

Number: **201516037**
Release Date: 4/17/2015
Index Number: 9100.00-00

Refer Reply To:
CC:FIP:B02
PLR-128520-14
Date:
December 22, 2014

Taxpayer	=
State A	=
State B	=
Owner 1	=
Owner 2	=
Manager	=
Firm	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=

Year 1 =

x =

y =

Dear :

This ruling responds to your letter dated July 28, 2014, and supplemental submission dated December 16, 2014, requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under section 856(c) of the Internal Revenue Code ("Code") to be treated as a real estate investment trust ("REIT") for the Taxpayer's taxable year ended on Date 2.

FACTS

Taxpayer was formed on Date 1 as a corporation under the laws of State A for the purpose of investing in real estate located in State B. Taxpayer is a corporation under the laws of State A for federal income tax purposes.

From Date 1 until Date 2, Taxpayer's common shares were owned by Owner 1, a State A corporation that elected to be taxed as a REIT under section 856. As of Date 2, Owner 1's common shares were owned by Owner 2, a State A limited partnership. Owner 1's preferred shares were owned by x shareholders. Taxpayer and Owner 1 were formed by and are managed by Manager. Manager is a privately-held registered investment advisor. On Date 3, y additional shareholders purchased shares in Taxpayer.

Firm assists Manager with federal and state tax compliance services for the various entities Manager serves. Manager relies on the advice of Firm, and relies on Firm to prepare the relevant tax forms required to meet the managed entities' federal and state tax compliance obligations.

Firm was engaged to advise and assist in the preparation of Taxpayer's Year 1 Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, including the preparation of a Form 7004, *Application for Automatic 6-Month Extension of Time to file Certain Business Income Tax, Information, and Other Returns*. As part of Manager's engagement with Firm, it is customary for Firm to file Forms 7004 to extend the period of time to file the original income tax return for all entities managed by Manager.

Taxpayer intended to qualify as a REIT under section 856 for its initial taxable year beginning on Date 1 and ending on Date 2 (First REIT Taxable Year). Taxpayer represents that it would have qualified as a REIT under the provisions of section 856 for that taxable year, but for the filing of a Form 1120-REIT to make an election to be so treated for federal income tax purposes.

Taxpayer's Form 7004 for its First REIT Taxable Year was due on or before Date 4, the original due date for its Form 1120-REIT. It was Taxpayer's and Firm's intention to extend the time for the Form 1120-REIT to be filed. Although Firm was engaged to prepare and file the extension, Taxpayer's Form 7004 was not filed on or before Date 4. This failure to file was the result of inadvertence and administrative oversight on the part of Firm. In preparing and filing numerous extensions for the various entities under the control of Manager, Firm overlooked filing Taxpayer's Form 7004. On Date 5, Firm discovered that Taxpayer's Form 7004 had not been filed.

Because Taxpayer's Form 7004 was not timely filed, the deadline for filing Taxpayer's federal income tax return, on which Taxpayer's REIT election was to be made, for its First REIT Taxable Year was not extended from Date 4 to Date 6. As such, Taxpayer's intended election to be treated as a REIT pursuant to section 856(c)(1) and section 1.856-2(b) of the Income Tax Regulations was not filed on or before Date 4. Firm informed Taxpayer of the missed Form 7004 filing, and Firm advised Taxpayer and Manager to submit a request for relief under section 301.9100-1. Accordingly, Taxpayer submitted this request for a private letter ruling under section 301.9100-1(c) requesting an extension of time to elect to be treated as a REIT for its taxable year ended Date 2.

Taxpayer filed its Form 1120-REIT for its First REIT Taxable Year before Date 6 while its request for this private letter ruling was pending. On its Form 1120-REIT, Taxpayer elected to be treated as a REIT for its First REIT Taxable Year.

Taxpayer represents that:

1. This relief is being requested before the failure to make the regulatory election was discovered by the Internal Revenue Service ("Service"). Taxpayer represents that the failure to make said election was never discovered by the Service.
2. Taxpayer relied upon qualified tax professionals, Firm, who did not prepare or timely file Form 7004 and Form 1120-REIT for Taxpayer's First REIT Taxable Year. No actions of Taxpayer contributed to the failure to timely file its federal income tax return electing to be treated as a REIT.

3. Granting the relief will not result in Taxpayer having a lower U.S. federal tax liability in the aggregate for all years to which the regulatory election applies than if the election had been timely made (taking into account the time value of money).
4. 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 is requesting relief and the new position requires or permits a regulatory election for which relief is requested.
5. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose not to file the election. No decision was made not to file the requested election, and at all times since formation, Taxpayer intended to be treated as a REIT for federal income tax purposes.
6. Taxpayer is not using hindsight in requesting relief. Taxpayer will not be in a better tax position by the grant of relief than if the regulatory election had been timely made. No facts have changed that make it more advantageous for Taxpayer to make the regulatory election at issue.
7. Taxpayer's Form 1120-REIT for its First REIT Taxable Year was filed before Date 6, but after Date 4. As such, that taxable year and any subsequent taxable years remain open.

An affidavit supporting Taxpayer's representations was provided with the submission, as required by section 301.9100-3(e).

LAW AND ANALYSIS

Section 856(c)(1) provides that a corporation, trust, or association shall not be considered a REIT for any taxable year unless it files with its return for the taxable year, an election to be a REIT or has made such an election for a previous taxable year, and such election has not been terminated or revoked. Pursuant to section 1.856-2(b), the election shall be made by computing taxable income as a REIT in its return for the first taxable year for which it desires the election to apply.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (as defined in section 301.9100-1(b)) or a statutory election (but no more than six 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 301.9100-1(b) defines a regulatory election as an election whose date is prescribed by regulations or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that requests for relief subject to this section 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 (1) taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and good faith if the taxpayer (i) requests relief under this section 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 not to have acted in good faith if the taxpayer (i) is seeking 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 of the required election but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c) 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)(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 years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(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 this section.

CONCLUSION

Based on the information submitted and the representations made, we conclude that Taxpayer has satisfied the requirements for the Service to grant a reasonable extension of time to elect under section 856(c) to be treated as a REIT for the tax year ending on Date 2. Taxpayer represents that while this letter ruling was pending and before Date 6, Taxpayer made the election to be treated as a REIT for the tax year ending on Date 2. Accordingly, Taxpayer is hereby granted a reasonable extension of time through the date that Firm filed Taxpayer's Form 1120-REIT for Taxpayer's First

REIT Taxable Year to make an election to be treated as a REIT for U.S. federal income tax purposes.

This ruling is limited to the timeliness of the filing of Taxpayer's election under section 856(c). This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed regarding whether Taxpayer otherwise qualifies as a REIT under subchapter M of the Code. No opinion is expressed concerning whether Taxpayer is subject to interest or penalties associated with its late filed Form 1120-REIT or its failure to file Form 7004 to request an automatic extension with which to file that return. No opinion is expressed regarding any material item or representation on Taxpayer's Form 1120-REIT.

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.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

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 terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Jonathan D. Silver
Jonathan D. Silver
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)