Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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Date:
August 03, 2010

TY:

LEGEND

Taxpayer =
Parent =
Manager =
Company =
A =
X =
Country B =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Year 1 =
Year 2 =
$aa =
$bb =
$cc =
$dd =
Accounting Firm =

Dear :

This letter is in response to a ruling request dated , modified by a letter dated , submitted on behalf of Taxpayer, requesting an extension of time to make a consent dividend election under section 565 of the Internal Revenue Code. This request is made pursuant to sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

FACTS

Taxpayer is a corporation organized and existing under the laws of the state of A. Taxpayer has elected to be treated as a Real Estate Investment Trust for Federal income tax purposes since Date 1. Taxpayer's sole shareholder is Parent, a Country B Listed Property Trust. Parent is managed by Manager, a fully integrated retail property ownership and services organization involved in retail property ownership, leasing, redevelopment and funds management. Taxpayer uses the accrual method of accounting as its overall method of accounting and files its tax returns on a calendar-year basis. Parent acquired Taxpayer mid-year, Year 1.

On Date 2, Taxpayer timely filed Form 1120-REIT for Year 1, and included Form 972, "Consent of Shareholder to Include Specific Amount in Gross Income," in which Parent agreed to include $aa in its taxable income for the tax year. Taxpayer's tax return was prepared by Accounting Firm. Before mid-year Year 2, Parent did not have a dedicated tax department, and staff turnover within Parent's other departments led to communication lapses during the time Taxpayer's Year 1 tax returns were being prepared.

On Date 3, Taxpayer discovered that it understated real estate investment trust taxable income on its Year 1 Federal income tax return by the amount of $bb because the information provided to Accounting Firm to calculate the Year 1 interest expense limitation under section 163(j) of the Internal Revenue Code was incorrect. Taxpayer calculated its interest expense limitation under section 163(j) by using a method that took into account fluctuations in accounts payable and accounts receivable.

However, because the accounts payable and accounts receivable had been included in the purchase price Parent paid for Taxpayer, subsequent payments and collections on the respective accounts would not be reflected on Taxpayer's income statement. As such, Taxpayer determined that, as of the acquisition date of Taxpayer by Parent, Taxpayer should have reset the accounts receivable and accounts payable to zero for purposes of calculating the fluctuations instead of using the balances in the accounts as of the acquisition date.

On Date 4, Taxpayer discovered that its real estate investment trust taxable income for Year 1 was further understated by $cc. During Year 1, Taxpayer had received a dividend of property in the amount of $dd from Company, a taxable REIT subsidiary in which Taxpayer invested. Taxpayer subsequently sold the distributed property to a third party approximately X days later. Due to communication failures, Parent's employees failed to inform Accounting Firm that the property had been received as a dividend. Accounting Firm was only informed of the sale of the distributed property to the third party.

LAW AND ANALYSIS

Section 565(a) of the Internal Revenue Code provides that if any person owns consent stock (as defined in section 565(f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with the regulations, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in section 565(b), constitute a consent dividend for purposes of section 561 (relating to the deduction for dividends paid).

Section 1.565-1(a) of the Income Tax Regulations provides that the dividends paid deduction, as defined in section 561, includes the consent dividends for the taxable year. A consent dividend is a hypothetical distribution (as distinguished from an actual distribution) made by certain corporations to any person who owns consent stock on the last day of the taxable year of such corporation and who agrees to treat the hypothetical distribution as an actual dividend, subject to specified limitations, by filing a consent at the time and in the manner specified in section 1.565-1(b). Section 1.565-1(b)(3) provides that a consent may be filed not later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. Under Rev. Rul. 78-296, 1978-2 C.B. 183, the due date for purposes of section 1.565-1(b)(3) includes the extended due date of a return filed pursuant to an extension of time to file.

Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in exercising his discretion, may grant a reasonable extension of time under the rules set forth in section 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. The term "regulatory election" is defined in section 301.9100-1(b) as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence 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.

Under section 301.9100-3(b)(1)(i), except as provided in paragraphs (b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service.

Paragraphs (b)(3)(i) through (iii) of section 301.9100-3 provide that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer:

> (i) seeks to alter a return position for which an accuracy-related penalty 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 advantageous to a taxpayer, the Service will not ordinarily grant relief. In such a 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 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. 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.

CONCLUSION

Based upon our analysis of the facts, Taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Therefore the requirements of sections 301.9100-1 and 301.9100-3 have been met.

Under the facts represented, Taxpayer's failure to make a proper consent dividend election was not due to the intentional disregard of the tax rules, but was due to inadvertent errors and communications failures on the part of Parent's employees. Taxpayer did not affirmatively choose not to file the election. Taxpayer is not seeking to alter a return position or to use hindsight to request relief. Finally, Taxpayer acted promptly in filing its request for relief, before the Service discovered the failure to make the regulatory election. Therefore, Taxpayer did not act unreasonably or in bad faith.

Furthermore, granting relief will not result in Taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayer would have had if the election had been timely made, nor will any closed years be affected. Therefore, the interests of the government will not be prejudiced by granting the request for relief.

Because Taxpayer acted reasonably and in good faith, and because the interests of the government will not be prejudiced if the request for relief is granted, Taxpayer is granted an extension of 45 days from the date of this ruling to file its consent dividend election. A copy of this letter should be attached to the amended return filed reflecting the election.

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.

Further, no opinion is expressed or implied whether Taxpayer or any entity mentioned in this letter that purports to be a Real Estate Investment Trust qualifies as a Real Estate Investment Trust under Part II of Subchapter M of the Code.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.

Sincerely,

Thomas D. Moffitt
Branch Chief, Branch 2
(Income Tax & Accounting)