Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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CC:FIP:B03
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Date:
June 15, 2016

Legend

Taxpayer =

Entity 1 =
Entity 2 =
Entity 3 =
Entity 4 =
Accounting Firm =

Taxable Year 1 =

Taxable Year 2 =
Taxable Year 3 =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =

State =
Industry =
Derivatives =
Individual =

Dear :

This is in reply to a letter dated December 8, 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 and section 1.1092(b)-4T(f)(1) of the Temporary Income Tax Regulations to establish one or more mixed straddle accounts for Taxable Year 2 and Taxable Year 3.

FACTS

Taxpayer, a State corporation, is a wholly-owned subsidiary of Entity 1 and is included in the consolidated returns of Entity 1 for U.S. Federal income tax purposes. Entity 1 is in the business of Industry in the U.S. Taxpayer is the sole shareholder of Entity 2, which is in the business of trading various Derivatives.

On Date 2, Entity 1 acquired Taxpayer from Entity 3 through a wholly-owned holding corporation, Entity 4. Prior to the acquisition, Entity 3 had made an election to establish one or more mixed straddle accounts relative to the Derivatives held by Entity 2 during Entity 3's taxable year ending on Date 4. Entity 2 is a disregarded entity for U.S. Federal tax purposes.

For all periods after Entity 1's acquisition of Taxpayer, the tax department of Entity 1 served as the tax department for Taxpayer, Entity 2, and Entity 4. Neither the vice president of tax for Entity 1, Individual, nor the other members of this tax department were knowledgeable about the procedures for making the mixed straddle account election. Prior to the acquisition of Taxpayer and its wholly-owned subsidiaries, the tax department of Entity 1 had only prepared returns and elections that were specific to Industry, the business of Entity 1.

During Date 1 and near the time of the acquisition, the tax director of Entity 3 advised Individual that a new mixed straddle account election would be required after the acquisition of Taxpayer. Accordingly, the tax department of Entity 1 prepared and filed a Form 6781, Gains and Losses from Section 1256 Contracts and Straddles (Form 6781), to establish the same mixed straddle accounts that Entity 3 previously elected to establish relative to the Derivatives held by Entity 2. The election was filed on or about Date 3 and was effective for Taxpayer's Taxable Year 1. Individual and the other members of the tax department were not advised, nor were they otherwise aware, that under section 1.1092(b)-4T(f)(1), a mixed straddle account election is effective only for the taxable year in which the election is made. Instead, they erroneously believed that the election, once made, remained in effect for all future periods until the election was revoked. As a result, Taxpayer failed to timely file a Form 6781 for Taxable Year 2 and Taxable Year 3. However, consistent with the erroneous belief that the election made for Taxable Year 1 was still in effect, Entity 1 prepared and filed its consolidated U.S. Federal income tax return for Taxable Year 2 as if Taxpayer had made a timely election for Taxable Year 2.

The error was discovered after Accounting Firm began a third-party audit in Date 5 of Entity 2's financial statements for Taxable Year 1 and Taxable Year 2. During this process, Individual was advised for the first time that a mixed straddle account election is effective only for the taxable year in which the election is made.

LAW AND ANALYSIS

Section 1.1092(b)-4T(a) generally permits a taxpayer to elect (in accordance with paragraph (f) of section 1.1092(b)-4T) 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) 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 election with respect to the new class of activities must be made by the taxpayer by the later of the due date of the taxpayer's income tax return for the immediately preceding taxable year (without regard to any extensions), or 60 days after the first mixed straddle in the new class of activities is entered into.

Section 1.1092(b)-4T(f)(1) also provides that if an election is made after the time specified above, the election will be permitted only if the Commissioner concludes that the taxpayer had reasonable cause for failing to make a timely election. Because section 1.1092(b)-4T(f)(1) provides specific guidance about making a late mixed straddle account election, the rules generally applicable to late elections described in section 301.9100-3 do not apply to this late mixed straddle account 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 section 1.1092(b)-4T(f). Therefore, we grant Taxpayer's request for an extension of time to make the election under section 1.1092(b)-4T(f)(1) for Taxable Year 2 and Taxable Year 3. This extension will expire 30 days from the date of this letter. The election must be made in the manner prescribed in section 1.1092(b)-4T(f)(2) and filed with the Director having audit jurisdiction over Entity 1's consolidated U.S. Federal income tax return.

Except as specifically ruled upon above, no opinion is expressed as to the tax treatment of any transactions under the provisions of any other sections of the Code or

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 section 1.1092(b)-4T(b)(2).

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,

_____

Patrick White
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures (2):
Copy of this letter
Copy for section 6110 purposes