Internal Revenue Service

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Department of the Treasury
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Third Party Communication: None
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PLR-123082-22

Date:
May 24, 2023

Legend

Taxpayer =

Company =

Month 1 =

Month 2 =

Month 3 =

Month 4 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear :

This ruling responds to a letter dated November 21, 2022, and subsequent correspondence, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a written representation under section 1.7872-15(d)(2) of the Income Tax Regulations to elect to treat otherwise noncontingent payments on split-dollar loans that are nonrecourse to the borrower as noncontingent.

FACTS

Taxpayer is a non-profit healthcare corporation that is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code (the "Code").

In Year 1, Taxpayer met with a consulting team from Company to consult on matters relating to employee recognition and retention. Company recommended and assisted with implementing a split-dollar life insurance plan ("SDP") for key employees of Taxpayer. Taxpayer had no prior experience with or knowledge of SDPs.

Taxpayer contracted Company to serve as the SDP third-party administrator in Month 1. Company was responsible for administering, implementing, and providing ongoing guidance related to the SDP and the loans thereunder. These responsibilities included set-up of the SDP, document preparation, and advising on document execution. Taxpayer represents that Taxpayer reasonably relied on Company's expertise regarding the SDP including all information, representations, conclusions, and assistance, and that Company was aware of this reliance.

Company intended for the SDP to be subject to the regulations under section 1.7872-15 ("Split-Dollar Regulations") and designed the plan to utilize nonrecourse premium loans to the employee participants secured by life insurance policies owned by each employee (the "SDP Loans"). SDP Loans were made to employees beginning in Year 1. Taxpayer represents that each SDP Loan has stated interest equal to the applicable federal rate and is not a "below-market split-dollar loan" under the Split-Dollar Regulations. Company projected that the proceeds of the insurance policies securing each SDP Loan are sufficient to pay all interest and principal due on that SDP Loan. Taxpayer also represents that a reasonable person would expect that all payments under each SDP Loan will be made.

In Month 2, Company advised Taxpayer that the parties to a SDP Loan were required to make a written representation pursuant to section 1.7872-15(d)(2)(i) and (ii) and file a copy of the representation with their tax returns for the years SDP Loans were made to avoid having the payments treated as contingent payments for purposes of the Split-Dollar Regulations. However, in the process of providing the initial SDP execution documents, Company inadvertently failed to provide the written representations for execution.

In Month 3, Company provided executed documents under the SDP to Taxpayer counsel for review. During the review, it was discovered that Company had inadvertently failed to provide Taxpayer and employees that received SDP Loans up to that point with the written representations necessary to make the section 1.7872-15(d)(2) election. In Month 4, Taxpayer counsel began preparing the written representations for Taxpayer and providing them to those employees who did not receive them for execution. In Month 4, Company also began providing the written

representation with the initial SDP execution documents for employees receiving their first SDP Loan. Taxpayer and employees who received SDP Loans prior to Month 4, fully executed the omitted written representations in Year 3 and Year 4.

Taxpayer represents that it has been accounting for the SDP Loans as though the written representations were timely made.[1]

Taxpayer makes the following additional representations:

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

2. Taxpayer is not seeking to alter a return position for which an accuracy related penalty has been or could have been imposed under section 6662 at the time Taxpayer requested relief and the new position requires or permits regulatory elections for which relief is requested.

3. Being fully informed of the required regulatory elections and related tax consequences, the Taxpayer did not choose to not make the elections.

4. Taxpayer is not using hindsight in requesting relief. No facts have changed between the time the elections should have been made and the time this request for relief was filed that would make the elections advantageous to Taxpayer.

5. The request for relief was filed before the failure to make the regulatory elections was discovered by the Service.

6. Although the period of limitations on assessment under section 6501(a) of the Code has expired for SDP Loans originated in Year 1, an affidavit on behalf of Taxpayer from an independent auditor certifying that the interests of the Government are not prejudiced under the standards of section 301.9100-3(c)(1)(i) by Taxpayer's receipt of a ruling granting relief has been provided.

7. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer for the taxable year in which the elections should have been made for SDP Loans originated in Year 2, nor for any taxable year(s) that would have been affected by the elections had they been timely made.

Affidavits on behalf of Taxpayer have been provided as required by section

[1] The affected employee participants in the SDP who joined in Year 1 and Year 2 have also requested relief under sections 301.9100-1 and 301.9100-3.

301.9100-3(e).

LAW AND ANALYSIS

Section 1.7872-15(d)(1) provides that, except as provided in section 1.7872-15(d)(2), if a payment on a split-dollar loan is nonrecourse to the borrower, the payment is a contingent payment for purposes of section 1.7872-15.

Section 1.7872-15(d)(2)(i) provides that an otherwise noncontingent payment on a split-dollar loan that is nonrecourse to the borrower is not a contingent payment under section 1.7872-15 if the parties to the split-dollar life insurance arrangement represent in writing that a reasonable person would expect that all payments under the loan will be made. Section 1.7872-15(d)(2)(ii) describes the time and manner requirements for providing the written representation required by section 1.7872-15(d)(2)(i). Section 1.7872-15(d)(2)(ii) provides, in part, that the written representation must be signed by both the borrower and lender not later than the last day (including extensions) for filing the Federal income tax return of the borrower or lender, whichever is earlier, for the taxable year in which the lender makes the first split-dollar loan under the split-dollar life insurance arrangement. This representation must include the names, addresses, and taxpayer identification numbers of the borrower, lender, and any indirect participants. Unless otherwise stated therein, this representation applies to all subsequent split-dollar loans made pursuant to the split-dollar life insurance arrangement. Each party should retain an original of the representation as part of its books and records and should attach a copy of the representation to its Federal income tax return for any taxable year in which the lender makes a loan to which the representation applies.

Section 301.9100-1(b) defines “election” to include an application for relief in respect of tax; a request to adopt, change, or retain an accounting method or accounting period. The term does not include an application for an extension of time for filing a return under section 6081. ”Regulatory election” is defined as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin.

Section 301.9100-1(c) provides 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 301.9100-3(a) through (c)(1) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably

and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer generally is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under section 301.9100-3 before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer will be deemed to have not acted reasonably and in good faith, however, if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made. Section 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under section 301.9100-3. The Service may condition a grant of relief on the taxpayer providing the Service with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to section 301.9100-3(e)) certifying that the interests of the Government are not prejudiced under the standards set forth in section 301.9100-3(c)(1)(i).

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to make the written representations under section 1.7872-15(d)(2). Accordingly, the fully executed written representations made in Year 3 and Year 4 for initial SDP Loans made to Employees in Year 1 and Year 2 will be deemed to have been timely made. Provided that copies of the fully executed written representations are attached to Taxpayer's Federal income tax return for the taxable year in which this letter is received, each written representation will be deemed effective for all years in which SDP Loans made to that employee prior to Year 2 are outstanding. In accordance with section 1.7872-15(d)(2)(ii), a copy of the written representation should be attached to Taxpayer's tax return for any subsequent taxable year in which Taxpayer makes a SDP Loan to the employee to which the written representation applies.

This ruling is limited to the timeliness of making written representations under section 1.7872-15(d)(2). This ruling's application is limited to the facts, representations, and Code and regulation sections cited herein. Except as 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. Specifically, no opinion is expressed with regard to whether Taxpayer satisfied the other requirements under section 1.7872-15(d)(2)(i) and (ii), the loan treatment requirements under section 1.7872-15(a)(2), or whether payments under each SDP Loan are otherwise noncontingent payments for purposes of section 1.7872-15. No opinion is expressed with regard to whether the SDP Loans are below-market loans for purposes of section 7872 of the Code and section 1.7872-15 of the Regulations.

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 elections apply than such tax liability would have been if the elections 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.

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,

Andrea M. Hoffenson
Andrea M. Hoffenson
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions and Products)

cc: