

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

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Refer Reply To:  
CC:FIP:B02  
PLR-107636-15

Date:  
June 03, 2015

LLC =

State =

Advisor =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This is in reply to a letter dated September 11, 2014, and subsequent correspondence, requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for LLC to elect to be treated as a real estate investment trust ("REIT") under section 856(c)(1) of the Internal Revenue Code, beginning with its taxable year ended on Date 4.

**FACTS**

LLC was organized on Date 1 under State law. At all times it intended to be treated as a REIT for federal income tax purposes under Subchapter M of the Code.

LLC retained Advisor to prepare its Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts, making the election under section 856(c)(1) to be a REIT on its return for the taxable year ended on Date 4. The due date for filing this 1120-REIT was Date 2. Advisor also prepared a Form 7004 to extend the time for filing the Form 1120-REIT to Date 3.

Due to administrative burdens associated with the immense volume of filings during the days immediately preceding Date 2, the Form 7004 was not brought to Advisor's mailroom before Date 2. Because Form 7004 was not timely filed, the deadline for filing LLC's federal income tax return, on which LLC's REIT election was to be made, was not extended from Date 2 to Date 3.

The following representations are made in connection with the request for an extension of time:

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

In addition, affidavits on behalf of LLC have been provided as required by section 301.9100-3(e) of the Procedure and Administration Regulations.

#### 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), 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 301.9100-1(c) of the Procedure and Administration Regulations 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 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 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1)(i) 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 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. Moreover, a taxpayer will be deemed not to have acted 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 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) 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)(i) 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 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 upon the facts and representations submitted, we conclude that LLC has shown good cause for granting a reasonable extension of time to file Form 1120-REIT making the election under section 856(c)(1) of the Code. The extension of time to make the election is 90 days from the date of this letter.

This ruling is limited to the timeliness of the filing of LLC's Form 1120-REIT for purposes of the election under section 856(c)(1) of the Code. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether LLC otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of LLC 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.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

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

In accordance with the terms of a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Susan Thompson Baker  
Susan Thompson Baker  
Senior Technician Reviewer, Branch 2  
Office of the Associate Chief Counsel  
(Financial Institutions and Products)