Internal Revenue Service

Department of the Treasury
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Person To Contact:
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Date:
July 09, 2010

LEGEND:

Taxpayer =

Accountant A =

Accountant B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Dear :

This responds to a letter dated January 28, 2010, submitted on behalf of Taxpayer requesting a ruling under § 301.9100-1 of the Procedure and Administration Regulations that an election under § 856(c) of the Internal Revenue Code to treat Taxpayer as a real estate investment trust (REIT) be considered as timely made.

FACTS

Taxpayer is a limited liability company that has operated in a manner intended to qualify it as a real estate investment trust (REIT) under § 856 since its formation on Date 1. On Date 2, Taxpayer filed Form 8832, Entity Classification Election, to be treated as a corporation.

Accountant A was responsible for preparing and filing all state and federal tax returns and extension requests for Taxpayer. Accountant A, however, inadvertently failed to file timely a request for an extension to file Taxpayer's Form 1120-REIT for the tax year ending on Date 3. The request for an extension of time on Form 7004, Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns, was received by the Service on Date 5, several days after the Date 4 due date. On Date 6, Taxpayer received a letter from the Service that stated Taxpayer's request for an automatic extension to file its tax return for the tax year ending on Date 3 had been denied because the request was filed after the original due date of the return. Accountant A informed Taxpayer that the rejected extension request was of no consequence because Taxpayer did not owe any tax for the tax year ending on Date 3. Accountant A never advised Taxpayer that the late filing might cause the Taxpayer's REIT election to be invalid. On Date 7, Accountant A prepared Taxpayer's Form 1120-REIT for the tax year ending on Date 3 and delivered it to Taxpayer. Taxpayer filed it with the Service on Date 8. Having been previously advised by Accountant A that the late filing had no adverse consequence, Taxpayer did not question the fact that the return was prepared later than what would have been the due date for a return filed pursuant to an automatic extension.

On Date 9, Accountant B inspected a copy of Taxpayer's Form 1120-REIT for the tax year ending on Date 3 and advised Taxpayer that its REIT election might not be valid because of the late filing. On Date 10, Taxpayer engaged Accountant B to prepare this request for relief under § 301.9100-1.

Taxpayer makes the following additional representations:

1. The request for relief was filed by Taxpayer before the failure to make the regulatory election was discovered by the Service.

2. Granting the relief will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Taxpayer requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose to not file the election.

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 election for a previous taxable year, and such election has not be terminated or revoked. Pursuant to § 1.856-2(b) of the Income Tax Regulations, 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) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no 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.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Internal Revenue Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) 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).

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect under § 856(c) to be treated as a REIT beginning with the tax year ending on Date 3. Accordingly, the election of REIT status Taxpayer made on its Form 1120-REIT that was filed by Taxpayer on Date 8 for the tax year ending Date 3 will be considered as timely made.

This ruling is limited to the timeliness of the election of REIT status Taxpayer made on its Form 1120-REIT for the tax year ending Date 3. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. 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. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a REIT under subchapter M of the Code.

Moreover, no opinion is expressed with regard to whether the tax liability of Taxpayer and 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.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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 Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Alice M. Bennett
Alice M. Bennett
Chief, Branch 3

Office of Associate Chief Counsel
(Financial Institutions & Products)