

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201516010**
Release Date: 4/17/2015
Index Number: 1092.05-02

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B06
PLR-123359-14
Date:
December 12, 2014

Legend

- Taxpayer =
- Entity 1 =
- Entity 2 =
- Entity 3 =
- Foreign Currency =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Year 1 =
- X =
- Employee 1 =
- Employee 2 =

Dear :

This is in reply to a letter dated June 11, 2014, 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 section 1.1092(b)-4T(f) of the Temporary Income Tax Regulations.

FACTS

Taxpayer is an open-ended investment company that was formed on Date 1 and has been registered under the Investment Company Act of 1940 since inception. Taxpayer is managed and administered by Entity 1, which also administers other funds.

In accordance with the terms of its management agreement with Taxpayer, Entity 1 provides a multitude of services to Taxpayer, including tax compliance and consulting services.

Taxpayer is an actively managed exchange traded fund that intends to invest at least 80% of its net assets in a portfolio that consists primarily of U.S. dollar-denominated investment-grade fixed and floating rate securities of varying maturities, such as corporate and government bonds, agency securities, instruments of non-U.S. issuers, privately issued securities, asset-backed securities, structured securities, municipal bonds, money market instruments, and investment companies.

During Taxpayer's initial short period, from inception on Date 1 to Date 2, Taxpayer entered into forward currency contracts for the purpose of hedging against the effects of fluctuations in value of Foreign Currency (against the U.S. dollar) on the value of Taxpayer's assets that are denominated in Foreign Currency. Taxpayer entered into similar contracts for the taxable year ending on Date 3. Taxpayer represents that it timely filed a mixed straddle election for its investments in the forward currency contracts for its short taxable year ending on Date 2 and intended to do so again for the taxable year ending on Date 3.

The renewal of the election for the taxable year ending on Date 3 was required to be filed by Date 4. Employee 1, an employee of Entity 1, Employee 2, an immediate supervisor, and Entity 2, Taxpayer's independent tax advisor, together decided that the election should be made for the taxable year ending on Date 3. Employee 1 had primary responsibility for preparing and timely filing the forms necessary to make the election. Accordingly, Employee 1 prepared the Form 6781 and the required supporting statement in early Date 5.

Entity 1 intended to file the mixed straddle election along with the Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, for Taxpayer, due on or before the same date as Form 6781. Form 7004 for Taxpayer was routinely prepared and filed by Entity 3, a third party service provider. However, Entity 1 failed to inform Entity 3 of its intention to file Form 6781 along with Form 7004 for Taxpayer. As a result, Entity 3 did not file the mixed straddle election. In addition, during the period leading up to the deadline, Entity 1 was focused on reviewing Form 1099 reporting data for approximately X separate funds, and the fact that Form 6781 had not yet been filed was inadvertently overlooked.

It was the clear intention of Entity 1 to file Form 6781 on or before Date 4. The decision was made by Entity 1 in consultation with Entity 2 prior to Date 4, and Form 6781 was prepared prior to Date 4. In addition, the error was identified almost immediately, and Form 6781 was filed on Date 6, two days after the filing due date.

LAW AND ANALYSIS

Section 1.1092(b)-4T(a) of the Regulations 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) 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 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) of the Regulations. Therefore, the mixed straddle account election for the taxable year ending on Date 3, filed on Date 6, will be considered as timely filed.

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 section 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,

Christina Morrison
Christina Morrison
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Financial Institutions & Products)