Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B01
PLR-123796-20

Date:
February 10, 2021

Legend

Taxpayer =

State =

a =

b =

Percentage =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter is in response to a letter from your authorized representative, dated October 8, 2020, requesting an extension of time under §§ 301.9100-1 and 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

According to the information submitted and representations made, Taxpayer is incorporated in the State and the parent of an affiliated group of corporations that files a consolidated federal income tax return on a calendar-year basis.

In order to finance certain exigent business activity and avoid economic dilution, Taxpayer intended to issue convertible notes ("Convertible Notes") and execute a hedging transaction. Under certain circumstances, the Convertible Notes are convertible, at the option of the holders of the Convertible Notes, into a specified number of shares of stock of Taxpayer. As part of the hedging transaction, Taxpayer intended to purchase call options with respect to its stock ("Call Options") and issue and sell warrants at a higher strike price ("Warrants"). Taxpayer sought to use the transaction to hedge the conversion feature on the Convertible Notes by synthetically raising their conversion price to the strike price under the Warrants.

To implement the transaction, on Date 1 and Date 2, Taxpayer executed separate confirmations with bank counterparties to purchase the Call Options. On Date 3, Taxpayer paid premiums of a total of $a for the Call Options. Also, on Date 1, Taxpayer sold the Warrants to the bank counterparties for a total of $b. On Date 3, Taxpayer issued and sold the Convertible Notes, which pay interest at Percentage and mature on Date 4.

Taxpayer believed that the Convertible Notes and the Call Options could be integrated for federal tax purposes. Taxpayer intended the integration of the Convertible Notes and the Call Options. Unaware of the specific identification requirements for integrated transactions under § 1.1275-6(e) ("Identification Requirements"), however, Taxpayer did not take any affirmative action to make the identification on or before the dates that the Call Options were executed. Subsequently, Taxpayer's accounting firms discovered the error. On Date 5, Taxpayer entered and retained, as part of its books and records, documentation intended to meet the requirements of § 1.1275-6(c)(1)(i) and (e) ("Recent ID Statement").

Taxpayer makes the following additional representations:

1. Taxpayer is requesting relief before the failure to make the election was discovered by the Internal Revenue Service ("IRS").

2. Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662, and the new position requires or permits a regulatory election for which relief is requested.

3. Taxpayer is not using hindsight in requesting this relief. No specific facts have changed since the original due date for complying with the Identification Requirements such that integration under § 1.1275-6 became more advantageous.

4. The requested relief will not result in a lower tax liability for Taxpayer, or any other affected taxpayer, in the aggregate, for all taxable years affected by the missed Identification Requirements than they would have had if the Identification Requirements had been timely met.

5. The period of limitations on assessment under § 6501(a) has not expired for Taxpayer for the taxable year in which the Identification Requirements should have been met, or for any taxable year(s) that would have been affected by the Identification Requirements had they been timely made.

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

LAW AND ANALYSIS

Section 1.1275-6(a) generally provides for integration of a qualifying debt instrument (as defined under § 1.1275-6(b)(1)) ("QDI") with a § 1.1275-6 hedge (as defined under § 1.1275-6(b)(2)) or combination of § 1.1275-6 hedges, if the combined cash flows of the components are substantially equivalent to the cash flows on a fixed or variable rate debt instrument.

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) requires 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 § 6081 of the Internal Revenue Code. 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 sets forth rules for determining whether the Commissioner will grant a reasonable extension of time for regulatory elections that do not meet the requirements of § 301.9100-2 for an automatic extension. In general, requests for relief subject to this section will be granted when the taxpayer provides evidence (including any required affidavits) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, that, except as provided in 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 IRS, the taxpayer will be deemed to have acted reasonably and in good faith.

Section 301.9100-3(b)(3)(i) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested. Section 301.9100-3(b)(3)(ii) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election. 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 the taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c) provides, in part, that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable 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). Further, the interests of the Government are prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under § 301.9100-3.

CONCLUSIONS

Based solely on the information submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted an extension of time, through Date 5, to satisfy the requirements of § 1.1275-6(c)(1)(i) relating to the Identification Requirements for integration of the Convertible Notes and the 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 in order to treat the Convertible Notes and the Call Options as an integrated transaction. Except as expressly provided herein, no opinion is expressed or implied concerning the application of any other provisions of the Code or regulations or 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 Call Options, including but not limited to: (1) whether the Recent ID Statement is adequate for the purposes of § 1.1275-6(e); (2) whether the Call Options are § 1.1275-6 hedges as described in § 1.1275-6(b)(2); or (3) whether the requirements of § 1.1275-6(c)(1)(ii) through (vii) are met.

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, Exam Division, will determine the relevant tax liability and treatment for the taxable years involved.

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. Because this office has not verified any of the material submitted in support of the request for rulings, such material 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Financial Institutions and Products)

By: _____
JIAN H. GRANT
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Financial Institutions and Products)

Enclosure (1):
Copy for § 6110 purposes

cc: