Internal Revenue Service

Number: **201432011**
Release Date: 8/8/2014

Index Number: 856.07-00, 9100.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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PLR-146093-13

Date:
April 30, 2014

Legend

Taxpayer =

Target =

LP 1 =

LP 2 =

Assets =

Firm 1 =

Firm 2 =

Firm 3 =

State A =

a =

b =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Dear :

This ruling responds to a letter dated November 6, 2013, and subsequent correspondence, submitted on behalf of Taxpayer. Taxpayer requests 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 tax year ending on Date 4.

FACTS

LP 1 is a privately owned hedge fund sponsor that also manages certain selected private investments. LP 2 is a State A limited partnership that was formed by LP 1 on Date 2. LP 2 serves as the aggregating investment vehicle for LP 1's and other investors' investment in Target.

Taxpayer is a State A limited liability company that was formed by LP 2 on Date 2. Target is a State A limited liability company that was founded in Year 1 to consolidate and operate Assets located throughout the United States.

On Date 3, LP 1 utilized Taxpayer as the vehicle for acquiring an interest in Target. As of Date 5, Taxpayer owned approximately a% of the interests in Target, and the remaining b% of the interests in Target were owned by certain managers of Target and investment funds unrelated to LP 1.

Taxpayer intended to be treated as a REIT for U.S. federal income tax purposes for the Year 2 tax year. During the process of LP 1's acquisition of the interest in Target, LP 1's external legal advisor, Firm 1, created multiple charts depicting the expected post-acquisition REIT structure. In addition, Firm 1 undertook intense efforts to obtain 100 shareholders for Taxpayer on or before Date 7, with the intention that Taxpayer would qualify as a REIT for the Year 2 tax year. If there had been no intention to treat Taxpayer as a REIT for the Year 2 tax year, LP 1 and its advisors could have waited to obtain the requisite number of shareholders for Taxpayer. Finally, on Date 3, the date of the transfer of interests in Target, LP 2 and Taxpayer executed an agreement which contained a number of provisions that were included solely to effectuate the intention of the parties to treat Taxpayer as a REIT, including, among others: (i) excess share provisions designed to ensure that Taxpayer is not "closely" held as required by section 856(a)(6) of the Code, (ii) management of Taxpayer by a Board of Managers, rather than its owners, as required by section 856(a)(1) of the Code, and (iii) language requiring the Board of Managers to use its efforts to cause Taxpayer to qualify as a REIT for U.S. federal income tax purposes.

Taxpayer's first taxable year ended on Date 4. In order to be treated as a REIT for U.S. federal income tax purposes, Taxpayer was required to file its initial income tax return for its first taxable year by Date 9. Taxpayer intended to file a Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns by Date 9 to extend the filing deadline of its Form 1120-REIT, U.S. Tax Return for Real Estate Investment Trusts, for the Year 2 tax year from Date 9 to Date 12, but, for the reasons set forth below, it inadvertently missed the Form 7004 filing deadline.

LP 1 does not have an in-house tax function that would otherwise handle completing and filing the requisite income tax return. Instead, LP 1 outsources its tax compliance function to Firm 2 and other advisors. However, in connection with the proposed investment in Target, LP 1 engaged Firm 3, Firm 1, and other advisors. Firm 2 was not involved with the discussions regarding the tax structure and the intended treatment of Taxpayer as a REIT. In an engagement letter between LP 1 and Firm 2, dated Date 6, LP 1 engaged Firm 2 to prepare the Year 2 federal and state and local income tax returns for a list of LP 1 entities and their subsidiaries and affiliates, but LP 1 did not include Taxpayer on this list. Additionally, the Year 2 tax year was the first year

for which Taxpayer was required to file an income tax return. Therefore, Taxpayer did not appear on the prior year's list of entities for which Firm 2 was required to file an income tax return.

During the course of Date 8, immediately before the time that the Form 7004 should have been filed for Taxpayer, the team assigned by Firm 2 to LP 1 was replaced with a new team that appears not to have known of the need to file a Form 1120-REIT or Form 7004 (or any other form) for Taxpayer.

The failure to file Form 7004 and Form 1120-REIT and the implication that Taxpayer would not be properly regarded as a REIT for the Year 2 tax year was fully understood on or around Date 10. On Date 10 and Date 11, LP 1 consulted with Firm 1, Firm 2, and other advisors to discuss options for addressing the failure to file the necessary forms. At the conclusion of those discussions, LP 1 authorized the submission of a request for relief under sections 301.9100-1 and 301.9100-3 and directed Firm 1 to begin preparing it. As of November 6, 2013, the date of the letter requesting relief, Firm 2 was in the process of preparing the Year 2 U.S. Federal income tax return on Form 1120-REIT for Taxpayer, and LP 1 will cause that return to be filed once relief has been granted.

In light of the facts set forth above, Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 to make an election under section 856(c) of the Code be treated as a REIT for the tax year ending on Date 4.

Taxpayer has made 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 Internal Revenue Service.

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

3. Taxpayer does 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 it 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.

5. Taxpayer is not using hindsight in requesting relief. No material facts have changed since the date Taxpayer was formed that would cause its being treated

as a REIT to produce more favorable tax treatment to any direct or indirect investor in Taxpayer than the tax treatment contemplated at the time Taxpayer was formed and purchased the equity of Target.

6. No return of Taxpayer is being examined by a district director, or is being considered by an appeals officer or a federal court.

In addition, an affidavit on behalf of Taxpayer was provided with the submission, as required by section 301.9100-3(e) of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Section 856(c)(1) of the Code 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 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) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election 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 301.9100-1(b) defines a regulatory election 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.

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 section 301.9100-2.

Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 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. 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).

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 section 856(c) to be treated as a REIT for its Year 2 tax year ending on Date 4. Accordingly, Taxpayer is hereby granted 60 days from the date of this letter to file Form 1120-REIT for the Year 2 tax year and 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 with regard to whether Taxpayer otherwise qualifies as a REIT under subchapter M of the Code.

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 representative.

Sincerely,

Andrea M. Hoffenson
Assistant to the Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes