

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:
(202) 622-3120
Refer Reply To:
CC:PSI:7/PLR-107195-01
Date:
October 17, 2001

Re:

Legend

Taxpayer:

Developer:

Date 1:
Year 2:
Year 3:
Year 4:
Year 5:
Year 6:

Dear

This letter responds to your letter, dated January 10, 2001, submitted on behalf of Taxpayer, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election to be treated as a homeowners association under § 528 of the Internal Revenue Code for the taxable years Year 2 through Year 4. Additional information was submitted on behalf of Taxpayer on March 22, 2001 and April 16, 2001.

The information submitted and the representations made are as follows: Taxpayer is a residential condominium management association that was established by Developer on Date 1. Developer handled the management responsibilities until the management functions were transferred to officers elected from among the unit owners. Because neither the previous nor current officers were aware of the filing requirements for a condominium association, nor were they told of any filing requirements by Developer, no income tax returns were filed for the organization prior to Year 5.

Section 528 and § 1.528-1 of the Income Tax Regulations generally provide that homeowners associations meeting the requirements of § 528(c) may elect to be treated as tax-exempt organizations, but only to the extent of their exempt function income.

Section 528(c)(1) provides, in part, that the term “homeowners association” means an organization that elects (at such time and in such manner as the Secretary by regulations prescribes) to have § 528 apply for the taxable year.

Section 1.528-8(a) provides that a separate election to be treated as a homeowners association under § 528 must be made for each taxable year. This election is made by filing a properly completed Form 1120-H (or such other form as the Secretary may prescribe). Section 1.528-8(b) provides that for taxable years ending after December 30, 1976, the election must be made not later than the time, including extensions, for filing an income tax return for the year in which the election is to apply.

Section 301.9100-1(c) provides that the Commissioner, in an exercise of discretion, may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but not more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election under § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interest of the government.

Based on the facts and representations submitted with your request, we have determined that the requirements of § 301.9100-3 have been satisfied with respect to taxable years, Year 2 through Year 4. Therefore, an extension of time is granted, until 30 days from the date of this ruling, for making an election to be treated as a homeowners association under § 528 for the taxable years Year 2 through Year 4.

We note, however, that the burden is upon Taxpayer to establish to the satisfaction of the Service that all of the requirements of § 528 are met. For example, the Taxpayer must have records available to show that it can meet all the requirements of § 528(c)(1).

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Moreover, we express no opinion concerning the assessment of interest, additions to tax, additional amounts, or penalties for failure to file an income tax return with respect to any year. Specifically, we express or imply no opinion on

whether Taxpayer qualifies as a homeowners association under § 528(c).

A copy of this letter should be attached to Taxpayer's election for each year covered by this ruling letter.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for § 6110 purposes