

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:

, ID No.

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CC:FIP:B02

PLR-100586-23

Date:

June 13, 2023

Legend

Taxpayer =

Fund =

Accounting Firm =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Month 1 =

Month 2 =

Month 3 =

Year 1 =

Year 2 =

x =

y =

Dear :

This letter responds to a letter dated December 19, 2022, 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 (the Code) to be treated as a real estate investment trust (REIT) effective Date 2.

FACTS

Taxpayer is a State limited liability company that was formed on Date 1 as a disregarded entity of Fund. Taxpayer always intended to be a REIT, which is evident from multiple provisions in its Limited Liability Company Agreement (LLC Agreement). For example, the LLC Agreement provides that Taxpayer was established to provide for the governance and operation of the company as a REIT within the meaning of sections 856 through 860 of the Code. The LLC Agreement also provides that the Board of Managers shall cause the company to issue up to y preferred units to a sufficient number of persons to permit the company to qualify as a REIT. Consistent with this provision, on Date 3, Taxpayer added y preferred shareholders to permit it to qualify as a REIT for Year 1. The LLC Agreement also provides that the Board of Managers shall use commercially reasonable efforts to take actions as are necessary or appropriate for the company to qualify as a REIT and to preserve its status as a REIT.

Taxpayer does not have employees and engages Accounting Firm to ensure it complies with federal and state tax obligations, including extensions. Accounting Firm is a reputable national accounting firm with a sophisticated real estate tax practice and strong expertise in REITs. Accounting Firm has a longstanding relationship with Fund, preparing and filing federal and state tax returns for Fund and more than x of its related entities, including Taxpayer (collectively, the Fund Group). In addition, Accounting Firm performed quarterly REIT asset testing for Taxpayer through Year 1 and annual gross receipts testing at Year 1 end.

Accounting Firm intended to electronically file Fund's Year 1 Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*, by Date 4. Accounting Firm also intended to electronically file a Year 1 Form 7004 for Taxpayer by Date 5 to extend the time to file Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, for Taxpayer's first REIT taxable year. Due to administrative oversights, Accounting Firm did not file Form 7004s for Fund or Taxpayer for Year 1. Because Taxpayer's Form 7004 was not timely filed, the deadline for Taxpayer's REIT election was not extended from Date 5 to Date 6.

After Date 5, the tax partner at Accounting Firm who was assigned to the Fund Group retired. In Month 1 of Year 2, Taxpayer's return and the returns of the entire Fund Group were transitioned to a new tax partner. At that time, the new tax partner believed that Taxpayer's Year 1 Form 7004 had been timely filed by Date 5, along with the many other federal and state extensions of the Fund Group that were previously due. In late Month 1/early Month 2 of Year 2, Accounting Firm first became aware that certain Fund Group federal extensions may not have been filed. At such time, the exact population was not immediately known to Accounting Firm, or whether Taxpayer was part of that population. Accounting Firm reviewed the files for each Fund Group entity to gain clarity on which entities may have been impacted. In early Month 3 of Year 2 (prior to the intended extended due date), upon Accounting Firm's review of Form 1120-REIT for Taxpayer's first REIT taxable year, it appeared that Taxpayer's Form 7004 may have been part of the population of unfiled extensions. Accounting Firm filed Form 1120-REIT on Date 6 consistent with Taxpayer's intention to be a REIT, including electing Year 1 as the year of Taxpayer's REIT status election. Subsequently, Accounting Firm informed Taxpayer of the omission and its potential impact on the validity of Taxpayer's initial REIT election. Accounting Firm also advised Taxpayer to seek a ruling under sections 301.9100-1 and 301.9100-3 for an extension of time to elect under section 856(c) to be treated as a REIT effective Date 2. At all times prior to discovery, Taxpayer intended to timely file Form 7004 and, subsequently Form 1120-REIT. Until Month 3 of Year 2, Taxpayer believed that Taxpayer's Form 7004 for the first REIT taxable year had been timely filed.

REPRESENTATIONS

Taxpayer makes the following representations in connection with this request for an extension of time:

1. Taxpayer filed the request for relief before the failure to make the election was discovered by the Service.
2. The interests of the government are not prejudiced within the meaning of section 301.9100-3(c). Granting the relief will not result in Taxpayer having a lower U.S. income 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 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 not to file the election.
5. Taxpayer 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 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 made, nor for any taxable year(s) that would have been affected by the election had it been timely made.

In addition, affidavits on behalf of Taxpayer 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 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, or 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 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 representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect under section 856(c) to be treated as a REIT effective Date 2. Accordingly, due to the reasonable extension of time granted to Taxpayer, Taxpayer's Form 1120-REIT filed on Date 6 is considered a timely election under section 856(c) for Taxpayer to be treated as a REIT under subchapter M of the Code effective Date 2.

CAVEATS

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, and Code and regulation sections 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. In particular, no opinion is expressed regarding the timeliness of Taxpayer's federal income tax return. Furthermore, no opinion is expressed or implied regarding whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of chapter 1 of the Code.

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 representative.

Sincerely,

Andrea M. Hoffenson
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: