

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
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TY:

Legend

Taxpayer 1 =

Taxpayer 2 =

Limited Partner =

General Partner =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

State =

Dear

This responds to a letter dated December 22, 2000, requesting that the Taxpayers be granted an extension of time to file an election under section 1092(b) of the Internal Revenue Code (Code) of 1986 and section 1.1092(b)-4T(f) of the Temporary Income Tax Regulations (Regulations).

Facts

Taxpayer 1 is an accrual basis limited partnership organized under the laws of the State on Date 1. Taxpayer 2 is an accrual basis limited liability company organized under the

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laws of the State on Date 2 and is treated as a partnership for Federal tax purposes. Limited Partnership is a limited partnership organized under the laws of the State and is a member of Taxpayer 2.

Both Taxpayer 1 and Taxpayer 2 invest in futures contracts, which are managed by trading advisors. Taxpayer 1 allocates its assets between two trading advisors. Taxpayer 2 allocates its assets among five trading advisors.

General Partner is a corporation organized under the laws of the State and is the general partner of both Taxpayer 1 and Limited Partnership. The General Partner is a commodity pool operator that currently has over 25 U.S. partnerships under management, including Taxpayer 1 and Taxpayer 2 through Limited Partnership.

For the taxable year in issue, Taxpayer 1 and Taxpayer 2 were the only new entities that commenced operations and were required to file initial year mixed straddle account elections. Taxpayer 1 and Taxpayer 2 commenced operations and entered into their first mixed straddle transactions on Date 3 and Date 4, respectively. Under section 1.1092(b)-4T(f)(1), Taxpayer 1 and Taxpayer 2 were required to file Forms 6781 to make a mixed straddle account election for the taxable year on Date 5 and Date 6, respectively. Due to the fact that the internal accounting department of Taxpayer 1 and Taxpayer 2 was not notified of the commencement of trading activity, Taxpayer 1 and Taxpayer 2 did not timely file Form 6781 and make a mixed straddle account election under section 1.1092(b)-4T(f)(1) for the taxable year. The vice president of external reporting responsible for filing the elections for the Taxpayers did not learn about the commencement of trading until the required reporting deadline for book purposes arose on or about Date 7, which was after the time for filing elections had expired for both Taxpayers, but before the end of the Taxpayers' then current tax year, Date 9. The vice president of external reporting immediately consulted with its external accountant. After considering steps to remedy the situation, on Date 8, the external accountant contacted the Internal Revenue Service to inquire about remedying the error.

The Taxpayers are in the process of developing and implementing internal controls to avoid the recurrence of the above error. The Taxpayers represent they have complied with all other operational aspects regarding the maintenance of the mixed straddle accounts.

Applicable Law

Section 1.1092(b)-4T(a) of the Regulations 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.

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Section 1.1092(b)-4T(f)(1) of the Regulations 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 extension) of the taxpayer's income tax return for the immediately preceding 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 elections with respect to the new class of activities by the later of the due date (without regard to any extension) of the taxpayer's return for the immediately preceding year or 60 days after the first mixed straddle in the new class of activities is entered into. Finally, section 1.1092(b)-4T(f)(1) provides that if an election is made after the times specified above, the election will be permitted only if the Commissioner concludes that the taxpayer had reasonable cause for failing to timely make the election.

Based upon the facts and representations submitted, we conclude that the Taxpayers have shown reasonable cause for failing to make a timely election under section 1.1092(b)-4T(f) of the Regulations. Therefore, we grant the Taxpayers' request for an extension of time to make the election under section 1.1092(b)-4T(a) for their respective taxable years ending Date 9. 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 the Taxpayers' respective tax returns.

Except as expressly 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 regarding whether any transaction Taxpayer 1 entered into before Date 3 or Taxpayer 2 entered into before Date 4 constitutes a hedging transaction under any provision of the Code or Regulations. Furthermore, no opinion is expressed concerning whether the positions designated by the Taxpayers as the class of activities are permissible designations under section 1.1092(b)-4T(b)(2) of the regulations.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
Acting Associate Chief Counsel
(Financial Institutions and Products)
By: Alice M. Bennett
Chief, Branch 3

Enclosure: 6110 copy