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From:

Sent: Tuesday, February 17, 2009 5:25 PM

To:

Subject: FYI: Previously mentioned FSA addressing a REIT closing agreement; reasonable cause, and the amount of a payment as a condition of the closing agreement

FYI, you may find of interest the attached FSA I've mentioned from time-to-time but may not have cited or forwarded to you previously. Following is a brief excerpt:

Generally, if the District Director determines that the taxpayer's failure of the 75% asset test was due to reasonable cause, taxpayer would be eligible to re-elect REIT status for its [TEXT REDACTED] tax year pursuant to I.R.C. § 856(g)(4). A closing agreement setting forth the District Director's determination and resolving the REIT's tax consequences for [TEXT REDACTED] (including, if the District Director so chooses, a provision that preserves the REIT's status for [TEXT REDACTED] vis-a-vis its shareholders) is within the District Director's discretion.

As the taxpayer's violation of the 75% asset test would, in all likelihood, result in a positive tax liability (computed as for a regular subchapter C corporation) for [TEXT REDACTED], the District Director may require the taxpayer to remit some reasonable portion of the foregone tax as a condition of the closing agreement. This office would be available to help draft such a closing agreement and to discuss those factors, including litigation hazards, which should be taken into consideration in evaluating the merits of any offer by taxpayer.

(Emphasis added)

Attachment:

1996 FSA Lexis 130