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:B03
PLR-148064-13

Date:
March 05, 2014

Legend:

Taxpayer	=
Parent	=
Advisor	=
Firm	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Year x	=

Dear :

This ruling is in reply to a letter dated November 21, 2013, submitted on behalf of Taxpayer requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations (the Regulations) to make an election under § 856(c) of the Internal Revenue Code (the Code) to treat Taxpayer as a real estate investment trust (REIT) effective as of the tax year ended on Date 4.

FACTS

Taxpayer is a subsidiary of Parent and is managed by Advisor. Advisor is an institutional investment manager with real estate portfolios that include a large number of retail, industrial, and residential properties. On Date 3, Taxpayer filed an entity classification election to be treated as an association taxable as a corporation effective on Date 2. Taxpayer owns residential, commercial and office properties.

In Date 1, Firm was engaged by Advisor on behalf of Parent to prepare the Year x federal and state tax returns of Parent and its subsidiaries and affiliates as then known and to provide tax advisory services to Parent related to its conversion to REIT status. The decision to organize Taxpayer was made subsequent to this time. A new engagement specifically referring to Taxpayer was entered into in Date 5. Parent represents that it always intended for Taxpayer to elect REIT status. Further, Taxpayer represents that it has at all times intended to operate and be taxed as a REIT.

Firm prepared and filed state tax return extension requests on behalf of Parent and its subsidiaries properly, including an extension request for Taxpayer. Firm also prepared and filed federal tax return extension requests properly, but due to an oversight, inadvertently failed to prepare and file an extension request for Taxpayer.

On Date 6, Firm discovered during the process of preparing Taxpayer's tax return for Year x that he had failed to prepare and file an extension request for Taxpayer. Firm advised Taxpayer to request relief under § 301.9100-3 of the Regulations and on Date 8, Firm requested such relief on behalf of Taxpayer. On Date 7, Firm filed a Form 1120-REIT on behalf of Taxpayer. The Form 1120-REIT provides that Taxpayer's REIT status election was made in Year x and the REIT established on Date 2.

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 Internal Revenue Service (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) 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) of the regulations, 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 Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) of the Regulations 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 § 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) of the Code to be treated as a REIT beginning with the tax year ended on Date 4. Accordingly, the election of REIT status Taxpayer made on the Form 1120-REIT that was filed on Date 7, for the tax year ended on Date 4, will be considered as timely made.

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 limited to the timeliness of the filing of Taxpayer's Form 1120-REIT for the tax year ended on Date 4 and is further limited to making an election under § 856(c) of the Code to treat Taxpayer as a REIT. This ruling's application is limited to the facts, representations, Code sections, and Regulations cited herein. No opinion is expressed with regard to whether Taxpayer 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) 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 representatives.

Sincerely,

_____

Julanne Allen
Assistant to the Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions and Products)

cc: