**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Date:
February 05, 2015

Legend:

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| Taxpayer | = |
| Entity 1 | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |
| Date 5 | = |
| Date 6 | = |
| Date 7 | = |
| Year 1 | = |
| Year 2 | = |
| Tax Consultant | = |
| Securities Counsel | = |
| Taxpayer’s Chief Accounting Officer | = |

Accountant =

Dear :

This is in reply to a ruling request dated November 7, 2014. Taxpayer requests a ruling that it is treated as if it had not made an election to be treated as a real estate investment trust (REIT) on its Form 1120-REIT filed for Year 1, and that the filing of Taxpayer's Form 1120-X (Amended U. S. Corporation Income Tax Return) for Year 1 is effective in place of the Form 1120-REIT originally filed for Year 1. Taxpayer further requests that the filing of the original Form 1120-REIT and subsequent filing of the Form 1120-X for Year 1 not be treated as a termination or revocation of its REIT status for purposes of section 856(g) of the Internal Revenue Code.

FACTS:

Taxpayer was organized on Date 1. On Date 2, Entity 1 became Taxpayer's sole shareholder. According to a prospectus dated Date 3, Taxpayer was formed to acquire and operate a diverse portfolio of commercial real estate assets and would elect to be taxed as a REIT beginning with Year 1.

On Date 4, Taxpayer met with audit and tax professionals from Tax Consultant and Securities Counsel, and determined that Taxpayer would elect to be a REIT beginning in Year 1. In Year 2 Securities Counsel determined that Taxpayer would not meet the requirements to qualify as a REIT for Year 1 and recommended that Taxpayer amend its draft Form10-K to reflect that Taxpayer would make the REIT election for Year 2 rather than Year 1. The proposed changes were made to the draft Form10-K.

Tax Consultant was inadvertently not informed of Taxpayer's decision to delay its REIT election until Year 2. Tax Consultant assumed the changes to the Form10-K were made in error. Some references in the Form10-K to the election being made in Year 2 were changed to reflect an election in Year 1, while other references to a Year 2 election were not changed. Accountant, a partner at Tax Consultant, prepared an automatic extension of Taxpayer's initial REIT return and subsequently prepared Taxpayer's Year 1 return on the Form 1120-REIT.

Tax Consultant provided Taxpayer's Chief Accounting Officer with the Year 1 Form 1120-REIT on Date 5. Taxpayer's Chief Accounting Officer reviewed the return for reasonableness and to confirm that the reported income and balance sheet figures were accurate. Taxpayer's Chief Accounting Officer, however, did not appreciate that filing a Form 1120-REIT constituted making a REIT election for Year 1 or the need to defer the election to assure compliance with the REIT qualification requirements. While

Taxpayer's Chief Accounting Officer had many years of experience as an accounting manager, Taxpayer's Chief Accounting Officer did not have in-depth experience with the REIT qualification rules in sections 856 through 860 of the Code. Taxpayer represents that it relies on its outside advisors for REIT-related matters.

On Date 6, Taxpayer filed its Form 10-Q. Upon review of the Form 10-Q, Securities Counsel discovered that the REIT election had not been deferred until Year 2 as he had recommended. On Date 7, Taxpayer completed Form 1120-X, a non-REIT amended return, for Year 1 and filed it with the Service.

In Year 2, Taxpayer met all the REIT qualification requirements and filed a Form 1120-REIT for Year 2. Taxpayer intends that the Year 2 Form 1120-REIT constitute its initial REIT election. Taxpayer makes the following representations:

1. The error in filing a Form 1120-REIT was contrary to Taxpayer's overriding intent, which was to make a REIT election only after it knew it would be able to comply with the REIT qualification rules;
2. The error was inadvertent, due in part to miscommunication and to a misunderstanding regarding the significance of filing the Form 1120-REIT as constituting an affirmative election;
3. Taxpayer acted promptly to rectify the erroneous filing before the error was discovered by the Service by contacting the Service to pursue a closing agreement and subsequently filing an amended return;
4. Taxpayer relied upon outside experts who were qualified in REIT-related matters;
5. Taxpayer did not alter in its amended return any tax treatment or position on its original Year 1 return, other than the REIT election; and
6. Taxpayer is not taking advantage of hindsight in asking the Service to accept its amended return position in lieu of its original Year 1 return.

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 under section 856(g).

Section 856(g)(1) provides that an election under section 856(c)(1) made by a corporation shall terminate if the corporation is not a real estate investment trust to which the provisions of part II of subchapter M of the Code apply for the taxable year with respect to which the election is made, or for any succeeding taxable year. Such termination shall be effective for the taxable year for which the corporation is not a real estate investment trust to which the provisions of sections 856–860 apply, and for all succeeding taxable years.

Section 856(g)(2) provides that an election under section 856(c)(1) made by a corporation may be revoked by it for any taxable year after the first taxable year for which the election is effective. Such revocation shall be effective for the taxable year in which made and for all succeeding taxable years.

Section 856(g)(3) provides, in general, that if a corporation has made a REIT election and such election has been terminated or revoked, such corporation or any successor corporation, shall not be eligible to make an election under section 856(c)(1) for any taxable year prior to the fifth taxable year which begins after the first taxable year for which such termination or revocation is effective.

In Rev. Rul. 83-74, 1983-1 C.B. 112, a homeowners association sought permission in 1980 to revoke an election made for its 1979 tax year to be taxed as a tax-exempt organization under section 528. It based the request upon an inaccurate audit performed by a professional tax advisor which understated the interest income of the association (nonexempt income under section 528), and inadequate tax advice provided by the advisor, which denied the association the use of a net operating loss carryover that could have been used if the association had filed as a corporation instead of electing to be taxed under section 528. In holding that under the facts and circumstances of the revenue ruling a revocation of the election would be permissible, the revenue ruling analogizes to situations in which taxpayers fail to make a particular election because of inadequate or incorrect tax advice provided by an attorney or accountant and subsequently seek extensions of time under section 1.9100-1 of the Income Tax Regulations in which to make the election.

Under section 301.9100-1 of the Procedure and Administration Regulations, the Commissioner has discretion, upon good cause shown by the taxpayer, to grant a reasonable extension of time fixed by the regulations for making an election, provided certain conditions are met. Section 301.9100-3 provides that requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence (including affidavits described in the regulations) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interest of the government.

Section 301.9100-3(b)(1) states that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer—

(i) requests relief before the failure to make the regulatory election is discovered by the Service;

(ii) failed to make the election because of intervening events beyond the taxpayer's control;

(iii) failed to make the election because, after exercising due diligence, the taxpayer was unaware of the necessity for the election;

(iv) reasonably relied on the written advice of the Service; or

(v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Under section 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer—

(i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of section 1.6664-2(c)(3)) and the new position requires a regulatory election for which relief is requested;

(ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or

(iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

The Taxpayer's situation in this case is similar to Rev. Rul. 83-74, and analogous to situations concerning taxpayers who have not made a particular election provided in the regulations because of inadequate or incorrect advice from knowledgeable tax professionals and are subsequently seeking extensions of time under section 301.9100-1.

CONCLUSION

Based upon the facts and representations submitted and assuming the Year 1 Form 1120-X was properly filed, consent is granted for Taxpayer to be treated as if it had not made the REIT election on the Form 1120-REIT filed for Year 1, and the filing of Form 1120-X for Year 1 is effective in place of the Form 1120-REIT originally filed. The foregoing shall not be treated as a termination or revocation for purposes of section 856(g).

This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above. No opinion is expressed regarding the validity of the Form 1120-X or whether it was correctly completed or properly filed.

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,

Jonathan D. Silver
Jonathan D. Silver
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)