Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
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Date:
July 06, 2010

Legend

Taxpayer	=
Employer	=
Parent	=
Company A	=
Company B	=
Company C	=
Law Firm	=
State	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=

Year 7 =

Year 8 =

Dear :

This is in reply to a letter dated January 28, 2010, and supplemental correspondence dated May 4, 2010, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to file a written representation under § 1.7872-15(d)(2)(ii) of the Income Tax Regulations. If this written representation under § 1.7872-15(d)(2)(ii) is considered timely filed and the other requirements under § 1.7872-15(d)(2)(ii) are satisfied, then an otherwise noncontingent payment on a split-dollar loan that is nonrecourse to the borrower is not a contingent payment under § 1.7872-15.

Facts

Employer and Parent, Employer's parent corporation, are State non-profit corporations exempt from taxation under section 501(a) of the Internal Revenue Code as organizations described in section 501(c)(3) and are classified as public charities under section 509(a)(1).

Since Year 1, Parent has had a split-dollar life insurance program for certain of its executive level employees and employees of its subsidiary corporations, including Employer. In Year 2, Parent hired Company A to consult on matters relating to the split-dollar program and to administer the program. Company A recommended revising the split-dollar plan and in Year 3, Parent implemented a new split-dollar life insurance program. Company B subsequently acquired Company A and became Parent's consultant and administrator of the split-dollar program. In Year 5, Parent implemented a new split-dollar life insurance program ("current SDP") upon the recommendation of Company B. The current SDP was entered into after the Treasury Department's issuance of final regulations under §§ 1.61-22 and 1.7872-15 pertaining to split-dollar life insurance arrangements (the "Split-Dollar Regulations").

Under the current SDP, Employer pays the premiums on a life insurance policy owned by Taxpayer. The premium payments made by Employer are treated as loans pursuant to the Split-Dollar Regulations, whereby Employer is the lender and the Taxpayer is the borrower (the "parties to the loan"). Taxpayer represents that the loans were to each have a stated interest rate equal to the applicable federal rate so as not to be "below-market split-dollar loans" under the Split-Dollar Regulations. Employer made the first loan under the current SDP to Taxpayer in Year 5. Taxpayer represents that a

reasonable person would expect that all payments under the loans will be made as described in § 1.7872-15(d)(2)(i).

Company B was instrumental in implementing the current SDP for Parent, Employer, and employee participants, including Taxpayer (collectively, "Plan Participants"): Company B was responsible for advising Plan Participants regarding the set-up of the current SDP, determining the type of life insurance policies associated with the current SDP, and administering the current SDP. Taxpayer represents that Taxpayer lacked knowledge and experience with regards to split-dollar life insurance arrangements and the Split-Dollar Regulations, and therefore, relied on Employer's guidance, representations, conclusions, and information regarding the current SDP. Employer, in turn, relied on Company B's guidance in developing, implementing, and administering the current SDP.

Company B provided Employer's tax return preparer with a governing document pertaining to the current SDP, but did not provide the preparer with a copy of the plan's participation agreement. Due to some confusing language in the governing document, the tax return preparer erroneously concluded that the loans involved in the current SDP were recourse loans. The tax return preparer has provided an affidavit stating that discussions with Company B representatives regarding the current SDP confirmed his conclusion that the loans were recourse in nature. Therefore, Employer did not execute or file the written representations for nonrecourse split-dollar loans pursuant to § 1.7872-15(d)(2), and neither did Taxpayer.

In Year 6, Company B ceased administering the current SDP and Employer hired Company C to administer the current SDP.

Due to the decline in the value of common stocks and many bonds from Year 6 to early Year 7, the cash surrender values of the life insurance policies under the current SDP declined. Employer employed counsel from Law Firm to review the current SDP and advise Employer on options to revise or terminate the plan. Counsel from Law Firm determined that under applicable State law, the loans under the current SDP were not recourse loans, but rather nonrecourse loans secured by the life insurance policies. Subsequently, Employer informed Taxpayer that the loans were nonrecourse loans and that a written representation should have been filed by both Taxpayer and Employer to ensure that payments on the loans were not treated as contingent payments. Employer further explained that the written representation should have been made in Year 5 when the first loan was made to Taxpayer under the plan and asked that Taxpayer file a request for an extension of time to make the written representations under §§ 1.7872-15(d)(2)(i) and (ii).

Taxpayer makes the following representations. The granting of relief under § 301.9100-3 would not result in Taxpayer having a lower tax liability in the aggregate for all years to which the election applies than it would have had if the election had been

timely made (taking into account the time value of money). Taxpayer did not knowingly choose not to file the election. Taxpayer did not use hindsight in requesting relief. Finally, Taxpayer represents that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662. In support of its ruling request, Taxpayer has submitted the affidavits of Taxpayer, Employer's Chief Executive Officer, Employer's tax return preparer, and Employer's counsel from Law Firm regarding the events that led to Taxpayer's failure to make the regulatory election pursuant to §§ 1.7872-15(d)(2)(i) and (ii).

Law and Analysis

Section 1.7872-15(d)(1) of the regulations provides that, except as provided in § 1.7872-15(d)(2), if a payment on a split-dollar loan is nonrecourse to the borrower, the payment is a contingent payment for purposes of § 1.7872-15.

Section 1.7872-15(d)(2)(i) provides that an otherwise noncontingent payment on a split-dollar loan that is nonrecourse to the borrower is not a contingent payment under § 1.7872-15 if the parties to the split-dollar life insurance arrangement represent in writing that a reasonable person would expect that all payments under the loan will be made. Section 1.7872-15(d)(2)(ii) describes the time and manner requirements for providing the written representation required by § 1.7872-15(d)(2)(i). Section 1.7872-15(d)(2)(ii) provides, in part, that the written representation be signed by both the borrower and lender not later than the last day (including extensions) for filing the federal income tax return of the borrower or lender, whichever is earlier, for the taxable year in which the lender makes the first split-dollar loan under the split-dollar life insurance arrangement.

Section 301.9100-1(b) defines election to include an application for relief in respect of tax; a request to adopt, change, or retain an accounting method or accounting period. The term does not include an application for an extension of time for filing a return under § 6081.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulation or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), 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 Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 sets forth parameters for determining whether, under particular facts and circumstances, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements for an automatic extension under § 301.9100-2. Section 301.9100-3(a) provides that when a taxpayer does not meet the

requirements for an automatic extension under § 301.9100-2, the taxpayer must provide evidence satisfactorily establishing that the taxpayer acted reasonably and in good faith and that granting relief will not prejudice the Government.

Section 301.9100-3(b)(1) provides that, subject to § 301.9100-3(b)(3), a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer satisfies at least one of the following five criteria: (i) the request for relief was made before the Service discovered the failure to make the regulatory election; (ii) the failure to make the election was due to intervening events beyond the taxpayer's control; (iii) after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied on the written advice of the Service; or (v) the taxpayer reasonably relied upon a qualified tax professional, including a tax professional employed by the taxpayer, and that tax professional failed to make or failed to advise the taxpayer to make the election.

Section 301.9100-3(b)(2) provides that a taxpayer has not reasonably relied on a qualified tax professional if the taxpayer knew, or should have known, that the professional was either (i) not competent to render advice on the regulatory election or (ii) not aware of all relevant facts.

Section 301.9100-3(b)(3) provides that a taxpayer will not be deemed to have acted reasonably and in good faith if taxpayer does one of the following: (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and the subsequent tax consequences, but chose not to make the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower 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).

Conclusion

Based on the information submitted and Taxpayer's representations, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to file the written representation as required under §§ 1.7872-15(d)(2)(i) and (ii). Taxpayer is therefore granted a period of time not to exceed 30 days from the date of this letter to prepare and have both parties to the loan sign the written representation. Provided that the written representation is timely signed by both parties to the loan as required by this letter and filed with the Taxpayer's tax return for Year 8,

the written representation will be deemed effective for all years in which the Arrangement has been in effect. In accordance with § 1.7872-15(d)(2)(ii), a copy of the written representation should be attached to Taxpayer's tax return for any subsequent taxable year in which Employer makes a split-dollar loan to Taxpayer to which the representation applies.

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. This ruling is limited to the timeliness of the filing requirement of the written representation under §§ 1.7872-15(d)(2)(i) and (ii); no opinion is expressed with regard to whether Taxpayer satisfied the other requirements under §§ 1.7872-15(d)(2)(i) and (ii), the loan treatment requirements under § 1.7872-15(a)(2), or whether payments under the Loan are otherwise noncontingent payments for purposes of § 1.7872-15.

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 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.

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,

David B. Silber
David B. Silber
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions and Products)