

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201002012**
Release Date: 1/15/2010

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 856.00-00, 565.00-00,
9100.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B03
PLR-123202-09

Date:
September 30, 2009

Legend

Trust =

Partnership =

Company A =

Company B =

Accounting Firm =

State X =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Dear :

This responds to your letter dated May 1, 2009, submitted on behalf of Trust. Trust requests, under sections 301.91000-1 and 301-9100-3 of the Procedure and

Administration Regulations, an extension of time to elect, under section 856(c) of the Internal Revenue Code (Code), to be treated as a real estate investment trust (REIT), and, under section 565(a), to make a consent dividend election, for the taxable year ending Date 3.

FACTS

Trust, a State X LLC, was formed Date 1 and elected to be classified as a corporation effective Date 2 by timely filing Form 8832, *Entity Classification Election*. During Year 1, Trust's sole owner was Partnership, which was owned by various institutional investors and managed by Company A, a subsidiary of Company B.

Trust represents that for its taxable year ending Date 3, Trust intended to make an election under section 856(c) of the Code and section 1.856-2(b) of the Income Tax Regulations (Regulations) to be treated as a REIT.

Accounting Firm was engaged in Year 1 to provide advice and assist in the preparation of Trust's Year 1 Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, including the preparation of a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*.

During the course of Year 1, Company A experienced a significant increase in work and the loss of many staff members, including its internal tax director. Trust represents that these events contributed to less oversight of filing deadlines and an increased reliance on external advisors to monitor return deadlines.

Although Accounting Firm held responsibility for tracking Trust's filing deadlines and for assisting in the preparation of Trust's returns and extensions, Trust missed the deadline to file its Form 7004 for its Form 1120-REIT for its taxable year ending Date 3. The senior associate at Accounting Firm assigned to Trust changed in early Year 2, and the new senior associate and the associate's overseer missed the filing deadline.

Trust represents that it intended to make and Partnership intended to consent to a consent dividend election under section 565(a) of the Code and section 1.565-1(b)(3) of the Regulations on Trust's timely filed Year 1 Form 1120-REIT. Consistent with that intention, in the third month of the first quarter of Year 2, Partnership distributed Year 1 Schedules K-1 to its investors, which included a non-qualified dividend equal to Trust's Year 1 net taxable income.

Upon discovering Form 7004 for its Year 1 Form 1120-REIT was not filed timely, Trust requested this extension of time to elect to be treated as a REIT and to make a consent dividend election for its taxable year ending Date 3. As of the date of its ruling request, Trust had not yet filed its Form 1120-REIT for its taxable year ending Date 3. Subsequently, Trust filed said return as if the relief requested therein had been granted.

Trust makes the following additional representations as to each request:

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 tax years to which the regulatory election applies than that Trust would have had it 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.

APPLICABLE LAW

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 election for a previous taxable year, and such election has not be terminated or revoked. Pursuant to section 1.856-2(b) of the Regulations, the election shall be made by computing taxable income as a REIT in its return for the first taxable year for which it desires the election to apply.

Section 565(a) provides that if any person owns consent stock (as defined in section 565(f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with the regulations, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in section 565(b), constitute a dividend for purposes of section 561 (relating to the deduction for dividends paid).

Section 1.565-1(a) provides that the dividends paid deduction, as defined in section 561, includes the consent dividends for the taxable year. A consent dividend is a hypothetical distribution (as distinguished from an actual distribution) made by certain corporations to any person who owns consent stock on the last day of the taxable year of such corporation and who agrees to treat the hypothetical distribution as an actual dividend, subject to specified limitations, by filing a consent at the time and in the manner specified in section 1.565-1(b). Section 1.565-1(a). Section 1.565-1(b)(3)

provides that a consent may be filed no later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. Under Rev. Rul. 78-296, 1978-2 C.B. 183, the due date for purposes of section 1.565-1(b)(3) includes the extended due date of a return filed pursuant to an extension of the time to file.

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 section 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 section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 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 section 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 Trust has satisfied the requirements for granting a reasonable extension of time to make an election, under section 856(c) of the Code and section 1.856-2(b) of the Regulations, to be treated as a REIT, and to make a consent dividend election under section 565(a) of the Code and section 1.565-1(b)(3) of the Regulations, for its taxable year ending Date 3.

Accordingly, the election to be treated as a REIT and the consent dividend election made on Trust's Year 1 Form 1120-REIT for its taxable year ending Date 3, which return was filed after the date of its ruling request as if the relief requested therein had been granted and before the date of this ruling, will be considered as timely made.

This ruling is limited to the timeliness of the REIT election and consent dividend election Trust made for its taxable year ending Date 3. 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 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 representatives.

Sincerely,

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

Enclosures:
Copy of the letter
Copy of section 6110 purposes