

# Internal Revenue Service

Number: **201848008**

Release Date: 11/30/2018

Index Number: 856.00-00, 856.03-00,  
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:B01

PLR-109712-18

Date:

September 05, 2018

## Legend

Taxpayer =

Accounting Firm =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to a letter dated March 1, 2018, and subsequent correspondence, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to elect under section 856(c) of the Internal Revenue Code to be treated as a real estate investment trust ("REIT") effective as of the beginning of the taxable year ended Date 2 ("Year 1").

## FACTS

Taxpayer is a State A limited liability company that was formed on Date 1. Taxpayer represents that it was operated in a manner to qualify as a REIT pursuant to section 856 for Year 1. Taxpayer uses an accrual method of accounting and employs the calendar year for federal income tax purposes.

Taxpayer represents that the operating agreement of Taxpayer specifically states the intention of the members to operate as a REIT pursuant to sections 856 - 860. Taxpayer represents that it began operations in Year 1, and that it intended to file Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, for Year 1 ("Year 1 Form 1120-REIT") to make an election to be treated as a REIT for Year 1.

Taxpayer engaged Accounting Firm to prepare the Year 1 Form 1120-REIT. Taxpayer represents that Accounting Firm timely filed a Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*, on behalf of Taxpayer to apply for an extension of time to file the Year 1 Form 1120-REIT, with code 23 entered on line 1 of the Form 7004 to indicate that the extension was for a Form 1120-REIT. Taxpayer represents that Accounting Firm then prepared the Year 1 Form 1120-REIT based on information provided by Taxpayer. Taxpayer represents that Accounting Firm delivered the Year 1 Form 1120-REIT to Taxpayer before Date 3, the extended due date for filing the Year 1 Form 1120-REIT. Taxpayer represents that in the weeks leading up to Date 3, however, Taxpayer's accounting department was in the middle of a change in office location. Taxpayer represents that the Year 1 Form 1120-REIT was signed and completed by Date 3 and that it satisfied all of the requirements of section 856(c) and section 1.856-2(b) for Taxpayer to elect to be a REIT effective as of the beginning of Year 1. Taxpayer represents that, due to a clerical error, a box of signed returns that included the Year 1 Form 1120-REIT was misplaced, and that the Year 1 Form 1120-REIT was not mailed to the Service prior to Date 3.

Taxpayer represents that, shortly after Date 3, Taxpayer discovered its clerical error and submitted the Year 1 Form 1120-REIT for filing with the Service and that the Service received the Year 1 Form 1120-REIT on Date 4. Taxpayer represents that Accounting Firm advised Taxpayer to submit a request for relief under section 301.9100-3 of the Procedure and Administration Regulations confirming that the Year 1 Form 1120-REIT that Taxpayer filed shortly after Date 3 will be considered as a timely election by Taxpayer to be treated as a REIT effective as of the beginning of Year 1.

Taxpayer makes the following additional representations in connection with its 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 Service.
2. Granting the relief requested will not result in Taxpayer having a lower U.S. federal tax liability in the aggregate for all years to which the election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer 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 Taxpayer requested relief and the new position requires or permits the regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose to not file the election.
5. Taxpayer is not using hindsight in making the decision to seek the relief requested. No specific facts have changed since the due date for making the election that make the election advantageous to Taxpayer.
6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had the election been timely filed.

In addition, affidavits on behalf of Taxpayer and Accounting Firm have been provided as required by sections 301.9100-3(e)(2) and (3).

#### 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) of the Income Tax Regulations, the election shall be made by the trust 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) 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 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, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1) 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 for an automatic extension under section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to section 301.9100-3 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 section 301.9100-3 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. A taxpayer will be deemed to have not 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 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)(1) 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)(1)(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)(1)(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 section 301.9100-3.

### **Conclusion**

Based on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to make an election under section 856(c) to be treated as a REIT effective for Year 1. Accordingly, the Year 1 Form 1120-REIT filed by Taxpayer that was received by the Service on Date 4 is hereby considered as a timely election by Taxpayer under section 856(c) to be treated as a REIT under subchapter M of the Code effective as of Date 1.

This ruling is limited to the timeliness of the filing of Taxpayer's election under section 856(c). 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 Taxpayer otherwise qualifies as a REIT under subchapter M of the Code.

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

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

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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Steven Harrison  
Branch Chief, Branch 1  
Office of Associate Chief Counsel  
(Financial Institutions & Products)

Enclosure:

A copy of this letter