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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:FIP:B01
PLR-114443-23

Date:
January 16, 2024

Taxpayer	=
DRE	=
Company	=
Partnership	=
Year 1	=
Year 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
State	=
Accounting Firm 1	=
Accounting Firm 2	=
z	=

Dear :

This is in reply to a letter dated July 20, 2023, submitted on behalf of Taxpayer. Taxpayer requests an extension of time to file an election pursuant to section 1092(b) of the Internal Revenue Code (the “Code”) and section 1.1092(b)-4T(f) of the Temporary Income Tax Regulations (a “mixed straddle account election”).

FACTS

Taxpayer is a limited liability company formed under the laws of State. Taxpayer uses an accrual method of accounting. Taxpayer is a global proprietary trading firm.

Taxpayer formed DRE as a limited liability company under the laws of State. DRE is a disregarded entity for federal income tax purposes. DRE is classified as a broker/dealer under securities laws.

Company is a limited liability company formed under the laws of State. Company and Taxpayer have almost exactly the same ultimate beneficial owners. Company and Taxpayer are partners in Partnership, a limited liability company treated as a partnership for federal tax purposes. Company, Taxpayer, DRE and Partnership have substantial common managerial control. Taxpayer's employees keep the records of account of all four entities.

During Year 1 and Year 2, Taxpayer and its affiliates engaged in a program of trading that entailed trading section 1256 positions offset by non-section 1256 positions (the "specified activity"). Taxpayer represents that the specified activity gave rise to mixed straddles and that the trading entity was eligible under section 1.1092(b)-4T(f) to elect to establish one or more mixed straddle accounts with respect to the specified activity.

The entity that conducted (or was treated for federal income taxes as conducting) the specified activity changed twice during the period comprising Year 1 and Year 2. In Year 1, Partnership conducted the activity. At that time, Partnership was wholly owned by Company and disregarded for federal income tax purposes. Company made a timely mixed straddle account election with respect to the specified activity for Year 1.

On Date 1, Taxpayer acquired a z percent interest in Partnership, converting it into a partnership for federal income tax purposes. Partnership made a timely mixed straddle account election with respect to the specified activity for Year 2 on Date 2.

Later in Year 2, Taxpayer migrated the specified activity from Partnership to DRE so the specified activity would be conducted through a broker/dealer. The migration did not entail a transfer of assets or an account. On Date 3, Partnership stopped the specified activity, and DRE carried it out thereafter. The specified activity in the hands of DRE required a new mixed straddle account election by Taxpayer. To be timely, the election needed to be filed by Date 4.

Taxpayer represents that the migration of a mixed straddle strategy from one entity to another was a new or uncommon occurrence, and it was outside the regular annual process of analyzing and making elections for Taxpayer and its affiliates. The migration occurred without a formal analysis by the tax team, who did not realize that a new mixed straddle account election would be required. In addition, the member of the

tax team who typically drafted mixed straddle account elections resigned early in Year 2. That employee was the person who would have been most likely to notice that mixed straddle activity was being booked into an account not subject to a mixed straddle account election. As a result, Taxpayer did not make a timely mixed straddle account election for the specified activity in the hands of DRE.

Taxpayer represents that Taxpayer intended the specified activity to continue to be subject to a mixed straddle account election. The mixed straddle account elections made for the specified activity by Company and Partnership were based on instructions to Taxpayer's tax team from the co-heads of the trading team that designed and operated the trading strategy.

In Years 1 and 2, Taxpayer engaged Accounting Firm 1 to provide tax compliance services as well as tax advice, including prior mixed straddle account elections. Due to miscommunication between the tax team and Accounting Firm 1, Accounting Firm 1 was not aware of the transfer of the specified activity from Partnership to DRE.

During the fall of Year 2, the tax team realized that the specified activity had migrated from Partnership to DRE. On Date 5, Taxpayer approached Accounting Firm 2, to determine whether relief was available for the delinquent mixed straddle account election. Accounting Firm 2 advised Taxpayer that relief was available for reasonable cause under section 1.1092(b)-4T(f).

Consequently, Taxpayer requests an extension of time to file a mixed straddle account election under sections 1092(b) and 1.1092(b)-4T(f).

LAW AND ANALYSIS

Section 1.1092(b)-4T(a) generally permits a taxpayer to elect (in accordance with section 1.1092(b)-4T(f)) 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 taxpayer must make the election with respect to the new class of activities 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. As 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, *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 make a timely mixed straddle account election under section 1.1092(b)-4T(f) for the specified activity in the hands of DRE. Therefore, we grant Taxpayer's request for an extension of time to make a mixed straddle account election under section 1.1092(b)-4T for one or more mixed straddle accounts associated with the specified activity in the hands of DRE for Year 2. This extension will expire 30 days from the date of this letter. The mixed straddle account 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 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 Income Tax 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,

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Steven Harrison
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: