

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
CC:FIP:B03 – PLR-107072-06  
Date: March 31, 2006

**LEGEND:**

- Trust =
  
- Company A =
- Company B =
- State X =
- Accounting Firm =
- Year 1 =
- Date 1 =
- Date 2 =
- Date 3 =

Dear

This responds to a letter dated January 31, 2006, submitted on behalf of Trust requesting under § 301.9100-1 of the Procedure and Administration Regulations that an election under § 856(c) of the Internal Revenue Code to treat Trust as a real estate investment trust (REIT) be considered as timely filed.

## FACTS

Trust, a State X corporation, was formed on Date 1, to acquire directly or indirectly properties to be leased on a long-term basis to tenants. Trust commenced operations in Year 1. Trust represents that at all times it both has intended to elect REIT status and has operated in a manner intended to qualify as a REIT, pursuant to section 856 of the Code.

Trust retained Company A as a general advisor to provide management, acquisition, advisory, and administrative services. Company A in turn engaged Company B to provide tax services. Company B employs all of the employees that perform the day-to-day financial, legal, and accounting operations of Trust. Company B computed Trust's taxable income for the tax year ending Date 2, and was responsible for preparing and filing the federal and state income tax forms required to be filed on behalf of Trust. In this capacity, Company B was responsible for preparing and filing federal Form 7004, Application for Automatic Extension of Time to File Corporate Income Tax Return. Company B, however, inadvertently failed to time file a Form 7004 on behalf of Trust.

Accounting Firm was engaged by Company B on behalf of Trust to prepare the Form 1120-REIT for the tax year ending Date 2. During the tax return preparation process, Accounting Firm requested a copy of the Form 7004 and discovered that there was no record of Trust having filed the federal Form 7004. Accounting Firm accelerated its preparation of Trust's tax return. Consequently Trust filed its initial Form 1120-REIT for the tax year ending Date 2, on Date 3. On Trust's return, Trust elected REIT status under § 856(c) of the Code. However, because Trust had not timely filed a Form 7004, Trust's Form 1120-REIT was not timely filed. Consequently, Trust submitted a request for a private letter ruling under § 301.9100-1 of the regulations requesting that the election of REIT status Trust made on its Form 1120-REIT, that was filed Date 3, for the tax year ending Date 2, be considered as timely made.

Trust makes the following additional representations:

1. The request for relief was filed by Trust before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Trust having a lower tax liability in the aggregate for all years to which the regulatory election applies than Trust would have had if the election had been timely made (taking into account the time value of money).
3. Trust did 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 Trust 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, Trust did not choose to not file the election.

## **LAW AND ANALYSIS**

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 § 301.9100-1(b) 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), 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) 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 § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 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 § 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 on the information submitted and representations made, we conclude that Trust has satisfied the requirements for granting a reasonable extension of time to elect under § 856(c) to be treated as a REIT beginning with the tax year ending Date 2. Accordingly, the election of REIT status Trust made on its Form 1120-REIT, that was filed Date 3, for the tax year ending Date 2, will be considered as timely made.

This ruling is limited to the timeliness of the election of REIT status Trust made on its Form 1120-REIT for the tax year ending Date 2. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. 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. In particular, no opinion is expressed with regard to whether Trust qualifies as a REIT under subchapter M of the Code.

Moreover, no opinion is expressed with regard to whether the tax liability of Trust and 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.

The ruling contained in this letter is 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) of the Code 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 representative.

Sincerely,

Alice M. Bennett  
Chief, Branch 3  
Office of Associate Chief Counsel  
(Financial Institutions & Products)

Enclosures:

Copy of this letter  
Copy for section 6110 purposes

cc: