

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
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Refer Reply To:
CC:FIP:B03 – PLR-141128-11
Date:
February 1, 2012

RE:

LEGEND:

Company =

Accounting Firm =

State X =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear _____ :

This responds to a letter dated September 15, 2011, that was submitted on behalf of Company requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 856(c) of the Internal Revenue Code to be treated as a real estate investment trust (REIT) for Company's tax year ending Date 5.

FACTS

Company is a State X corporation. Company was formed on Date 1 to acquire a portfolio of real estate and real estate-related investments.

On Date 2, Company filed a Form S-11, *Registration Statement Under the Securities Act of 1933 of Certain Real Estate Companies* ("Form S-11") with the Securities Exchange Commission ("SEC"), pursuant to which it proposed offering its common stock for sale. Company later filed amendments of its Form S-11 with the SEC to address comments made by the SEC. The SEC issued a Notice of Effectiveness with respect to the registration on Date 3.

Company represents that it always intended to make an election to be considered a real estate investment trust ("REIT") for the taxable year in which it satisfied its minimum offering requirement as set forth in its prospectus and the operational requirements of a REIT as set forth in §856(a) and (b). Company represents that it satisfied both its minimum offering requirements and the operational requirements of a REIT on Date 4.

During the second half of Year 1 and first half of Year 2, Company was in discussion with Accounting Firm with respect to engaging Accounting Firm to perform tax compliance and tax consulting work for Company. Accounting Firm provided to Company a fee estimate for its services, but as of the due date for filing a Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, for Company's tax year ending Date 5, Company had not formally engaged Accounting Firm to perform any tax compliance work. Company, however, believed that Accounting Firm would be filing a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, on Company's behalf requesting a six-month extension of time to file the Company's Form 1120-REIT for Company's tax year ending Date 5. As a result of this misunderstanding, neither Company nor Accounting Firm filed the Form 7004 before its due date. On Date 6, Company realized that an error had been made and informed Accounting Firm about it. Accounting Firm filed this request thereafter.

Furthermore, Company makes the following additional representations:

1. The request for relief was filed by Company before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Company having a lower tax liability in the aggregate for all years to which the regulatory election applies than Company would have had if the election had been timely made (taking into account the time value of money).
3. Company 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 the Company 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, Company did not choose to not file the election.

LAW AND ANALYSIS

Section 856(c)(1) of the Code 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 Income Tax 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 Company has satisfied the requirements for granting a reasonable extension of time to elect under § 856(c) of the Code to be treated as a REIT for its tax year ending Date 5. Accordingly, Company is given 60 days from the date of this letter to make an election under § 856(c) to be treated as a REIT for Company's tax year ending Date 5.

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 limited to the timeliness of the election to be treated as a REIT made by Company. 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 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 representatives.

Sincerely,

Alice Bennett Coppersmith
Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes

cc: