

Internal Revenue Service

Department of the Treasury
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Person To Contact:
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Telephone Number:

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PLR-121832-21

Date:
March 14, 2022

LEGEND

Taxpayer =
State =
Date 1 =
Date 2 =

Dear :

This letter is in response to a request for a private letter ruling filed on behalf of Taxpayer. Taxpayer requested an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations 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

Taxpayer is a corporation organized in State and taxable as a corporation under § 301.7701-2(b)(1). Taxpayer's overall method of accounting for federal income tax purposes is an accrual method, and Taxpayer uses a calendar year as its taxable year for federal income tax purposes.

On Date 1, Taxpayer issued convertible notes (the "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 capped call options with respect to its stock (the "Call Options"), paying the premium for the Call Options on Date 1. Issuance of the Convertible Notes and purchase of the Call Options are hereinafter referred to as the "Transaction."

When the Transaction took place, Taxpayer was unaware that the Convertible Notes and the Call Options could be integrated under § 1.1275-6 (“Integration”) and, consequently, did not satisfy the identification requirements of § 1.1275-6(e) within the timeframe provided in § 1.1275-6(c)(1)(i) (the “Identification Requirement”). After the Transaction was completed, Taxpayer’s independent public accounting firm (the “Accounting Firm”) reviewed the Transaction and discovered that Taxpayer failed to comply with the Identification Requirement. The Accounting Firm informed Taxpayer of Integration and the Identification Requirement.

On Date 2, Taxpayer entered 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) (the “Recent ID Statement”). Taxpayer has requested an extension of time under §§ 301.9100-1 and 301.9100-3 to satisfy the requirements of § 1.1275-6(c)(1)(i) and (e), using the Recent ID Statement, treating the Identification Requirement as a regulatory election.

Taxpayer makes the following representations:

1. Taxpayer requested relief before the failure to meet 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 § 6662 of the Internal Revenue Code.
3. It is not the case that Taxpayer was informed in all material respects of the required 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 facts have changed since the original due date for complying with the Identification Requirement such that Integration became 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 failure to timely comply with the Identification Requirement was the result of Taxpayer not being aware or advised of the Identification Requirement.

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

LAW AND ANALYSIS

Section 1.1275-6 generally 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 fixed or variable rate debt instrument. 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 § 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 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, subject to 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 Service, 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 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) 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 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 on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time, through Date 2, 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) 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 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 Transaction meets the requirements of § 1.1275-6(c)(1)(ii) through (vii).

Moreover, no opinion is expressed regarding 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 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, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Jason D. Kristall
Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:
Copy for § 6110 purposes

cc: