

Internal Revenue Service

Number: **200826015**

Release Date: 6/27/2008

Index Number: 858.00-00, 9100.00-00

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:B03

PLR-141543-07

Date:

March 14, 2008

Legend:

Trust =

State X =

Accounting Firm 1 =

Accounting Firm 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Year 2 =

Dear _____ :

This responds to a letter dated September 14, 2007, submitted on behalf of Trust. Trust requests an extension of time to make an election under § 858 of the Internal Revenue Code to treat dividends distributed after the close of a tax year as having been paid during that tax year, pursuant to § 301.9100-3 of the Procedure and Administration Regulations.

FACTS:

Trust has elected to be a real estate investment trust (REIT) subject to the provisions of Subchapter M of Chapter I, sections 856-860 of the Internal Revenue Code. Trust was formed under State X law on Date 1.

Trust employed Accounting Firm 1 to prepare its federal income tax returns for the tax years that ended on Date 2, Date 3, Date 4, and Date 5. Trust declared and distributed dividends in January, Year 1 and Year 2, and intended to make the election to have these dividends qualify as dividends for the respective previous years under § 858(a). Accounting Firm 1 inadvertently failed to make the proper election as required by § 1.858-1(b). The failure to make the proper election was discovered on Date 6 by Accounting Firm 2 that was hired by Trust to undertake a review of Trust's Form 1120-REITs for years that ended on Date 2, Date 3, Date 4, and Date 5. Upon discovery of the failure, Accounting Firm 2 requested relief under § 301.9100-1 for an extension of time to make the election under § 858(a) for the years that ended on Date 3 and Date 4.

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 requested will not result in Trust having a lower tax liability in the aggregate for all years to which the regulatory election applies than that 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 858(a) of the Code provides that, if a real estate investment trust--

- (1) declares a dividend before the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return) and
- (2) distributes the amount of such dividend to shareholders or holders of beneficial interests in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the trust elects in such return (and specifies in dollar amounts) in accordance with regulations prescribed by the Secretary, be considered as having been paid only during such taxable year, except as provided in subsections (b) and (c).

Section 1.858-1(b) of the Income Tax Regulations sets forth the method of making the election and provides that the election must be made in the return filed by the REIT for the taxable year.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides, in part, 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.

Sections 301.9100-3(a) through (c)(1)(i) set 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 § 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.)

HOLDING:

Based upon the facts presented and representations made by Trust, we hold that Trust has demonstrated good cause for the granting relief under § 301.9100-3. Accordingly, Trust will be given an extension of time not to exceed 60 calendar days from the date of issuance of this letter to file the elections under § 858(a) for the years that ended on Date 3 and Date 4.

No opinion is expressed as to whether Trust's tax liability is not lower in the aggregate for the year to which the election applies than Trust's 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 will determine Trust's tax liabilities for the year involved. If the director determines that Trust's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of Trust's election under § 858(a) of the Code. This ruling does not relieve Trust from any penalty that it may owe as a result of its failure to file its federal income tax returns on time. Except as specifically ruled upon above, no opinion is expressed or implied as to any federal excise or income tax consequences regarding Trust. In particular, no opinion is expressed or implied whether Trust qualifies as a REIT that is taxable under subchapter M, part 1 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

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

Enclosures:

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