

Internal Revenue Service

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Date:
July 28, 2015

Legend:

Taxpayer =

Entity 1 =

Entity 2 =

Entity 3 =

Jurisdiction 1 =

Accountant 1 =

Accountant 2 =

Tax Year 1 =

Tax Year 2 =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This is in reply to a letter dated January 29, 2015, submitted on behalf of Taxpayer by its authorized representative. Taxpayer requests an extension of time to file an election under section 1092(b) of the Internal Revenue Code of 1986 and section 1.1092(b)-4T(f) of the Temporary Income Tax Regulations.

FACTS

Taxpayer is in the business of investing in various entities that trade U.S. and foreign financial securities, as well as providing investment management services to certain of said entities.

As of the close of business on Date 1, Taxpayer purchased the entire partnership interest which Entity 1 held in Entity 2, an exempted company organized under the laws of Jurisdiction 1.

Taxpayer had no officers or directors and was managed by two managing members, neither of whom possessed extensive knowledge of U.S. Federal tax law.

For periods through Date 1, Entity 1 and Entity 3 each owned an interest in the profits (loss) of Entity 2. Only Entity 1, however, owned a capital interest in Entity 2. At the close of business on Date 1, but immediately prior to Taxpayer's purchase of Entity 1's entire partnership interest in Entity 2, Entity 3 transferred its profits (loss) interest in Entity 2 to Entity 1.

Taxpayer, which did not employ an internal tax department or internal tax professionals, previously engaged a third-party tax professional, Accountant 1, to prepare federal income tax returns for Taxpayer. Immediately following Taxpayer's purchase of Entity 1's interest in Entity 2, Taxpayer engaged Accountant 2 to perform its federal tax compliance function. This arrangement was terminated shortly thereafter and Accountant 1 was again engaged just prior to the preparation of Taxpayer's Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns* ("Form 7004"), for Tax Year 1.

Accountant 1, unaware that Entity 2 had terminated as a partnership for U.S. Federal tax purposes as of the close of business on Date 1, prepared Form 7004 for Entity 2, attaching a statement making an election to establish one or more "mixed straddle accounts" effective Date 2 and identifying the trading strategy to which the election was to apply. Accountant 1 was also unaware that, pursuant to section 1.1092(b)-4T(f)(2)(i), the prescribed manner for making this election is on Form 6781, *Gains and Losses from Section 1256 Contracts and Straddles*.

In preparation for filing Entity 2's Form 1065 for Tax Year 1, Accountant 1, upon a more thorough review of the purchase agreement and records from Entity 2, determined that for U.S. Federal tax purposes, Entity 2 terminated as a partnership and became a disregarded entity as of the close of business for Tax Year 1. Consistent with its termination as a partnership as of the close of business for Tax Year 1, Entity 2's Form 1065 for Tax Year 1 was marked as a final return. Consistent with Entity 2 becoming a disregarded entity as of the close of business for Tax Year 1, and with the intention to make effective as of Date 3 an election to establish one or more "mixed straddle accounts" relative to positions held by Entity 2 and the Taxpayer, Accountant 1 filed Form 7004 on behalf of Taxpayer for Tax Year 2, including a statement electing one or more "mixed straddle accounts" effective Date 3.

LAW AND ANALYSIS

Section 1.1092(b)-4T(a) of the Regulations generally permits a taxpayer to elect (in accordance with paragraph (f) of section 1.1092(b)-4T) to establish one or more "mixed straddle accounts." Section 1.1092(b)-4T(b) defines a mixed straddle account to mean an account for determining gains and losses from all positions held as capital assets in a designated class of activities by the taxpayer at the time the taxpayer elects to establish a mixed straddle account.

Section 1.1092(b)-4T(f)(1) of the Regulations generally provides that, except as otherwise provided, the election to establish one or more mixed straddle accounts for a taxable year must be made by the due date (without regard to any extensions) of the taxpayer's income tax return for the immediately preceding taxable year (or part thereof). Section 1.1092(b)-4T(f)(1) further provides that if an election is made after the time specified above, the election will be permitted only if the Commissioner concludes that the taxpayer had reasonable cause for failing to make a timely election. Because section 1.1092(b)-4T(f)(1) provides specific guidance about making a late mixed straddle account election, the rules generally applicable to late elections described in section 301.9100-3 do not apply to this late mixed straddle account election.

CONCLUSION

Based on the facts and representations submitted, we conclude that Taxpayer has shown reasonable cause for failing to make proper timely elections under section 1.1092(b)-4T(f) of the Regulations. Therefore, we grant the requests for extensions of time to make the elections under section 1.1092(b)-4T(a) effective for Date 2 and effective for Date 3.

Except as specifically ruled upon above, no opinion is expressed as to the tax treatment of the transaction under the provisions of any other sections of the Code and Regulations which may be applicable thereto, or the tax treatment of any conditions

existing at the time of or effects resulting from the transaction. Specifically, no opinion is expressed as to the status of whether Taxpayer substantially complied with section 1.1092(b)-4T(f)(2)(i) by the manner in which they attempted to make an election. Also, no opinion is expressed concerning whether the positions designated by Taxpayer as the class of activities is a permissible designation under section 1.1092(b)-4T(b)(2) of the Regulations.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

John W. Rogers III
Senior Technician Reviewer, Branch 6
Office of the Associate Chief Counsel
(Financial Institutions and Products)

Enclosures:

Copy of this letter
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