Internal Revenue Service

Number: **201615001**
Release Date: 4/8/2016

Index Number: 1092.05-00

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-122319-15
Date: December 8, 2015

Legend

Taxpayer =

Parent =
Partner =
Tax Director =
Year 1 =
Year 2 =
Date 1 =

Dear :

This is in reply to a letter dated June 29, 2015, submitted on behalf of Taxpayer by its authorized representative. Taxpayer requests an extension of time to file an election under section 1092(b) of the Internal Revenue Code of 1986 and § 1.1092(b)-4T(f) of the Temporary Income Tax Regulations (the "mixed straddle election").

FACTS

Taxpayer was created as a wholly owned subsidiary of Parent. Taxpayer is a registered broker-dealer under the Securities Exchange Act of 1934 and it is a member of various options exchanges including the Chicago Board Options Exchange ("CBOE") and the NASDAQ OMX PHL. It makes proprietary trades and operates as a market maker in equity options. As part of its business, Taxpayer enters into large numbers of straddle transactions.

Taxpayer represents that it is an "options dealer" within the meaning of section 1256(g)(8) and that the options it trades are "dealer equity options" described in section 1256(g)(4). Therefore the options are section 1256 contracts within the meaning of

section 1256(b). The combination of a dealer equity option with offsetting positions in the underlying shares of stock will generally constitute a mixed straddle.

Before Year 1, Taxpayer was disregarded as an entity separate from Parent. Parent represents that it made timely mixed straddle elections for a number of consecutive years before Year 1, and for Year 1 and Year 2.

During Year 1, Parent began discussions regarding admission of Partner as a partner in Taxpayer. Parent did not employ any tax professionals and relied on an outside accounting firm for its tax advice. Parent discussed the tax consequences of admitting Partner as a partner in Taxpayer with its outside accounting firm. Parent was informed that the admission of Partner would create a new partnership for federal tax purposes and that the partnership would also be eligible for mixed straddle account treatment. Parent, however, was not informed that a new mixed straddle election should be filed for Taxpayer within 60 days after Taxpayer became a partnership.

Parent admitted Partner as a partner on Date 1 and did not file a mixed straddle election within 60 days of Taxpayer becoming a partnership for federal tax purposes.

Later in Year 1, Parent hired Tax Director and replaced its outside accounting firm (for reasons unrelated to the mixed straddle election). In Year 2, during the preparation of Taxpayer's Year 1 tax return, Tax Director realized that Taxpayer had failed to file a timely mixed straddle election.

Consequently, Taxpayer requests an extension of time to file an election under section 1092(b) and § 1.1092(b)-4T(f).

LAW AND ANALYSIS

Section 1.1092(b)-4T(a) of the Regulations generally permits a taxpayer to elect (in accordance with § 1.1092(b)-4T(f)) to establish one or more "mixed straddle accounts." Section 1.1092(b)-4T(b) defines a mixed straddle account to mean an account for determining gains and losses from all positions held as capital assets in a designated class of activities by the taxpayer at the time the taxpayer elects to establish a mixed straddle account.

Section 1.1092(b)-4T(f)(1) of the Regulations generally provides that, except as otherwise provided, the election to establish one or more mixed straddle accounts for a taxable year must be made by the due date (without regard to any extensions) of the taxpayer's income tax return for the immediately preceding taxable year (or part thereof).

Section 1.1092(b)-4T(f)(1) further provides that if a taxpayer begins trading or investing in positions in a new class of activities during a taxable year, the taxpayer

must make the election with respect to the new class of activities by the later of the due date (without regard to any extensions) of the taxpayer's return for the immediately preceding year or 60 days after the first mixed straddle in the new class of activities is entered into.

Finally, § 1.1092(b)-4T(f)(1) provides that if an election is made after the times specified, the election will be permitted only if the Commissioner concludes that the taxpayer had reasonable cause for failing to make a timely election.

CONCLUSION

Based on the facts and representations submitted, we conclude that Taxpayer has shown reasonable cause for failing to make a timely election under § 1.1092(b)-4T(f). Therefore, we grant the Taxpayer's request for an extension of time to make the election under § 1.1092(b)-4T for the taxable year ending December 31, Year 1. This extension will expire 30 days from the date of this letter. The election must be made in the manner prescribed in § 1.1092(b)-4T(f)(2) and filed with the Director having audit jurisdiction over the Taxpayer's tax return.

Except as specifically ruled upon above, no opinion is expressed as to the tax treatment of the transaction under the provisions of any other sections of the Code and Regulations which may be applicable thereto, or the tax treatment of any conditions existing at the time of or effects resulting from the transaction. Specifically, no opinion is expressed concerning whether the positions designated by Taxpayer as the class of activities is a permissible designation under § 1.1092(b)-4T(b)(2) of the Regulations.

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,

Steven Harrison
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)