

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Refer Reply To:
CC:FIP:B02
PLR-116044-18
Date:
August 27, 2018

Legend

P =

T =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Month 1 =

Month 2 =

Month 3 =

Month 4 =

Account 1 =

Account 2 =

Dear _____ :

This is in reply to a letter dated May 10, 2018, requesting an extension of time for P to file elections under section 1092 of the Internal Revenue Code and section 1.1092(b)-4T(f) of the Temporary Income Tax Regulations for Year 3.

FACTS

P is a partnership for federal income tax purposes. P is a trader in securities, commodities, and their derivatives. P's first federal income tax return was filed for Year 1.

For Years 1 and 2, P made timely elections to establish mixed straddle accounts by checking Box C on Form 6781, Gains and Losses from 1256 Contracts and Straddles. Those elections were prepared by an outside accounting firm (the "First Firm").

In Years 1 and 2, T, a partner in P, provided services to P. In those years the head of T's tax department, Employee X, was the only employee of T's tax department. In Month 1 of Year 3, prior to Date 1, it was decided that Employee X would prepare P's Form 6781 for Year 3. The due date for the Form 6781 for Year 3 was Date 1, and the filing was the task of employee X. However, in Month 2 of Year 3, several months after Date 1, employee X left P's employment. As of the date of the filing of this request for an extension of time to file a mixed straddle election, P had not replaced employee X. P later discovered that employee X left without having prepared the Form 6781 for Year 3 for P.

In Month 3 of Year 3, P established two new mixed straddle accounts, Account 1 and Account 2. P later discovered no Form 6781 had been filed for either of these accounts within 60 days of their formation due to the failure of First Firm to advise P of the need to do so and the vacancy in P's tax department.

In Month 4, P replaced First Firm with another outside accounting firm ("Second Firm"). Second Firm discovered that there were no records of P having filed Form 6781 for Year 3 or for Accounts 1 and 2.

P now has procedures in place to prevent further problems with tax advice. P has also timely filed its Form 6781 for Year 4.

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 P has shown reasonable cause for failing to make timely elections under section 1.1092(b)-4T(f). Therefore, we grant P's request for an extension of time to make elections under section 1.1092(b)-4T(f)(1) for Year 3 and for Accounts 1 and 2. This extension will expire 30 days from the date of this letter. The elections must be made in the manner prescribed in section 1.1092(b)-4T(f)(2) and filed with the district director having audit jurisdiction over P's tax return.

Except as specifically ruled upon above, no opinion is expressed 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 P as the class of activities is a permissible designation 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

Pamela Lew
Pamela Lew
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions and Products)