

Internal Revenue Service

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Date:
May 23, 2023

Legend

Taxpayer =

Employer =

Company =

Month 1 =

Month 2 =

Month 3 =

Month 4 =

Year =

Date =

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 an employee of Employer, 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, Employer 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 Employer. Neither Employer nor Taxpayer had prior experience with or knowledge of SDPs.

Employer 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 both Employer and 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"). Taxpayer is an employee participant in the SDP and in Year, Taxpayer received Taxpayer's first SDP Loan. Taxpayer represents that each of Taxpayer's SDP Loans 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 of Taxpayer's SDP Loans will be made. The due date for making Taxpayer's written representation was Date.

In Month 2, Company advised Employer 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. Taxpayer represents that they were informed of this requirement by Employer. However, in the process of providing the initial SDP execution documents, Company and Employer inadvertently failed to provide Taxpayer with the written representation for execution.

In Month 3, Company provided executed documents under the SDP to Employer counsel for review. During the review, it was discovered that Company had

inadvertently failed to provide Taxpayer and Employer with the written representation necessary to make the section 1.7872-15(d)(2) election for Taxpayer's SDP Loans. The written representation was subsequently prepared by Employer counsel and executed by both Taxpayer and Employer in Month 4.

Taxpayer represents that Taxpayer has been accounting for the SDP Loans as though the written representation was 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 election applies than Taxpayer would have had if the election 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 a regulatory election for which relief is requested.
3. Being fully informed of the required regulatory election and related tax consequences, the Taxpayer did not choose to not make the election.
4. Taxpayer is not using hindsight in requesting relief. No facts have changed between the time the election should have been made and the time this request for relief was filed that would make the election advantageous to Taxpayer.
5. The request for relief was filed before the failure to make the regulatory election was discovered by the Service.
6. Although the period of limitations on assessment under section 6501(a) of the Code has expired for the taxable year at issue, an affidavit 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 a ruling granting relief has been provided.

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

¹ Employer has also requested relief under sections 301.9100-1 and 301.9100-3.

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 representation under section 1.7872-15(d)(2). Accordingly, the fully executed written representation made in Month 4 will be deemed to have been timely made. Provided that a copy of the fully executed written representation is attached to Taxpayer's Federal income tax return for the taxable year in which this letter is received, the written representation will be deemed effective beginning in Year. 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 Employer makes a SDP Loan to Taxpayer to which the written representation applies.

This ruling is limited to the timeliness of making a written representation 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 election applies than such tax liability would have been if the election 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: