

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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PLR-129056-20

Date:

August 01, 2022

Legend

Taxpayer =

Parent 1 =

Parent 2 =

Firm =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Year =

Dear :

This ruling responds to a letter dated December 15, 2020, 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) of the Internal Revenue Code (“Code”) to be treated as a Real Estate Investment Trust (“REIT”).

Facts

Taxpayer is a limited liability company formed under the laws of State on Date 1. Taxpayer was wholly owned by Parent 1 from Date 1 to Date 2. During this time, Taxpayer owned no assets and engaged in no activities. On Date 2, Taxpayer was transferred to Parent 2. Parent 2 is a partnership formed under the laws of State and at the time of the transfer was owned by Parent 1 and an institutional investor. Taxpayer acquired its first asset on Date 3.

Taxpayer intended to elect to be treated as a REIT under section 856 on its Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, effective for its initial tax year ended Date 4. Taxpayer’s limited liability company agreement dated Date 2, states that it is Taxpayer’s intention to qualify for treatment as a REIT under Code sections 856 through 860. The agreement references this intent several times.

Parent 1 provides Taxpayer with portfolio and management services. These services include tax matters which are overseen by the Vice-President of Tax at Parent 1. Additionally, Parent 1 engages Firm to provide Parent 1 and Taxpayer with advice on tax-related matters and assistance with tax compliance.

Parent 1 determined that Taxpayer would make a REIT election pursuant to section 856(c) effective Date 5. Parent selected Date 5 because it was the first day of the first quarter in which Taxpayer was capitalized and acquired its first asset. Taxpayer filed a Form 8832, *Entity Classification Election*, making a change election for Taxpayer to be classified as an association taxable as a corporation effective as of Date 5.

Firm prepared and filed Taxpayer's Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, by Date 6 to extend the filing due date of Taxpayer's Form 1120-REIT. The Form 7004 listed the initial tax year as the period of Date 1 to Date 4.

On Date 7, a partner at Firm reviewed a draft of Taxpayer's initial Form 1120-REIT and requested Firm staff to confirm that the tax year beginning date and the date the REIT was established were consistent with the date listed on the Form 8832 previously filed for Taxpayer. The Firm partner did not notice that the Form 1120-REIT still recorded the tax year beginning date as Date 1 rather than Date 5 when he reviewed Taxpayer's final Form 1120-REIT. The Form 1120-REIT was then reviewed by the Vice-President of Tax for Parent 1 and his tax department who also did not notice the discrepancy on the effective date. The CFO of Taxpayer likewise did not notice the discrepancy on the effective date of Taxpayer's REIT status when he signed the Form 1120-REIT.

Taxpayer's Form 1120-REIT was filed on or around Date 8 and included all its activity as a REIT from Date 5 to Date 4.

In early Year, the financial statements of Parent 2 were audited by a third-party public accounting firm. At this time the discrepancy between Taxpayer's representation that it was a REIT effective Date 5 and the date on the Form 1120-REIT for tax year ended on Date 4 was discovered. Taxpayer subsequently submitted this request for an extension of time to make a REIT election under section 856(c) and section 1.856-2(b) of the Income Tax Regulations to be treated as a REIT effective Date 5.

Taxpayer makes the following additional representations:

1. The request for relief was filed by Taxpayer before the failure to make the regulatory election was discovered by the IRS.
2. Granting the relief will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer is not seeking to alter a return position for which an accuracy related penalty has been or could have been imposed under Section 6662 at the time Taxpayer 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, the Taxpayer did not choose to not file the election.
5. Taxpayer is not using hindsight in requesting relief. No facts have changed

between the time the election should have been made and the time this request for relief was filed that would make the election advantageous to Taxpayer.

6. The period of limitations on assessment under Code 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 it been timely filed.

Affidavits on behalf of Taxpayer have been provided with the submission as required by section 301.9100-3(e).

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 six 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 to mean an election whose due date is prescribed by a regulation, 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 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 generally 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. 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 a 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 on the information submitted and the representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect under § 856(c) to be treated as a REIT beginning on Date 5. Accordingly, Taxpayer has 90 calendar days from the date of this letter to amend its Form 1120-REIT to make an election under § 856(c) to be treated as a REIT effective Date 5.

This ruling is limited to the timeliness of the filing of Taxpayer's REIT election under § 856(c). This ruling's application is limited to the facts, representations, Code and regulation sections cited herein. No opinion is expressed with regards to whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code. Furthermore, no opinion is expressed regarding the timeliness of Taxpayer's entity classification election or federal income tax return.

Except as specifically provided otherwise, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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 who requested 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, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Andrea M. Hoffenson
Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)