

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201820014**  
Release Date: 5/18/2018

Third Party Communication: None  
Date of Communication: Not Applicable

Index Number: 1092.05-02, 1092.05-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:FIP:B02  
PLR-128469-17  
Date:  
January 25, 2018

Taxpayer	=
Entity 1	=
Entity 2	=
Entity 3	=
Accounting Firm	=
Advisor	=
Year 1	=
Year 2	=
Date 1	=
Date 2	=
Month	=
State	=
Services	=
Foreign Currency Contracts	=

Dear \_\_\_\_\_ :

This is in reply to a letter dated September 15, 2017, 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 and section 1.1092(b)-4T(f)(1) of the Temporary Income Tax Regulations to establish one or more mixed straddle accounts for Year 2.

## FACTS

Taxpayer is a State limited liability corporation and is affiliated with Entity 1, a firm providing Services. Taxpayer makes foreign investments through Entities 2 and 3. Entity 2 is wholly owned by Taxpayer and is classified as a foreign corporation for U.S. federal income tax purposes. Entity 3 is 99 percent owned by Taxpayer and one percent owned by Entity 2, and is classified as a foreign partnership for U.S. federal income tax purposes.

Taxpayer has historically made elections to establish mixed straddle accounts by filing Form 6781, Gains and Losses from Section 1256 Contracts and Straddles ("Form 6781"), with its timely filed Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns ("Form 7004") for its immediately preceding tax year. The election is made by Taxpayer as the owner of Entity 3, the entity entering into Foreign Currency Contracts, with respect to which the mixed straddle account elections are made, and which does not file its own U.S. federal income tax return.

Entity 1 has an internal tax department that provides tax and related services to Taxpayer. In connection with their activities, Entity 1 engaged Accounting Firm and Advisor to provide tax compliance services as well as tax advice. Among Accounting Firm's responsibilities under its engagement was the preparation of requests for extensions of time to file tax returns for various entities affiliated with Entity 1, including Taxpayer, and Taxpayer's mixed straddle account election. Accounting Firm's normal procedure was to prepare Form 7004, Form 6781, and the election statement required by Form 6781 and forward them to Taxpayer for signature and paper filing. With respect to Taxpayer, Advisor reviews the extension request and election, coordinates signatures, and assists with filing.

For Year 2, Taxpayer, as it had in prior years, intended to make an election to establish one or more mixed straddle accounts associated with the Foreign Currency Contracts held by Entity 3. The Form 7004 extension for Taxpayer's Year 1 federal income tax return ("Year 1 Form 7004") and Form 6781 mixed straddle account election with required election statement for Year 2 ("Year 2 Form 6781") were both due to be filed no later than Date 2. In contrast to prior years, however, Accounting Firm determined it was feasible to file Year 1 Form 7004 and Year 2 Form 6781 electronically. As such, Accounting Firm prepared Year 1 Form 7004 and Year 2 Form 6781 and emailed them along with filing instructions to Advisor and Entity 1's Vice President of Finance ("VP Finance") for review and signature.

The filing instructions that Accounting Firm sent to Advisor and VP Finance indicated that Accounting Firm would file Year 1 Form 7004 and Year 2 Form 6781 electronically. VP Finance, however, stated to both Accounting Firm and Advisor in an email on Date 1 that Year 1 Form 7004 had already been paper filed by Entity 1.

Although VP Finance indicated that Year 1 Form 7004 had already been paper filed, in the midst of filing multiple Forms 7004 for other Entity 1 affiliates, Accounting Firm inadvertently filed an electronic Year 1 Form 7004 for Taxpayer that did not include Year 2 Form 6781. When Advisor tried to obtain a copy of the confirmation that Year 1 Form 7004 and Year 2 Form 6781 had been timely filed in Month of Year 2, it was discovered that an error had been made. The Year 1 Form 7004 and accompanying Year 2 Form 6781 had not been paper filed by Entity 1 as VP Finance believed. Rather, Year 1 Form 7004 had been electronically filed by Accounting Firm, but without Year 2 Form 6781.

### LAW AND ANALYSIS

Section 1.1092(b)-4T(a) 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) 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 election with respect to the new class of activities must be made by the taxpayer by the later of the due date of the taxpayer's income tax return for the immediately preceding taxable year (without regard to any extensions), 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 facts and representations submitted, we conclude that Taxpayer has shown reasonable cause for failing to make a timely election under section 1.1092(b)-4T(f). Therefore, we grant Taxpayer's request for an extension of time to make the election under section 1.1092(b)-4T(f)(1) for Year 2. This extension will expire 30 days from the date of this letter. The election must be made in the

manner prescribed in section 1.1092(b)-4T(f)(2) and filed with the Director having audit jurisdiction over Taxpayer's U.S. Federal income tax return.

Except as specifically ruled upon above, no opinion is expressed or implied as to the tax treatment of any transactions under the provisions of any other sections of the Code or 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 mixed straddle accounts are permissible designations under section 1.1092(b)-4T(b)(2).

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 representatives.

Sincerely,

John W. Rogers III  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)