Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:3
PLR-123410-15

Date:
December 31, 2015

LEGEND

Taxpayer	=
Activity	=
Year 1	=
Year 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Percentage 1	=
Z	=
Y	=
Banker	=
Counterparty	=
Tax Officer	=
Auditors	=
Recent ID Statement	=

Dear :

This letter is in response to a letter from your authorized representatives requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to satisfy the requirements of § 1.1275-6(c)(1)(i) of the Income Tax Regulations relating to the identification requirements of § 1.1275-6(e) for integration of a qualifying debt instrument and a § 1.1275-6 hedge.

FACTS

Taxpayer is the domestic parent of an affiliated group of corporations that files a consolidated federal income tax return on a calendar-year basis.

During the first Z months of Year 1, Taxpayer began to consider issuing convertible notes to fund Activity as well as other business operations. Taxpayer's long-time advisor and investment banker, Banker, provided Taxpayer with materials explaining the accounting and tax treatment of issuing convertible debt and entering into a convertible bond hedging transaction to hedge the conversion feature. The transaction consists of purchased call options that offset the conversion feature under the convertible notes, together with written call options at a higher strike price. The materials prepared by Banker explained that the economic dilution associated with issuing convertible debt by effectively raising the conversion price to the strike price under the warrants and that the cost of the purchased call options would be deductible over the life of the convertible notes for tax purposes.

Shortly before Date 1, Taxpayer's board of directors approved a convertible note offering and appointed a special pricing committee to review and approve the final terms of the financing. On Date 1, the committee approved the terms of the financing, including the purchase of call options and the sale of warrants.

On Date 1, Taxpayer executed a confirmation with Counterparty for Taxpayer's purchase of Y call options with respect to its stock ("Purchased Call Options") corresponding to the convertible notes expected to be issued. The Purchased Call Options are automatically exercised when a corresponding number of the convertible notes have been converted. On Date 1, Taxpayer entered into a separate confirmation with Counterparty under which Taxpayer sold warrants ("Warrants") to Counterparty.

On Date 2, Taxpayer issued senior convertible notes that pay interest at Percentage 1 and mature on Date 4 ("Convertible Notes"). On Date 2, Taxpayer also paid the premium for the Purchased Call Options from the proceeds of the Convertible Notes.

From the presentation and communications with Banker and its legal advisor, Taxpayer did not become aware that it must take any affirmative action such as identifying the Convertible Notes and Purchased Call Options under § 1.1275-6 in order to treat them as an integrated transaction. Taxpayer believed that integrated treatment was the default tax treatment for the Convertible Notes and the Purchased Call Options. Tax Officer declared that Taxpayer intended to integrate the Convertible Notes and the Purchased Call Options.

As part of Taxpayer's financial audit for Year 1, Auditors reviewed Taxpayer's tax provision in Year 2 and requested a copy of its documentation meeting the

requirements of § 1.1275-6(c)(1)(i) and (e). Taxpayer's sole tax professional was unaware of the requirements and had not prepared the documentation.

On Date 3, Taxpayer prepared and retained, as part of its books and records, documentation that it believes meets the requirements of § 1.1275-6(c)(1)(i) and (e), the Recent ID Statement. Taxpayer has requested an extension of time under § 301.9100-1 to satisfy the requirements of § 1.1275-6(c)(1)(i) and (e), using the Recent ID Statement.

Taxpayer makes the following additional representations, treating the requirements of § 1.1275-6(c)(1)(i) and (e) as a regulatory election:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service ("Service").

2. Granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Internal Revenue Code at the time Taxpayer requested relief, and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose to not file the election.

5. Taxpayer is not using hindsight in requesting this relief.

In addition, affidavits on behalf of Taxpayer have been provided as required by § 301.9100-3(e).

LAW AND ANALYSIS

Section 1.1275-6 generally provides for the integration of a qualifying debt instrument within the meaning of § 1.1275-6(b)(1) ("QDI") with a § 1.1275-6 hedge or combination of § 1.1275-6 hedges if the combined cash flows of the components are substantially equivalent to the cash flows on a noncontingent debt instrument that pays interest at a fixed rate or qualified floating rate. See § 1.1275-6(a).

Section 1.1275-6(c)(1) provides generally that a QDI and a § 1.1275-6 hedge are an integrated transaction if the requirements in § 1.1275-6(c)(1)(i) through (vii) are satisfied. Section 1.1275-6(c)(1)(i) requires that the taxpayer satisfy the identification

requirements of § 1.1275-6(e) on or before the date the taxpayer enters into the § 1.1275-6 hedge.

Section 1.1275-6(e) provides that for each integrated transaction, a taxpayer must enter and retain as part of its books and records the following information: (1) the date the QDI was issued or acquired (or is expected to be issued or acquired) by the taxpayer and the date the § 1.1275-6 hedge was entered into by the taxpayer; (2) a description of the QDI and the § 1.1275-6 hedge; and (3) a summary of the cash flows and accruals resulting from treating the QDI and the § 1.1275-6 hedge as an integrated transaction.

Section 301.9100-1(c) provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) provides in part that the term "election" includes an application for relief in respect of tax; a request to adopt, change, or retain an accounting method or accounting period; but does not include an application for an extension of time for filing a return under section 6081. Section 301.9100-1(b) also provides in part that the term "regulatory election" means an election whose due date is prescribed by a regulation published in the Federal Register, or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1)(ii) sets forth rules that the Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2 for an automatic extension.

Section 301.9100-3(b) provides that, subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith.

Section 301.9100-3(c) provides that the interests of the Government are prejudiced if either granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money) or the taxable year in which a timely regulatory election should have been made is closed.

Section 301.9100-3(b)(3)(iii) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief. In such

a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

CONCLUSIONS

Based on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time under § 301.9100-3 to satisfy the requirements of § 1.1275-6(c)(1)(i) relating to the identification requirements of § 1.1275-6(e) for integration of the Convertible Notes and the Purchased Call Options.

CAVEATS

This ruling is limited to the timeliness of satisfying the requirements of § 1.1275-6(c)(1)(i) relating to the identification requirements of § 1.1275-6(e) in order to treat the Convertible Notes and the Purchased Call Options as integrated transactions. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed or implied concerning the integration of the Convertible Notes and the Purchased Call Options, including but not limited to: (1) whether the Recent ID Statement is adequate for purposes of § 1.1275-6(e); (2) whether the Purchased Call Options and Warrants should be treated as a single instrument; or (3) whether the Commissioner could integrate, under § 1.1275-2(g)(2), the Convertible Notes, the Purchased Call Options and the Warrants as a single synthetic position.

Moreover, no opinion is expressed with regard to whether the tax liability of Taxpayer is not lower in the aggregate for all years to which the regulatory election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Charles W. Culmer
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosure
Copy of this letter for section 6110 purposes