

Internal Revenue Service

Number: **202344011**

Release Date: 11/3/2023

Index Number: 1092.05-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-104048-23

Date:

August 01, 2023

Legend

Taxpayer =

Month 1 =

Month 2 =

Month 3 =

Date =

Year 1 =

Year 2 =

Tax Firm =

Accounting Firm =

State =

Dear _____ :

This is in reply to a letter dated February 17, 2023, requesting an extension of time for Taxpayer to make mixed straddle account elections under section 1.1092(b)-4T(f)(1) of the Temporary Income Tax Regulations for Year 1 and Year 2.

FACTS

Taxpayer is an individual who files federal income tax returns jointly with Taxpayer's spouse.

Beginning in Month 1, Taxpayer entered into a series of transactions for Taxpayer's personal benefit whereby Taxpayer purchased and sold exchange-traded put options with respect to a publicly-traded trust while simultaneously holding beneficial interests in the same publicly-traded trust. Taxpayer disposed of all of Taxpayer's positions entered into as part of these transactions by Date.

Taxpayer engaged Tax Firm, a State tax return preparation firm, for tax consulting and tax return preparation services. Tax Firm identifies itself as having experience with individual income taxation and has assisted Taxpayer in the past with the federal income tax implications of Taxpayer's individual investments. Taxpayer had no previous knowledge of mixed straddle accounts and relied on the guidance and advice of Tax Firm. Taxpayer did not consult with Tax Firm prior to commencing the series of transactions described above.

Taxpayer and Taxpayer's spouse filed Form 4868, *Application for Automatic Extension of time to File U.S. Individual Income Tax Return*, for Year 1. When Taxpayer met with Tax Firm in Month 2 to discuss the preparation of Taxpayer's tax return for Year 1, Taxpayer became aware of the tax treatment of Taxpayer's transactions. However, although Tax Firm became aware of Taxpayer's trading activities at that time, Tax Firm did not inform Taxpayer of the ability to make mixed straddle account elections under section 1.1092(b)-4T or the procedures to do so.

Taxpayer subsequently became dissatisfied with Tax Firm and engaged Accounting Firm in Month 3 to provide technical advice regarding the proper tax treatment for Taxpayer's transactions. Accounting Firm advised Taxpayer that mixed straddle account elections could have been made for Year 1 and Year 2. Accounting Firm also informed Taxpayer that although the deadline had passed to make the mixed straddle account elections for those years, late election relief may be available if Taxpayer could establish reasonable cause for failing to make timely elections. Consequently, Taxpayer engaged Accounting Firm to request this extension of time to file elections under section 1.1092(b)-4T(f) for Year 1 and Year 2.

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 these late mixed straddle account elections.

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, *Gains and Losses From Section 1256 Contracts and Straddles*.

CONCLUSION

Based on the facts and representations submitted, we conclude that Taxpayer has shown reasonable cause for failing to timely make the elections under section 1.1092(b)-4T(f) for Year 1 and Year 2. Therefore, we grant Taxpayer's request for an extension of time to make the mixed straddle account elections under section 1.1092(b)-4T(f)(1) for Year 1 and Year 2. This extension will expire 30 days from the date of this letter. The elections 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). Furthermore, no opinion is expressed concerning the timeliness of the filing of Taxpayer's federal tax returns for Year 1 and Year 2. Additionally, this letter does not relieve Taxpayer of any penalties that may be assessed under section 6651 or any other section of the Code, or any interest that may accrue thereon.

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
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions and Products)

cc: