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:B03
PLR-121435-21

Date:
March 14, 2022

Legend

Taxpayer =

State =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter is in response to a letter from your authorized representatives requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to satisfy § 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 a corporation incorporated in State that primarily conducts its business of supplying engineered components for certain industries through a wholly-owned subsidiary. For federal income tax purposes, Taxpayer uses an accrual method as its overall method of accounting and the year ending December 31 as its taxable year. On Date 2, Taxpayer issued convertible notes ("Convertible Notes"). 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 same transaction, Taxpayer purchased call options for the specified number of shares of its stock with a strike price equal to the conversion price per share of the stock issuable under the Convertible Notes ("Call Options") and sold warrants for the specified number of shares of its stock with a strike price greater than the strike price of the Call Options ("Warrants"). Taxpayer paid the premium for the Call Options and received the proceeds from the sale of the Warrants on Date 2. To implement the purchase of the Call Options and the sale of the Warrants, on Date 1, Taxpayer executed separate confirmations with bank counterparties to purchase the Call Options and sell the 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. The issuance of the Convertible Notes, the purchase of the Call Options, and the sale of the Warrants are hereinafter referred to as the "Transaction."

Taxpayer represents that it intended for the Convertible Notes and the Call Options to be integrated transactions as defined in § 1.1275-6(c). Taxpayer retained and relied upon professional advisors to assist with the Transaction. These advisors did not inform Taxpayer of the requirement, set forth in § 1.1275-6(c)(1)(i), to satisfy the identification requirements of § 1.1275-6(e) on or before the date the taxpayer enters into the § 1.1275-6 hedge ("Identification Requirement"), and Taxpayer's tax director was not otherwise aware of the Identification Requirement on or before that date. Consequently, Taxpayer failed to satisfy the Identification Requirement on or before the due date.

After the Transaction was completed, Taxpayer's outside tax advisors ("Tax Advisors") reviewed the Transaction and discovered Taxpayer's failure to satisfy the Identification Requirement. The Tax Advisors informed Taxpayer of such failure.

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) ("Recent ID Statement"). Treating satisfaction of the Identification Requirement as a regulatory election, Taxpayer has requested an extension of time under §§ 301.9100-1 and 301.9100-3 to satisfy § 1.1275-6(c)(1)(i) and (e), using the Recent ID Statement.

REPRESENTATIONS

Taxpayer makes the following representations:

1. Taxpayer requested relief before the failure to satisfy the Identification Requirement was discovered by the Internal Revenue Service.

2. Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 of the Internal Revenue Code ("Code").

3. It is not the case that Taxpayer was informed in all material respects of the election and the related tax consequences, but nonetheless chose not to make the election.

4. Taxpayer is not using hindsight in requesting this relief. No specific facts have changed since the original due date for satisfying the Identification Requirement that makes integration under § 1.1275-6 advantageous.

5. The requested relief would not result in Taxpayer having a lower tax liability than it would have had if Taxpayer had satisfied the Identification Requirement in a timely manner.

6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer for the taxable year in which the Identification Requirement should have been satisfied, or for any taxable year(s) that would have been affected by the Identification Requirement had it been timely satisfied.

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

LAW AND ANALYSIS

Section 1.1275-6 provides for integration of a qualifying debt instrument ("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) 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 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 sets forth rules that the Service 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. In general, requests for relief subject to § 301.9100-3 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 that, subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

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 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.

Section 301.9100-3(c)(1) 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.

CONCLUSIONS

Based on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time, through Date 3, under §§ 301.9100-1 and 301.9100-3 to satisfy the Identification Requirement for integration of the Convertible Notes and Call Options. Accordingly, we will treat the Recent ID Statement as if it had been entered and retained as part of Taxpayer's books and records on or before the date Taxpayer entered into 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 of § 1.1275-6(e) in order to treat the Convertible Notes and 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 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'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 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 Taxpayer. 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 (1):
Copy for section 6110 purposes

cc: