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.
Telephone Number:

Refer Reply To:
CC:FIP:3
PLR-119788-25

Date:
April 27, 2026

Legend:

Company =

Preparer =

State =

Partnership =

a =

b =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Dear :

This is in reply to a letter dated October 29, 2025, requesting an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to elect under section 858(a) of the Internal Revenue Code to treat a dividend made in year 2 as having been paid by the Company during Year 1.

FACTS

Company is a State corporation that elected to be taxed as a real estate investment trust (REIT) under sections 856-859 of the Code.

Company had been engaging Preparer to provide tax return preparation and general tax consulting services for more than b years including Year 1. Company recognized a net capital gain of $a in Year 1.

On Date 1, Company emailed Preparer noting the $a capital gain and describing three options Company had to claim a dividends paid deduction equal to that capital gain:

1. Pay a dividend by Date 4 pursuant to the dividend procedures outlined in section 857(b)(9);

2. Pay a dividend before filing the tax return for Year 1, pay the excise tax in section 4981, and make the election available under section 858(a); or

3. Pay a consent dividend pursuant to the procedure described in section 565.

On Date 2 and Date 3 Company emailed Preparer to follow up on their prior email and to the best of their knowledge have not received a timely response from Preparer. The engagement team members who had been sent the emails are no longer with Preparer. Company subsequently determined that a section 858(a) election would be the preferred method of claiming the dividends paid deduction for the Year 1 capital gain of $a. Accordingly, Company decided to pay an $a dividend (the “Dividend”) before filing its tax return for Year 1 and make the election available under section

858(a) to have the Dividend treated as paid in Year 1. Company paid the Dividend on Date 7, and Preparer was directed to prepare Company's Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, and file it by Date 8, the extended deadline for Company's Year 1 tax return, consistent with this decision.

The audited financial statements of Company for Year 1, issued on Date 5, are consistent with its decision to make a section 858(a) election as they reflect an accrued dividend of $a for Year 1. Preparer prepared the Year 1 tax returns for Company and delivered them to Company on Date 6. However, the Form 1120-REIT, Schedule A – *Deduction for Dividends Paid*, erroneously included the Dividend on line 1 of Schedule A as dividends paid in Year 1. A dividend for which a section 858(a) election is made is required to be reported on line 2. Neither the CFO nor the Controller of Company were aware of the requirement to report the Dividend on Line 2 of Schedule A, and they relied on Preparer to prepare the return and properly make the section 858(a) election. Thus, neither the CFO nor the Controller noticed the error.

Company declared and paid the Dividend on Date 7, prior to the timely filing of its form 1120-REIT for Year 1 on Date 8.[1] Taxpayer represents that the required notices to shareholders were made no later than 30 days after the close of Year 2. The individual that prepared the tax return for Year 1 retired from Preparer and the individual who was engaged to assist in the preparation of Company's Year 2 tax returns ("Affiant") discovered the error in the Year 1 tax returns. Affiant notified Company that the return for Year 1 did not properly report the dividends paid deduction. Based on advice from Preparer, Company determined to seek relief from the Service to make this late election. Company timely filed its Form 1120-REIT for Year 2 as if it had made a proper section 858(a) election in Year 1.

In support of its request Company has submitted the affidavit of its CFO, its Controller, and Affiant attesting to and supporting the facts and representations underlying this ruling request as required by section 301.9100-3(e)(2) and (3).

The following representations are made in connection with the request for the relief of an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service.

2. Company 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 Company requested relief and the new position requires or permits a regulatory election for which relief is requested.

[1] Company represents that it made no other distributions with respect to its common stock in Year 2.

3. Company did not choose to not file the election, being informed in all material respects of the required election and related tax consequences.

4. Company is not using hindsight in requesting this relief. No specific facts have changed since the due date for making this election that makes this election advantageous to the Company.

5. Granting the relief requested will not result in Company having a lower tax liability in the aggregate for all years to which the election applies than Company would have had if the election had been timely made (taking into account the time value of money).

6. The period of limitations on assessments under section 6501(a) has not expired for the Company for the taxable year for which the election should have been filed, nor for any taxable years that would have been affected by the election had it been timely filed.

LAW AND ANALYSIS

Section 858(a) of the Code provides that if a REIT declares a dividend before the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return) and distributes the amount of such dividend to shareholders or holders of beneficial interests in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the trust elects in such return (and specifies in dollar amounts) in accordance with regulations prescribed by the Secretary, be considered as having been paid only during such tax year, except as provided in section 858(b) and (c).

Section 858(b) provides that except as provided in section 857(b)(9), amounts to which section 858(a) applies shall be treated as received by the shareholder or holder of a beneficial interest in the taxable year in which the distribution is made. Section 858(c) provides that in the case of amounts to which section 858(a) applies, any notice to shareholders or holders of beneficial interests required under this part with respect to such amounts shall be made not later than 30 days after the close of the taxable year in which the distribution is made (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year).

Section 1.858-1(b) of the Income Tax Regulations requires the election to be made in the return filed by a REIT for the taxable year. The election shall be made by treating the dividend (or portion thereof) to which the election applies as a dividend paid during the taxable year of the REIT in computing its real estate investment trust taxable income and, if applicable, the alternative tax imposed by section 857(b)(3)(A). A REIT must specify in its return (or in a statement attached to its return) the exact dollar amount that is to be treated as having been paid during the taxable year.

Section 301.9100-1(c) of the Procedure and Administration Regulations 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, 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 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. If specific facts have changed since the due date for making the election that make the election more advantageous to the taxpayer, the Service will not ordinarily grant relief. In such case the Service will grant relief only when the taxpayer provides strong proof that the taxpayer’s decision to seek relief did not involve hindsight.

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 Company has satisfied the requirements for granting a reasonable extension of time to elect under § 858(a) to treat the Dividend distributed by Taxpayer in Year 2 as having been paid in Year 1. Accordingly, Company has 60 calendar days from the date of this letter to make an election under § 858(a) for Year 1 to treat the Dividend as having been paid in Year 1.

This ruling is limited to the timeliness of the election under section 858(a) of the Code. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Company otherwise qualifies as a REIT under subchapter M of chapter 1 of the Code. No opinion is expressed regarding taxes due or paid under section 4981. Additionally, except with respect to the § 858(a) election, no opinion is expressed regarding the consequences of filing an amended return.

No opinion is expressed with regard to whether the tax liability of Company 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.

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

Sincerely yours,

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

cc: