Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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LEGEND:

Taxpayer =

Company A =

Company B =

Parent =

Trust A =

Trust B =

Foreign =

Date 1 =

Date 2 =

Date 3 =

Month 1 =

Month 2 =

Year 1 =

Year 2 =

Accountant =

Dear :

This responds to a letter submitted on behalf of Taxpayer requesting a ruling under § 301.9100-1 of the Procedure and Administration Regulations that an election under § 856(c) of the Internal Revenue Code to treat Taxpayer as a real estate investment trust (REIT) be considered as timely filed.

FACTS

Taxpayer was formed on Date 2 to hold the units of Trust A, which owns and leases office properties in select cities in the United States (U.S.). Taxpayer represents that at all times it intended to elect REIT status and operate in a manner to qualify as a REIT pursuant to § 856 of the Code.

Taxpayer is directly owned by Company A, Company B, and more than one hundred unrelated investors. Company A owns all issued and outstanding common shares of Taxpayer. Company B and the unrelated investors own all issued and outstanding preferred shares of Taxpayer. Parent, a Foreign corporation, indirectly owns shares of Taxpayer.

The purchase of Trust A was part of a larger acquisition (the Acquisition) that occurred on Date 1, whereby Parent and others jointly acquired all the stock of Trust B, a U.S. REIT.

Prior to the Acquisition, Trust B had its own U.S. tax department. After the Acquisition, this tax department, led by the vice president of Trust B (the VP) was charged with all relevant U.S. tax compliance responsibilities for the entities formed as part of the Acquisition, including Taxpayer.

After Trust B's tax department closed in Month 2 of Year 1, the VP was no longer employed by Trust B or Parent. Parent hired new employees to assist with its U.S. tax reporting. It was intended that Taxpayer file a Form 7004, Application for Automatic Extension of Time to File Corporate Income Tax Return for the tax year ended Date 3. However, due to the fact that Taxpayer was the only entity for which a REIT election had to be made in Year 1, and the fact that new employees were responsible for a substantial volume of U.S. tax compliance matters, Taxpayer inadvertently failed to file the Form 7004.

In Month 1 of Year 2, the Vice President of Taxation of Parent (the VP-Parent) discovered the failure to file the Form 7004. The VP-Parent promptly informed Accountant of the failure to file the Taxpayer's REIT election. Accountant advised

Parent that a request for § 9100 relief should be filed. Once advised of the availability of § 9100 relief, the VP-Parent immediately authorized this letter ruling request. Parent's tax department is in the process of preparing the Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts, for Taxpayer.

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 Service.

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 did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code 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, Taxpayer did not choose to not file the election.

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 election for a previous taxable year, and such election has not be terminated or revoked. Pursuant to § 1.856-2(b), the election shall be made 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) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) 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), 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 Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Internal Revenue 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 § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) 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 years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

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 § 856(c) to be treated as a REIT beginning with the tax year ended Date 3. Accordingly, the election of REIT status Taxpayer makes on its Year 1 Form 1120-REIT will be considered as timely made.

This ruling is limited to the timeliness of the election of REIT status. 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 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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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,

/S/

Elizabeth A. Handler
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes