Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.
Telephone Number:

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Date:
July 16, 2010

LEGEND:

Taxpayer =

Company =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Number 1 =

Percentage 1 =

Year 1 =

Dear :

This letter is in response to a letter from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer, the successor in interest to Company, 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

Company was a financial holding company until it was merged into Taxpayer. On Date 2, Company issued Number 1 convertible senior notes paying interest at Percentage 1 per annum and maturing on Date 6 ("Convertible Notes"). As part of the same transaction, on Date 2, Company purchased Number 1 call options with respect to its stock ("Purchased Call Options") corresponding to the Convertible Notes

Several officers of Company ("Officers") intended and believed that the Convertible Notes and the Purchased Call Options would be treated as integrated transactions for federal income tax purposes. The Officers were unaware of the requirements of § 1.1275-6(c)(1)(i) and (e) for integrating the Convertible Notes with the Purchased Call Options under § 1.1275-6. The Officers believed that integrated treatment was simply an item to be reflected on Company's timely filed federal income tax return for Year 1, and no further procedural steps were necessary to obtain integrated treatment. The Officers presented the transactions to Company's board of directors with pricing that reflected integrated treatment. On Date 1, the board approved the transactions as presented to them by the Officers.

On or before Date 2, the Officers placed several documents describing the Convertible Notes, the Purchased Call Options, and their intended treatment for federal income tax purposes ("Contemporaneous Documentation") into Company's files. Taxpayer has submitted copies of the Contemporaneous Documentation with its ruling request, but has neither asserted nor requested a ruling that they satisfy the requirements of § 1.1275-6(c)(1)(i) and (e).

On Date 3, Taxpayer acquired Company in a merger transaction in which Taxpayer survived and became the successor in interest of Company. Company's federal income tax return for Year 1 was filed on Date 4 consistent with the belief that the Convertible Notes and the Purchased Call options were integrated transactions for federal income tax purposes.

Taxpayer subsequently became concerned that the Contemporaneous Documentation did not unambiguously satisfy the requirements of § 1.1275-6(c)(1)(i)

and (e). On Date 5, Taxpayer prepared and retained, as part of its books and records, documentation that it believes more clearly meets the requirements of § 1.1275-6(c)(1)(i) and (e) ("Recent ID Statement"). Taxpayer has requested an extension of time under § 301.9100-1 to satisfy the requirements of § 1.1275-6(c)(1)(i) and (e), using the Recent ID Statement.

Taxpayer makes the following additional representations, treating the requirements of § 1.1275-6(c)(1)(i) and (e) as a regulatory election:

1. The request for relief was filed by Taxpayer before the failure to make the regulatory election was discovered by the Service.

2. Granting the relief will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 at the time Taxpayer requested relief, and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose to not file the election.

LAW AND ANALYSIS

Section 1.1275-6 provides for the 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.

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) provides 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. If the QDI and the § 1.1275-6 hedge satisfy the

requirements in § 1.1275-6(c)(1)(ii) through (vii), the taxpayer may achieve integrated treatment of the components by satisfying the identification requirements of § 1.1275-6(e), and the taxpayer may achieve separate treatment of those same components by not satisfying those requirements.

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(a) through (c)(1)(ii) sets forth rules that the Service generally 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. Section 301.9100-3(b) provides 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(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 a timely regulatory election should have been made is closed.

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 a 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.

CONCLUSIONS

Based on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect that the Convertible Notes and the Purchased Call Options be integrated transactions under § 1.1275-6 as of Date 2. Accordingly, for purposes of § 1.1275-6(c)(1)(i), the Recent ID Statement will be considered to have been placed in Company's files on or before Date 2.

This ruling is limited to the timeliness of the election that the Convertible Notes and the Purchased Call Options be 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 concerning the integration of a QDI and a § 1.1276-6 hedge, including whether the Recent ID Statement is adequate for purposes of § 1.1275-6(e).

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 the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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 representative.

Sincerely,

/S/

Charles W. Culmer
Assistant to the Branch Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes