Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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PLR-148847-13

Date:
March 28, 2014

Legend:

Company =

LLP 1 =

LLP 2 =

State =

Dear

This is in reply to a letter dated November 21, 2013, requesting on behalf of Company an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to elect to be treated as a real estate investment trust ("REIT") under section 856(a) of the Internal Revenue Code.

FACTS

Company is a State corporation that was formed on August 29, 2012. Company's primary business is dealing with real estate assets that it owns either directly or through subsidiaries. Company has at all times intended to qualify as a REIT beginning with its first taxable year ending December 31, 2012.

LLP 1 is an accounting firm hired by Company to prepare its federal tax returns. LLP 2 is a law firm providing services to Company.

On March 15, 2013, the due date for Company's first federal income tax return, LLP 1 tried to file electronically Form 7004 to request an automatic extension of time for Company to file its return for 2012. The Form was rejected with a response that the form code on the Form 7004 did not match the form code in the Internal Revenue Service database. Thereafter, LLP 1 filed electronically another Form 7004 but for a Form 1120, which is for a non-REIT corporation, instead of Form 1120- REIT, the correct form for Company. LLP 1 also mailed a paper Form 7004 on behalf of Company.

On September 12, 2013 LLP 1 filed a Form 1120, rather than Form 1120-REIT, on behalf of Company for its first taxable year.

Neither Company nor LLP 2 was informed that a Form 7004 had been rejected. Prior to the filing of the Form 1120, LLP 1 did not inform Company or LLP 2 that LLP 1 would not be filing an 1120-REIT on behalf of Company.

On September 19, 2013 LLP 2 became aware that Form 1120-REIT had not been filed for Company. On September 23, 2013 LLP 2 notified Company and LLP 1 of the need to file Form 1120-REIT in order to elect REIT status for Company. Prior to that notice Company was unaware of the need to file Form 1120- REIT instead of Form 1120 to elect REIT status.

After LLP 2 notified LLP 1 of the need to file Form 1120-REIT for Company, LLP 1 immediately began preparing the Form 1120-REIT for Company.

The following representations are made in connection with the request for an extension of time:

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

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

3. Company 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 Company requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Company failed to file the election inadvertently. Company has not used hindsight to seek an extension of time to make the election. Company always had the intent to elect REIT status. If Company had been advised by their tax professionals of the need for the election to be made on Form 1120-REIT Company would have made the election on that form.

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.

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 section 301.9100-1(b) as an election whose deadline 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) of the regulations sets forth rules that the Internal Revenue Service generally will use to determine whether, under the 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; and section 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 upon the facts and representations submitted, we conclude that Company has shown good cause for granting a reasonable extension of time to elect to be treated as a REIT under section 856 of the Code. We further conclude that the time for filing the election under section 856(c)(1) is extended by 90 days from the date of this letter.

This ruling is limited to the timeliness of the filing of Company's Form1120-REIT for purposes of the election under section 856(c)(1) of the Code. This ruling's application is limited to the facts, representations, Code sections, and regulations cited

herein. No opinion is expressed with regard to whether Company otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Company 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 that requested 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 yours,

Susan Thompson Baker
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions & Products)