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:
,
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Telephone Number:

Refer Reply To:
CC:FIP:B01
PLR-130372-18

Date:
December 18, 2018

LEGEND:

Taxpayer =

Company 1 =
Company 2 =
Firm =
State A =
State B =
City =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
a =

Dear :

This ruling responds to a letter dated October 10, 2018, and subsequent correspondence, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 856(c) of the Internal Revenue Code ("Code") to be treated as a real estate investment trust ("REIT") for the taxable year ended Date 1.

FACTS

Taxpayer is a State A corporation that was formed on Date 2 for the purpose of investing in real estate located in City. From Date 2 through Date 3, Taxpayer was a qualified REIT subsidiary, within the meaning of § 856(i), of Company 1, a publicly traded State A REIT. On Date 3, all of the shares of Taxpayer were assigned to Company 2, a State B limited liability company that was disregarded as an entity separate from Company 1 for federal income tax purposes. On Date 4, an unrelated investor acquired an a% membership interest in Company 2, which resulted in Company 2 becoming a partnership for federal income tax purposes and Taxpayer ceasing to be a qualified REIT subsidiary of Company 1.

Taxpayer intended to qualify for taxation as a REIT under §§ 856 through 859 for its initial, short taxable year beginning Date 4 and ending Date 1 (the "First REIT Taxable Year"). Company 1's public filings with the U.S. Securities and Exchange Commission disclose its intent and expectation that Taxpayer qualifies for taxation as a REIT under §§ 856 through 859.

Taxpayer has no employees and engages Firm to provide day-to-day management services. Taxpayer relies on Firm for all tax compliance matters, including the preparation and timely filing of its federal income tax returns. Firm is an experienced manager of private and public REITs and provides tax compliance services to its clients, including the preparation and filing of federal, state, and local income tax returns.

Firm intended to file Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, which was due on or before Date 5, on behalf of Taxpayer in order to extend the time for filing Taxpayer's Form 1120-REIT for the First REIT Taxable Year. Due to an administrative error, Firm did not file Taxpayer's Form 7004. Firm transitioned from physically filing the Forms 7004 for clients to which it provides tax compliance services to electronically filing the Forms 7004 for these clients. Firm inadvertently omitted Taxpayer from the extension filing process because it was Taxpayer's first taxable year as a REIT instead of a qualified REIT subsidiary. On or about Date 6, while preparing Taxpayer's Form 1120-REIT for the First REIT Taxable Year, Firm discovered that it had not filed Taxpayer's Form 7004. Later in the week of Date 6, Firm informed Taxpayer of the failure to file Taxpayer's Form 7004. At all times prior to that discovery, Taxpayer believed that Firm timely filed the Form 7004 for the First REIT Taxable Year and did not learn that a Form 7004 had not been timely filed until the preparation of the return was underway. After informing Taxpayer of the discovery but no later than Date 7, Firm filed on behalf of Taxpayer a Form 1120-REIT, on which Taxpayer elected to be treated as a REIT for its First REIT Taxable Year. Firm advised Taxpayer to seek a ruling under § 301.9100-3

requesting that the Form 1120-REIT that Firm filed on or before Date 7 be considered a timely election by Taxpayer to be treated as a REIT effective as of Date 4.

Because Form 7004 was not timely filed, the deadline for filing Taxpayer's federal income tax return, on which Taxpayer's REIT election was to be made, was not extended from Date 5 to Date 7.

Taxpayer makes the following additional representations:

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

2. Granting the relief will not result in Taxpayer having a lower federal 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 or could have been imposed under § 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 § 6501(a) has not expired for Taxpayer for the taxable year for which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

Taxpayer has provided the affidavits required by § 301.9100-3(e).

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 § 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 § 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 § 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 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 not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election, or (ii) aware of all relevant facts. A taxpayer will be deemed to have not 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 § 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)(1)(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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based on the information submitted and the 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 effective as of the first day of the taxable year that commenced on Date 4 and ended on Date 1. Accordingly, due to the reasonable extension of time granted to Taxpayer, Taxpayer's Form 1120-REIT filed on or before Date 7 for Taxpayer's First REIT Taxable Year is considered a timely election under § 856(c) to be treated as a REIT under subchapter M of the Code effective as of Date 4.

This ruling is limited to the timeliness of the filing of Taxpayer's election under § 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.

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.

The rulings contained in this letter are 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) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Spence Hanemann
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:
A copy of this letter

cc: