

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
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PLR-102989-21

Date:  
July 28, 2021

**LEGEND:**

Taxpayer =

Subsidiary =

Manager =

Firm =

State A =

City =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Month =

Dear :

This ruling responds to a letter dated February 2, 2021, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under section 856(c)(1) of the Internal Revenue Code ("Code") to be a real estate investment trust ("REIT") for its taxable year beginning Date 2.

**FACTS**

Taxpayer is a State A limited partnership formed for the purpose of acquiring and operating real estate located in City. Taxpayer made an election on Form 8832, *Entity*

*Classification Election*, to be treated as a corporation for U.S. tax purposes effective Date 2. Taxpayer has a subsidiary entity, Subsidiary. Manager is the manager of Taxpayer and its subsidiaries.

Taxpayer intended to elect to be a REIT on Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, effective for its taxable year beginning Date 2. Taxpayer's partnership agreement states that the partners intend that Taxpayer will elect to be a REIT on its U.S. federal income tax return for the fiscal year during which Taxpayer was formed. The partnership agreement also requires the general partner of Taxpayer to use best efforts to cause Taxpayer to qualify as a REIT and to make all necessary tax elections and tax filings.

Taxpayer relies on external tax advisors and return preparers for its U.S. federal and state income tax compliance requirements. Taxpayer engaged Firm to prepare federal and state filings, including extensions and returns for Taxpayer and Subsidiary. Firm prepared various extensions for the state and federal income tax returns of both Taxpayer and Subsidiary for their taxable years ended Date 1. The state extensions and a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for Subsidiary were filed electronically by Firm on or before their due date of Date 4.

The Form 7004 for Taxpayer was to be filed by mail because Taxpayer had not yet received confirmation of the acceptance of its entity classification election. Firm prepared Taxpayer's Form 7004 to extend the due date of Taxpayer's return to Date 6. The Form 7004 indicated the type of return as Form 1120-REIT in Line 1. Firm provided the Form 7004 to the Chief Accounting Officer of Manager ("Officer") on Date 3 for review and filing. Officer assembled the mailing package for the Form 7004 and provided it as well as mailing instructions to Officer's executive assistant for mailing. On Date 4, the executive assistant mailed the Form 7004 for Taxpayer but did not use U.S. certified mail or request return receipt service. No tracking information was generated, and no proof of mailing was retained.

Both Taxpayer and Firm believed the Form 7004 was received and processed by the Internal Revenue Service (the "Service") in a timely manner. In Month, Officer realized that Taxpayer did not receive a stamped return receipt from the Service confirming delivery of Taxpayer's Form 7004. Officer was informed by the executive assistant that the Form 7004 was not mailed using U.S. certified mail with return receipt service. Officer contacted Firm to request that Firm determine whether the Form 7004 for Taxpayer had been processed by the Service. On Date 5, Firm confirmed that the Service had not processed a Form 7004 for Taxpayer for its taxable year ended Date 1, and, therefore, the due date for filing Taxpayer's initial Form 1120-REIT had not been extended to Date 6. On Date 7, two weeks after receiving the confirmation from Firm, Taxpayer made the decision to proceed with submitting this request for an extension of time to elect to be a REIT for its taxable year ended Date 1. Completion and filing of the request were delayed, in part because of the Covid-19 emergency.

Firm prepared Taxpayer's Form 1120-REIT for its tax year ended Date 1. Taxpayer filed the Form 1120-REIT on Date 6.

Taxpayer makes the following additional representations:

1. The request for relief was filed before the failure to make the election was discovered by the Service.
2. Granting the relief requested will not result in Taxpayer having a lower 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 be imposed under section 6662 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, 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 makes this election advantageous to Taxpayer.
6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer for the taxable year for which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

In addition, affidavits on behalf of Taxpayer and Firm have been provided as required by section 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 a regulation or by a revenue ruling, revenue procedure, notice, or 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 generally 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, however, 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 upon the facts and representations submitted, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect under section 856(c)(1) to be a REIT beginning on Date 2. Taking into account the reasonable extension of time granted to Taxpayer, Taxpayer's Form 1120-REIT filed Date 6 is considered a timely election under section 856(c)(1) to be a REIT beginning Date 2.

This ruling is limited to the timeliness of the filing of Taxpayer's REIT election under section 856(c)(1). This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as 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. No opinion is expressed as to whether Taxpayer otherwise qualifies as a REIT. Furthermore, no opinion is expressed regarding the timeliness of Taxpayer's federal income tax return.

The ruling contained in this letter is based upon information submitted and representations made by Taxpayer and accompanied by penalties of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

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 Taxpayer's authorized representatives.

Sincerely,

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

cc: