

## Internal Revenue Service

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Department of the Treasury  
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PLR-128669-18

Date:  
December 11, 2018

TY:

Legend

Taxpayer =

Year 1 =

Fund 1 =

Fund 2 =

State A =

Date 1 =

C Corporations =  
Contributors

b =

Subsidiary REIT 3 =

Company Official =

Tax Professional 1 =

Tax Professional 2 =

Dear :

This letter responds to a letter dated July 24, 2018, submitted on behalf of Taxpayer, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Taxpayer is requesting an extension of time to file a deemed sale election under § 1.337(d)-7(c) of the Income Tax Regulations (the “Election”) that was required to be filed with its federal income tax return for the Year 1 taxable year. Additional information was submitted in a letter dated November 13, 2018. The information submitted is summarized below.

Fund 1 and Fund 2, limited partnerships under State A law, were formed to invest in real estate (Fund 1 and Fund 2 may be referred to as “the Funds”). Fund 1 and Fund 2 are classified as partnerships for federal income tax purposes. Taxpayer is a limited partnership under State A law that is classified as a partnership for federal income tax purposes.

Taxpayer is jointly owned by the Funds. C Corporation Contributors own interests (approximately b percent) in the Funds. On Date 1, Taxpayer contributed various appreciated assets to Subsidiary REIT 3, a State A limited liability company that has elected to be taxed as a real estate investment trust (“REIT”) under section 856 of the Internal Revenue Code (the “Code”).

A deemed sale election under § 1.337(d)-7(c)(1) to recognize gain and loss upon the contribution of the assets to Subsidiary REIT 3 was required to be attached to Taxpayer's return for the taxable year in which the deemed sale occurred, under the rules as in effect on the date of the deemed sale. However, for various reasons, the Election was not filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under section 6501(a) of the Code has not expired for Taxpayer's taxable year for which it desires to make the Election, or for any taxable years that would be affected by the Election, had it been timely filed. Taxpayer has represented that it is not seeking to alter a return position for which an accuracy related penalty has been or could be imposed under section 6662 at the time of the request for relief and the new position requires or permits a regulatory election for which relief is requested.

All cites to regulations under § 1.337(d)-7 are to those regulations in effect on the date of the transaction.

Section 1.337(d)-7(a)(1) provides, in relevant part, that if property owned by a C corporation becomes the property of a RIC or a REIT in a conversion transaction (as defined in § 1.337(d)-7(a)(2)(ii)), then section 1374 treatment will apply (as described in § 1.337(d)-7(b)), unless the C corporation elects deemed sale treatment with respect to the conversion transaction.

Section 1.337(d)-7(a)(2)(i) defines a C corporation as a corporation that is not an S corporation, a RIC, or a REIT.

Section 1.337(d)-7(a)(2)(ii) defines the term conversion transaction to mean the qualification of a C corporation as a RIC or a REIT or the transfer of property owned by a C corporation to a RIC or a REIT.

Section 1.337(d)-7(c)(5) provides that a deemed sale election is made by a C corporation (or a partnership to which the principles of § 1.337(d)-7 apply under § 1.337(d)-7(e)) by attaching a statement, as described therein, to its return for the taxable year in which the deemed sale occurs.

Section 1.337(d)-7(e) provides that the principles of § 1.337(d)-7 apply to property transferred by a partnership to a RIC or a REIT to the extent of any gain or loss in the converted property that would be allocated directly or indirectly, through one or more partnerships, to a C corporation if the partnership sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in § 1.337(d)-7(c)(3)).

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election 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 Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. § 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 regulatory 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 evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e. § 1.337(d)-7(c)(5)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the Election, provided Taxpayer establishes that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information, representations, and affidavits submitted by Taxpayer, Company Official, Tax Professional 1 and Tax Professional 2, explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the Election, and that the request for relief was filed before the failure to make the election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations that have been made, we conclude that Taxpayer has shown that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 60 days from the date on this letter, for Taxpayer to file the Election.

The above extension of time is conditioned on Taxpayer's, its members (or partners), and their members (or partners) tax liability, if any, being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been made timely (taking into account the time value of money).

No opinion is expressed as to any tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved. In addition, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that any tax liability is lower. Section 301.9100-3(c).

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. Further, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. Specifically, no opinion is provided concerning Taxpayer's status as a partnership or Subsidiary REIT 3's qualification as a REIT under subchapter M of the Code.

For purposes of granting relief under § 301.9100-3, we relied on certain information and affidavits provided by Taxpayer, Company Official, Tax Professional 1 and Tax Professional 2 under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date on and control number (PLR-128669-18) of the letter ruling.

Pursuant to a power of attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)