

## 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:

Telephone Number:

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April 12, 2016

EIN:

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### Legend

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
State	=
Amount 1	=
Accounting Firm	=
Senior Manager	=

Dear :

This letter is in response to a ruling request dated November 3, 2015, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make a consent dividend election pursuant to § 565 of the Internal Revenue Code.

### FACTS

Taxpayer was organized on Date 1 as a State limited liability company for the purpose of investing in residential real estate. Taxpayer hired Accounting Firm to advise it on tax matters, prepare its income tax returns, and ensure its compliance with Federal tax filing obligations. On Date 2, Taxpayer timely filed its first income tax return on a Form 1120-

REIT for the taxable year ending Date 3, reporting taxable income of Amount 1, and electing to be treated as a Real Estate Investment Trust (REIT).

In Date 4, Taxpayer discovered the absence of a dividend paid deduction on Taxpayer's initial income tax return for the taxable year ending Date 3, as required under § 857(a)(1), and notified Accounting Firm. Taxpayer's Form 1120-REIT was prepared by staff at Accounting Firm and reviewed by Senior Manager. In his affidavit, Senior Manager stated that through an oversight he did not recognize the need for a dividend paid deduction due to the fact that Taxpayer's income tax return indicated that there was no tax due. Senior Manager further stated that had he realized the need for the dividend paid deduction he would have advised Taxpayer to take remedial action, such as making a consent dividend election under § 565.

Accounting Firm has advised Taxpayer of the need to correct its error and recommended that Taxpayer request an extension of time to make a consent dividend election for the taxable year ending Date 3. Taxpayer represents that upon the granting of this request it will obtain and file executed consents on Forms 972, *Consent of Shareholder to Include Specific Amount in Gross Income*, from the two common unitholders it had as of Date 3, and will file Forms 973, *Corporation Claim for Deduction for Consent Dividends*, on an amended Form 1120-REIT. Taxpayer further represents that it has otherwise met all the requirements to be classified as a REIT.

## LAW AND ANALYSIS

Section 565(a) provides that if any person owns consent stock (as defined in § 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 § 565(b), constitute a consent dividend for purposes of § 561 (relating to the deduction for dividends paid).

Section 1.565-1(a) of the Income Tax Regulations provides that the dividends paid deduction, as defined in § 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 § 1.565-1(b). Section 1.565-1(b)(3) provides that a consent may be filed not 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 § 1.565-1(b)(3) includes the extended due date of a return filed pursuant to an extension of the time to file.

Section 301.9100-3 of the Procedure and Administration regulations generally provides extensions of time for making regulatory elections. For this purpose § 301.9100-1(b) defines the term “regulatory election” to include an election whose deadline is prescribed by a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence (including affidavits described in paragraph (e) of this section) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1) states that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer:

- (i) requests relief before the failure to make the regulatory election is discovered by the Service;
- (ii) inadvertently failed to make the election because of intervening events beyond the taxpayer’s control;
- (iii) failed to make the election because, after exercising due diligence, 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, and the tax professional failed to make, or advise the taxpayer to make, the election.

The affidavits presented show that Taxpayer acted reasonably and in good faith because it: (1) requested relief before the failure to make the election was discovered by the Service, (2) failed to make the election, after exercising due diligence, because it was unaware of the need, and (3) reasonably relied on Accounting Firm, a qualified tax professional, who failed to make or advise Taxpayer to make the election.

Under § 301.9100-3(b)(3), a taxpayer will not be considered to have 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 (taking into account § 1.6664-2(c)(3) of the Income Tax Regulations) and the new position requires 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. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Taxpayer has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time Taxpayer requests relief, and was not informed in all material respects of the required election, and its related tax consequences, but chose not to file the election. Furthermore Taxpayer has represented that it is not using hindsight in requesting relief and that specific facts have not changed since the original deadline that made the election advantageous to Taxpayer.

Section 301.9100-3(c)(1)(i) provides, in part, 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)(1)(ii) provides, in part, 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 these criteria, the interests of the government are not prejudiced in this case.

Accordingly, the consent of the Commissioner is hereby granted for an extension of time to file the forms necessary to make the § 565 consent dividend election for the taxable year ending Date 3. This extension shall be for a period of 45 days from the date of this ruling.

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 hereby expressed or implied regarding whether Taxpayer otherwise qualifies as a REIT under the Internal Revenue Code.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.

Sincerely,

Lewis K. Brickates  
Chief, Branch 1  
(Income Tax & Accounting)

cc: