Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Date:
June 23, 2016

Legend

Taxpayer =

Accounting Firm =

Company =

State A =

State B =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This responds to a letter dated January 11, 2016, submitted on behalf of Taxpayer by its authorized representatives. Taxpayer requests an extension of time to file an election under section 1092(b) of the Internal Revenue Code ("Code") and section 1.1092(b)-4T(f) of the Temporary Income Tax Regulations ("mixed straddle election").

FACTS

Taxpayer is a State A LLC organized on Date 1 that is treated as a partnership for federal income tax purposes. Taxpayer uses an accrual method of accounting and employs the calendar year as its taxable year for federal income tax purposes.

Taxpayer was created as a hedge fund with the purpose of allocating capital for both internal traders and external managed accounts. Taxpayer's management team founded the fund and had significant investment experience but no prior experience running a strategy directly.

On Date 2, Taxpayer retained Accounting Firm, a State B CPA firm with expertise in hedge fund and private equity taxation, to provide both tax and fund administration services. Accounting Firm was uniquely qualified to assist Taxpayer because of its hedge fund administration affiliate, Company, an independent provider of specialized administration services for financial companies such as Taxpayer. Further, Accounting Firm marketed itself as having hedge fund tax professionals who specialize in tax issues affecting hedge funds and private equity firms. In retaining Accounting Firm, Taxpayer intended to rely upon Accounting Firm to provide both administration services and tax advice in connection with Taxpayer's trading activities because Taxpayer was managed by trained investment managers who lacked any tax expertise.

During the first quarter of Year 1, shortly after Taxpayer was created, Taxpayer began a new fund and entered into transactions that Taxpayer later learned qualified for federal income tax purposes as "mixed straddles" under sections 1092 and 1.1092(b)-4T(b). At the time these transactions started, Taxpayer's managers were unaware of the availability of tax elections attributable to mixed straddles and their tax implications. Although Accounting Firm was aware of Taxpayer's trading activities, and monitored Taxpayer's trading on a daily basis, Accounting Firm failed to advise Taxpayer of the availability of an election to treat the transaction as "mixed straddles" for federal income tax purposes. Taxpayer continued the investment strategy from which it entered into mixed straddle transactions until Date 3, at which time Taxpayer liquidated the transactions.

On Date 4, Taxpayer's management became aware of the potential availability of the mixed straddle election when its Accounting Firm accountant asked how Taxpayer "handles certain elections," including the mixed straddle election. After the accountant raised the issue, and Taxpayer learned about the tax implications of making such an election, Taxpayer expressed to the accountant an interest in making such an election. In response, the accountant advised that the election should have been made in the prior year, and, therefore, "it doesn't look like it's an option at this point." At the time of this communication, Taxpayer had no knowledge of the manner in which the election is made, that a separate election is required for each mixed straddle account, or that late election relief is available if a taxpayer has reasonable cause for failure to file the election. Rather than advise Taxpayer about the manner in which an election is made, or the availability of late election relief, the accountant discouraged Taxpayer from making an election, suggesting that it was "a lot of work" and "cost prohibitive" to recalculate the income under a different methodology.

On Date 5, Taxpayer began a different investment strategy, and again entered into transactions that qualified as mixed straddles. Although Accounting Firm was aware of Taxpayer's investment activity, and that Taxpayer had previously expressed an interest in making a mixed straddle election, Accounting Firm failed to advise Taxpayer as to the availability of the election for the new strategy, the manner in which the election is made, or the time for making the election.

Taxpayer began interviewing new tax advisers shortly thereafter, based, in part, on a belief that Accounting Firm was not properly advising them on tax matters, including the mixed straddle election which Taxpayer believed was irrevocably missed in Year 1.

On Date 6, Taxpayer retained counsel who advised Taxpayer that a mixed straddle election should have been made for Year 1 and Year 2, and that late election relief for Year 1 and Year 2 may be available due to reasonable cause.

Consequently, Taxpayer requests an extension of time to file an election under sections 1092(b) and 1.1092(b)-4T(f) for Year 1 and Year 2.

LAW AND ANALYSIS

Section 1.1092(b)-4T(a) of the Regulations generally permits a taxpayer to elect (in accordance with § 1.1092(b)-4T(f)) 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 a taxpayer begins trading or investing in positions in a new class of activities during a taxable year, the taxpayer must make the election with respect to the new class of activities by the later of the due date (without regard to any extensions) of the taxpayer's return for the immediately preceding year or 60 days after the first mixed straddle in the new class of activities is entered into.

Section 1.1092(b)-4T(f)(1) also 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 information provided and representations made, we conclude that Taxpayer has shown reasonable cause for failing to make a timely election under § 1.1092(b)-4T(f) for its Year 1 and Year 2 taxable years. Therefore, we grant the Taxpayer's request for an extension of time to make these elections under § 1.1092(b)-4T for the taxable years ending December 31, Year 1 and December 31, Year 2. The extension will expire 30 days from the date of this letter. Each election must be made in the manner prescribed in § 1.1092(b)-4T(f)(2) and filed with the Director having audit jurisdiction over the Taxpayer's tax return.

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 concerning whether the positions designated by Taxpayer as the class of activities is a permissible designation under § 1.1092(b)-4T(b)(2) of the Regulations.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 representative.

Sincerely,

Robert A. Martin
Senior Technician Reviewer
Office of Associate Chief Counsel
(Financial Institutions & Products)