



## FACTS

Taxpayer is a partnership for federal income tax purposes and is engaged in the business of trading in securities. Taxpayer represents that it has been entering into straddles and making timely Elections since Year 1. However, Taxpayer failed to make the Election for Year 2 by the due date of Date 2.

Since Year 3, Taxpayer has engaged a third-party tax professional, Accountant, to provide tax return preparation services for Taxpayer and its affiliated entities, including the filing of related extensions and any attendant elections to be attached thereto. As in years past, Taxpayer reminded Accountant throughout the year and immediately prior to the time for filing Taxpayer's extension for Taxpayer's Year 4 tax return regarding the need to make the Election for Year 2 by the due date of Date 2.

As part of the preparation of Taxpayer's application for extension for filing its Year 4 tax return, a senior employee of Accountant prepared the Election form, Form 6781, *Gains and Losses from Section 1256 Contracts and Straddles*, and the statement required to be attached to the form. The materials were subsequently reviewed by management of Accountant. Accountant utilizes Software for tax preparation and filing. Previous versions of Software prompted users to attach the Election to an extension to file by checking a box on a specific screen within the sequential displays. Due to significant tax law updates, Software was updated in Year 4, moving the checkbox to attach the Election form to a previous screen within the filing process. Not realizing the change, and expecting the checkbox to be in the same sequence, the senior employee of Accountant mistakenly assumed that the absence of the checkbox meant that the Election form would be automatically attached to the extension without checking a box. Management of Accountant reviewed the overall extension package but did not realize that the correct box was not checked and the Election form would not be attached or transmitted with the electronic filing.

On Date 3, during a routine review, management of Accountant discovered that no Election had been filed for Year 2 and notified Taxpayer who now seeks administrative relief for the Election.

## 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.

Section 1.1092(b)-4T(f)(2) sets forth the manner for making the election, including that the election is to be made on Form 6781.

#### CONCLUSION

Based on the facts and representations submitted, we conclude that Taxpayer has shown reasonable cause for failing to timely make the Election. Therefore, we grant Taxpayer's request for an extension of time to make the Election for one or more mixed straddle accounts for Year 2. 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 Taxpayer's 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

Matthew P. Howard  
Senior Counsel, Branch 2  
Office of the Associate Chief Counsel  
(Financial Institutions and Products)

cc: