

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B02

PLR-110826-24

Date:

December 6, 2024

LEGEND

Taxpayer =

Company =

Accounting Firm =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Month 1 =

Month 2 =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated February 9, 2024, 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 (the “Code”) to be treated as a real estate investment trust (“REIT”) effective Date 4.

FACTS

Taxpayer is a State limited liability company that was formed on Date 1 for the purpose of investing in real estate located across the United States. Taxpayer filed Form 8832, *Entity Classification Election*, electing to be treated as an association taxable as a corporation effective on its formation date of Date 1. Taxpayer filed Form 1120, *U.S. Corporation Income Tax Return*, for the tax years ended Date 2 and Date 3. In Year 1, after completing an internal analysis, Taxpayer concluded that it would be tax efficient to make a REIT election effective Date 4.

Company is generally responsible for Taxpayer’s tax return filing obligations. Company has a small tax department that relies on outside advisors concerning the application of complex United States tax matters, including the REIT rules. Accordingly, Company engaged Accounting Firm, a qualified professional return preparer, to prepare and timely file federal and state income tax returns for numerous entities, including Taxpayer. Company intended for Taxpayer to elect to be treated as a REIT (the “Election”) effective Date 4. Such Election would have been made by timely filing Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, for the tax year ended Date 5 (the “First REIT Taxable Year”).

Company engaged Accounting Firm to prepare Taxpayer’s Form 1120-REIT for the First REIT Taxable Year. Pursuant to this engagement, the Accounting Firm employees responsible for preparing the Form 1120-REIT (the “Engagement Team”) prepared and timely electronically filed Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, on Date

6. Taxpayer's Form 7004 was, however, rejected.

Following the rejection, Accounting Firm prepared to paper file the Form 7004 within the perfection period allowed for electronic filing rejections. However, the Engagement Team erroneously, but inadvertently, believed that the perfection period of ten calendar days applicable to electronically rejected returns applied to electronically rejected extensions (rather than the perfection period of five calendar days applicable to extensions). Accordingly, on Date 7, seven calendar days from the rejected filing date (i.e., Date 6), the Engagement Team mailed Taxpayer's Form 7004 to the Service. Both Taxpayer and the Engagement Team believed that the extension was timely filed.

Company then provided Accounting Firm with all required information to prepare Taxpayer's Form 1120-REIT for the First REIT Taxable Year. On Date 8, Taxpayer's Form 1120-REIT was filed (i.e., mailed) by what Taxpayer and the Engagement Team believed was the extended due date.

Company relied on the Engagement Team to timely prepare the tax return extension, and then timely file, first electronically and then on paper, the required Form 7004. Company's tax department was not familiar with the perfection period requirements with respect to Service e-filing procedures. As such, Company did not identify the failure to timely file the extension. Until the oversight with the extension was discovered, Company and the Engagement Team believed that Taxpayer properly elected, as intended, to be treated as a REIT for the First REIT Taxable Year by timely filing the Form 1120-REIT.

In Month 1 of Year 2, other taxpayers with substantially identical facts received notices from the Service stating that their extensions were rejected. A Company employee immediately contacted the Engagement Team to request proof of filing of these extensions. The Engagement Team reached out to another group in Accounting Firm to confirm whether the documentation on file was sufficient to respond to the notices. In Month 2 of Year 2, the other group in Accounting Firm confirmed that the extensions were late because the perfection period for the rejected electronic extensions was five calendar days, not ten days as the Engagement Team previously thought. Following this advice, the Engagement Team reviewed its internal files to determine what other extensions may have been filed late, and which entities may have made a late REIT election as a result.

Following the Engagement Team's review of its internal files, the Engagement Team determined that Taxpayer needed to request section 9100 relief for its late Election. On Date 9, after Accounting Firm completed its internal administrative process concerning Taxpayer's missed Election, Company engaged Accounting Firm to prepare a request for section 9100 relief.

Taxpayer's income tax returns for tax years ended Date 5 and Date 10 were prepared consistently with Taxpayer being treated as a REIT since Date 4, as if the

Election had been timely made.

REPRESENTATIONS

Taxpayer makes the following representations in connection with this request for an extension of time:

1. Taxpayer filed the request for relief before the failure to make the election was discovered by the Service.
2. The interests of the government are not prejudiced within the meaning of section 301.9100-3(c). Granting the relief will not result in Taxpayer having a lower U.S. income 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 does not seek to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 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 not to file the election.
5. Taxpayer is not using hindsight in requesting this relief. No specific facts have changed since the due date for making the election that makes this election advantageous to Taxpayer.
6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer for the taxable year for which the election should have been made, nor for any taxable year(s) that would have been affected by the election had it been timely made.

In addition, affidavits on behalf of Taxpayer have been provided as required by section 301.9100-3(e)(2) and (3).

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 an election for a previous taxable year, and such election has not been terminated or revoked. Pursuant to section 1.856-2(b) of the Income Tax Regulations, the election shall be made by the trust 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) 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 six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to mean an election whose due date is prescribed by a regulation, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1) sets forth rules that the 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(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer generally is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section 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 reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), 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, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer will be deemed to have not acted reasonably and in good faith, however, 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 and the new position requires or permits 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.

Section 301.9100-3(c)(1) 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)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on

assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

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 effective Date 4. Accordingly, due to the reasonable extension of time granted to Taxpayer, Taxpayer's Form 1120-REIT filed on Date 8 is considered a timely election under section 856(c) for Taxpayer to be treated as a REIT under subchapter M of the Code effective Date 4.

CAVEATS

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, and Code and regulation sections cited herein. Except as 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 regarding the timeliness of Taxpayer's federal income tax return. Furthermore, no opinion is expressed or implied regarding whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of chapter 1 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) 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,

Matthew Howard
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)

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cc: