put option gives the holder the right (but not the obligation) to sell property to the put seller for a fixed price (the strike price) in the future. An American-style option can be exercised for some period of time up to its expiration; a European-style option can only be exercised on its expiration date. Put options are often cash-settled, meaning that the put seller, rather than purchasing the asset at the strike price (so-called physical settlement), pays the holder the difference (if any) of the strike price over the value of the asset.

At first blush, one might reasonably describe an RVI policy as a put option, *i.e.*, a contract that gives its holder (the insured) the right to sell the insured assets to the put seller (RVIA) at a fixed price (the Insured Value) on a fixed date (the lease expiration date). Indeed, Judge Lauber struggled with this very issue. At the end of the trial, he asked the parties to address the similarity between the RVI policies and a put option:

So [I] think really the question I’m struggling with is, is this insurance risk or is it some other kind of risk. And, you know, as Professor Baranoff said, in a very real sense if you ignore the netting of multiple vehicles under the lease structure, in the very real sense what the insured has bought is a put. He’s bought a right to put this property to the insurer at the end of the lease term if it’s worth less than the insured value … And so that’s the area where I think I need the most help.

The government’s expert witness Baranoff stated that the RVI policies “look like put options from all points of view except the fact that the leased cars are owned by the lessors. Ownership is not required in put options.”

RVI’s opening brief also acknowledged the functional similarity between a put option and insurance in that both may be used to transfer a risk of loss. All parties recognized that the RVI policies were not actually put options because of various contingencies in the policies that prevented them from being treated as put options for tax purposes. However, the government argued that the payouts on the policies functioned like put options, which are treated for tax purposes as derivative contracts and not as insurance. The government likened the RVI policies to a cash-settled European put option because the policies pay the protected party the Insured Value (strike price) over the Actual End Value (market price) on the contract’s expiration date. The government also noted that, in some cases, RVI had the contractual right to physically settle a policy, that is, to purchase the assets upon the policy’s expiration. Essentially, by analogizing the RVI policies to put options (which are derivative instruments and not treated as insurance), the government argued that the policies cover investment risk, not insurance risk.

The Tax Court, however, was not persuaded by the analogy. The court writes:

The insureds purchase insurance from RVIA to protect against the risk that unexpected events will wreak havoc with these lease-pricing formulas and generate an ordinary business loss instead of a profit. This is not an investment risk; it is a risk at the very heart of the lessor’s business model. In comparison with typical stock investors, therefore, the insureds under the RVI policies are at the opposite end of the bell curve.

Thus, although Judge Lauber himself initially found the analogy of put options to be compelling enough to make it the area where he needed the most help, the analogy did not hold up under the court’s closer inspection. However, *RVI* was not the first time the government argued by analogy that a contract entailed investment risk because it was similar to a financial contract.
ii. Currency derivatives—CCA 201511021

As RVI was winding its way through the Tax Court process, the government released CCA 201511021. There, the parent of a group that conducts business throughout the world entered into contracts with the group’s captive insurance company on behalf of some members of the group regarding sales and purchases in foreign currencies that exposed the group to the risk of fluctuations in those foreign currencies relative to the U.S. dollar. Under one type of contract, the captive agreed to indemnify the members for the amount of “loss of earnings” connected to a decrease in the value of each specified foreign currency relative to the U.S. dollar up to a stated coverage limit for the period stated in the contract. Under a second type of contract, the captive agreed to indemnify the members for the amount of “loss of earnings” connected to an increase in the value of each specified foreign currency relative to the U.S. dollar up to a stated coverage limit for each period stated in the contract.

When evaluating whether an arrangement constitutes insurance, the CCA stated that the first inquiry is whether “the subject risk is properly viewed as an ‘insurance risk’ or as a risk of another nature, such as investment, or perhaps synonymously, ‘business’ risk.” The CCA noted that the predicate of insurance risk is the risk of an “economic loss,” and that the failure to achieve a desired investment return is an investment risk, not an economic loss giving rise to an insurance risk and that not all contracts that transfer risk are insurance policies.

For the particular contracts at issue, the CCA advised that the risk involved was an investment-type risk because the risk was solely the manifestation of currency valuation. It noted that protection against the fluctuation in currency exchange rates does not appear to be commonly available from the major insurance carriers; rather, “it appears that the risk of loss from fluctuations in currency exchange rates are typically mitigated by derivative contracts.” This arrangement bears resemblance to a notional principal contract or other type of a section 988 transaction. This is borne out given that the premium paid by the participants is determined with reference to commercially available options …”

Similar to the government’s put-option argument regarding the RVI policies, the government advised that, at least in part because the risk that the taxpayer is seeking to control is sometimes controlled via derivative contracts, the contracts at issue are not insurance contracts.

iii. Comments

Analogies to known financial products can be helpful in understanding contracts that fall at various points on the spectrum from “definitely insurance” to “definitely not insurance” for federal income tax purposes. With no definitive tax definition of “insurance,” it is understandable that the government tried this approach in RVI.

But although analogies perhaps are helpful at times, the Tax Court in RVI was not convinced:

Analogizing the RVI policies to put options, moreover, is little more than a simile … At a conceptual level, many insurance products could be likened to put options. A mortgage guaranty policy, for example, could be said to give the policyholder the right to put the mortgage loan to the insurer unless the insurer pays the insured the difference between the remaining balance of the loan (the strike price) and its value on the exercise date. Even a fire insurance policy could be likened to a put on the fire-damaged house that is settled by the insurer’s payment of the damage claim.

Given the Tax Court’s rejection of the government’s analogy, it remains to be seen whether the government will continue to use analogies when arguing that other arrangements are or are not insurance, either in informal guidance or in future court cases.

b. Inevitability—A Type of Fortuity?

It has been a mantra of the government that insurance risk requires “fortuity.” According to the government’s opening brief in RVI, a fortuitous event is “[a] happening that, because it occurs only by chance or accident, the parties could not reasonably have foreseen it.” Courts also look for fortuity when determining if a contract is an insurance contract: “From an insurance standpoint there is no risk unless there is uncertainty or, to use a better term, fortuitousness. It may be uncertain whether the risk will materialize in any particular case. Even death may be considered fortuitous, because the time of its occurrence is beyond control.”
In \textit{RVI}, the government argued that the RVI policies do not turn on the occurrence or nonoccurrence of fortuitous events because, under the policies, the insured event may be caused by any number of different factors, including among others: increasing unemployment rates, increasing fuel prices, over-supply of used car inventories, economic downturns and significant technological advances that cause obsolescence.\textsuperscript{24} The government argued that these are not discrete, fortuitous events: “Although their direction and extent are unknown, it is a given (and not a fortuity) that the market forces cited by [RVI] will affect the value of the covered assets on a continuous basis. Unlike a fire or car accident or default on a bond, market fluctuations are not isolated events, but instead ‘happen’ every day, and even every minute … Price movements typical to the marketplace are not ‘events’ that trigger potential claims as commonly understood in the insurance world.”\textsuperscript{25}

This position is not new for the government. A well-known ruling on the issue is Rev. Rul. 89-96, a.k.a., the MGM Grand ruling.\textsuperscript{26} Apparently based on the fire that occurred on November 21, 1980, at the MGM Grand in Las Vegas,\textsuperscript{27} this ruling addresses a taxpayer that, because of a catastrophe, incurs a liability of unknown size that greatly exceeds the taxpayer’s current liability insurance coverage. After the catastrophe, the taxpayer enters into an arrangement with an insurer under which the insurer would pay the taxpayer’s liability up to a cap (which cap was less than the total liability the taxpayer expected to pay out, so the insurer expected to pay out the full cap amount). The taxpayer paid the insurer a premium for entering into the arrangement.

The ruling states that the arrangement “does not involve the requisite risk shifting necessary for insurance. The catastrophe has already occurred, and the economic terms of the contract demonstrate the absence of any transfer of risk apart from an investment risk … Although the contract created certain risks for [the insurer], those risks are investment risks and not insurance risks. Specifically, the only risks borne by [the insurer] in this situation are that it will be required to make payments with respect to a known loss earlier than expected and that the available investment yield between the time of payment of the premiums and the time of payment of the claims will be lower than expected.”\textsuperscript{28}

This ruling focused on the insurer, addressing the question of what risk the insurer had assumed. In this situation, (i) the insured event had occurred and (ii) the amount of the economic loss was known (\textit{i.e.}, the insurer expected to pay out the full cap amount). So the insurer knew that it would have to pay out as well as how much it would have to pay out; all that remained was for the insurer to compute a premium such that, based on investment return estimations, the premium will accrue to more than the required payout. The ruling concluded that this type of risk was purely an investment risk.

Rev. Rul. 89-96 was “amplified” in Rev. Rul. 2007-47,\textsuperscript{29} where the taxpayer was engaged in a business process that was inherently harmful to people and property, and it was legally required to remediate that harm. Doing so required the taxpayer to incur future costs to restore the location to its condition before the taxpayer began its business there. The future costs would be incurred when the taxpayer ceased its business process, and the exact amount and timing of the future costs were a function of many factors, but there was no uncertainty that the future costs would be incurred. When the taxpayer began its process, it estimated the present value of the future costs. The taxpayer then entered into an arrangement with an unrelated insurance company whereby the taxpayer agreed to pay the company the present value of the future costs and the company agreed to reimburse the taxpayer for its future costs, up to a limit.

In analyzing this arrangement, the ruling noted that it was certain the taxpayer would incur the future costs, and it was certain that the insurance company would have to perform under the arrangement at the full amount of the policy limit. The ruling noted that, economically, the arrangement was merely a prefunding of the taxpayer’s future obligations. The insurance company’s overall risk was whether its return on the premium would accrue to fully cover the insurance company’s obligation. The ruling found this risk to be akin to timing and investment risk, not insurance risk.

Similarly, in CCA 200703007 (which likely is precursor guidance to Rev. Rul. 2007-47), the taxpayer operated a nuclear power plant and was obligated to decommission the plant when it shut the plant down. Periodically, the taxpayer had to prove to a government agency that the taxpayer would have sufficient funds available to decommission the plant. The variables that influence the ultimate cost of decommissioning fell into various categories (\textit{e.g.}, when do operations at the plant cease, the extent of actual contamination, changes in regulatory requirements for decommissioning and the economic conditions at the time of decommissioning). So although the costs of decommissioning could not be presently known with certainty, industry experience provided data to build reliable models of the timing and amount of such costs.
Under Section 468A of the Code, an eligible taxpayer can establish a “Nuclear Decommissioning Reserve Fund” (a.k.a., a “qualified decommissioning trust,” or QDT) which functions as segregated reserve dedicated exclusively for the payment of nuclear decommissioning costs, taxes on fund income and management costs of the fund. Code Sec. 468A also provides that an eligible taxpayer can establish a “nonqualified decommissioning trust fund” (a.k.a., an NQDT). The NQDT is not governed by Code Sec. 468A and is commonly treated as a grantor trust.

In the CCA, several unrelated entities were operating nuclear power plants. For each plant, there was both a QDT and an NQDT. The QDTs and NQDTs were to be used to form a new corporation (Newco) to sell a contract covering decommissioning costs to each QDT and each NQDT. For the payment of a specified charge, each Newco contract would have indemnified the contract holder for the costs incurred to decommission a plant up to a specified limit. The specified charge for the contract was to be based on the net present value of the estimated costs of decommissioning the specified plant plus a risk margin.

It will be interesting to see if the government continues to employ these arguments in future cases or informal guidance, or if the government revises how it approaches the concept of fortuity.

In analyzing the contracts, the CCA noted that, if they are to constitute insurance, they must transfer an insurance risk. But when a nuclear power plant is placed in operation, it is inevitable that the operator of the plant will incur the cost of decommissioning it; therefore, no hazard or fortuity exists as to the occurrence of such costs. Instead, the operators bear the risk that they used an inaccurate method to estimate and discount their future (inevitable) decommissioning costs, i.e., that when the time comes to decommission, they will have set aside too little money to fulfill their obligations. The CCA advised that this risk was a business risk more akin to timing and investment risks than to insurance risks. Accordingly, the CCA advised that the proposed contracts would not constitute insurance.

The two revenue rulings differ in a fundamental way. In Rev. Rul. 89-96, the catastrophe that created the taxpayer’s liability had occurred before the taxpayer entered into the coverage arrangement with the insurer, whereas in Rev. Rul. 2007-47, the taxpayer had not yet begun the process that would create the liability. Yet the government concluded that neither arrangement was insurance. Fundamentally, the above guidance suggests that the government does not generally treat losses as fortuitous (i) when they arise from events that either have occurred or are almost certain to occur and (ii) when their amount is reasonably ascertainable at the time the coverage arrangement is entered into.

The arguments in RVI revolve mostly around the first prong: Can an event that is almost certain to occur (depreciation in the leased assets) be fortuitous? By holding for the taxpayer, the Tax Court responds “yes,” at least when RVI’s expected loss cannot be predicted at the time it issues its policies. The court acknowledges that the value of the assets covered by the policies will inevitably decline by an unknown amount: “At the inception of any lease, the lessee anticipates that the leased property will depreciate during the lease term to a probable ‘residual value’ due to normal wear and tear. Numerous factors, however, can cause property to decline in value more precipitously than expected.” To the government, these events are not fortuitous: “Although [an RVI policy] provides the buyer with contractual security against possible loss, [the RVI policy] does not involve any defined contingency or fortuitous event, which has been held as an essential element of insurance.” In its analysis, the court does not so much attack the government’s logic; rather, it refers to RVI’s statutory financial statement requirements and state case law that held that contracts that provide coverage against an apparently inevitable decline in the market values of particular assets can nevertheless be insurance contracts. For example, it cites a Pennsylvania Supreme Court case that held an insurer’s indemnification against loss from a decline in value of real estate involved an insurance risk. The insurance company there insured against a well-known risk, to which all landowners are subject, depreciation from the price paid (the magnitude of the depreciation, however, was not known). The court there held that the company was clearly engaged in the “business of insurance” in providing its guaranty against decline in the value of property.

After citing several other state-law authorities, statutory financial statement rules and Congress’ general grant of authority to the States to regulate the business of insurance, the Tax Court concludes that the RVI policies are insurance for federal tax purposes. In reaching this conclusion, the court clearly gives a substantial amount
of weight to the insurance/not-insurance determinations of state courts, but how far this reliance goes remains to be seen. In any event, because the court accords significant weight to state-law determinations, the court does not squarely address the government’s position that insurance is the mechanism to manage the risk of loss from fortuitous events; it is not the mechanism to manage losses that are substantially certain to occur. However, by holding for the taxpayer, the court supports the notion that an event that is certain to occur (like depreciation of lease assets) coupled with a loss that is uncertain in amount (like the ultimate loss of the insureds under the RVI policies) can be fortuitous.

### C. Final Thoughts

The government has been consistent with the arguments it employs when determining whether a contract is “insurance,” and in particular how it has approached “fortuity.” However, the Tax Court was persuaded by neither the government’s analogy of the RVI policies to put options nor the government’s argument that it was a given (and thus not a fortuity) that market forces would affect the value of the assets covered under the RVI policies. It will be interesting to see if the government continues to employ these arguments in future cases or informal guidance, or if the government revises how it approaches the concept of fortuity.

### ENDNOTES

1. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser. This article represents the views of the author(s) only and does not necessarily represent the views or professional advice of KPMG LLP.

2. Unless otherwise indicated, all section references are to the U.S. Internal Revenue Code of 1986, as amended (the “Code”), or to the Treasury regulations issued thereunder.

3. Throughout this article, we often refer to RVIG and RVI collectively as RVI.


5. R.V.I. Guaranty Co., 145 TC No. 9, at 3.


9. Id.; AMERCO, CA-9, 92-2 ustc ¶50,571, 979 F2d 162, 167.


13. Opening Brief for the Petitioner at § C1, No. 27319-12.


15. Opening Brief for the Government at § I.A.1, No. 27319-12.

16. Id.

17. R.V.I. Guaranty Co., 145 TC No. 9, at 23. Interestingly, this language suggests that investment risk and business risk may not be one and the same. Indeed, the risks inherent in the conduct of a business (e.g., property damage, malpractice liability cover and business interruption) are precisely the types of risks that are commonly insured. So is the Tax Court here beginning to draw a line between investment risk, which presumably is speculative and can produce a profit or a loss, versus business risk? The government itself recently queried at this very issue when it wrote: What is an investment (or business) risk? You buy stock with the intent to make a profit. That risk of success is an investment risk. A business owner invests its capital in a business enterprise with the intent to make a profit. A business has an unlimited number of economic risks. The factory building may burn down. The business may not make a profit because it fails to obtain sufficient raw materials, gross receipts, or customers. Are all of these economic risks insurance risks? Is a business risk an investment risk of a business? See CCA 201510I21, discussed below. It will be interesting to see if future guidance or court opinions further analyze a distinction between investment risk and business risk.


19. Id. (emphasis added).

20. R.V.I. Guaranty Co., 145 TC No. 9, at 23, Dec. 60,408

21. See AMERCO, CA-9, 92-2 ustc ¶50,571, 979 F2d 162, 167, for a classic description of this concept.

22. Opening Brief for the Government at § I.A.1, No. 27319-12.


25. Opening Brief for the Government at § I.A.1, No. 27319-12 (emphasis added).


28. Id.


30. R.V.I. Guaranty Co., 145 TC No. 9, at 2 (emphasis added). The court also stated, at 11, that “We have no difficulty concluding that the lessors and finance companies that purchased the RVI policies transferred to petitioner a meaningful risk of loss. As Professor Angelina explained, these companies faced a significant business risk: if the values of the leased assets declined more precipitously than expected by the end of the lease term, their lease pricing formula could generate a substantial economic loss.” (Emphasis added.)


32. R.V.I. Guaranty Co., 145 TC No. 9, at 18–19 (citing Commonwealth ex rel. Schnader v. Fidelity LandValue Assurance Co., 167 A.300 [Pa. 1933]). The Tax Court cites precedents from several states holding that residual value insurance policies are insurance for state purposes.

33. We note that both the government and the Tax Court have, when determining whether an arrangement is insurance for federal tax purposes, often looked to state regulators’ definitions of insurance companies and insurance transactions. But both the government and the Tax Court typically also note that they are not bound by state-law determinations. See, e.g., AMERCO, 96 TC 18, 42 (acknowledging the state regulators’ determination that an entity was a fully licensed property and casualty insurer and saying that, “while
these definitions are not dispositive of the issue before us, they do inform our decision.

CCA 201533011 (Aug. 14, 2015) (noting that "the determination of whether an arrangement resembles insurance in its commonly accepted sense encompasses a number of factors, including state regulators’ definitions of insurance companies and insurance transactions. However, state law definitions are not dispositive for Federal income tax purposes.

34 See, e.g., CCA 200703007 (Jan. 19, 2007).