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:B01
PLR-123791-16

Date:
October 21, 2016

Legend

Taxpayer	=
Subsidiary	=
Parent	=
Company 1	=
Company 2	=
Company 3	=
Accounting Firm	=
Hotel 1 Properties	=
Hotel 2 Properties	=
Individual 1	=
Individual 2	=
State A	=
State B	=
Date 1	=

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

a =

b =

c =

d =

Dear :

This responds to a letter dated July 27, 2016, submitted on behalf of Taxpayer. Taxpayer requests 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").

Facts

Taxpayer is a State A limited liability company that was formed on Date 1 to purchase from Company 1 and indirectly own through various single-member limited liability companies a hotel properties, which include b Hotel 1 Properties and c Hotel 2 Properties (collectively, "Hotel Properties"). Hotel Properties are located in d states across the United Sates. Taxpayer commenced operations on Date 2.

Taxpayer is owned by Parent, a joint venture owned by various entities associated with Company 2 and Company 3. Subsidiary is Taxpayer's corporate subsidiary. Hotel Properties are operated and managed by an affiliate of Company 2 through Subsidiary. Taxpayer represents that Taxpayer and Subsidiary timely filed Form 8875, *Taxable REIT Subsidiary Election*, to elect for Subsidiary to be treated as a taxable REIT subsidiary ("TRS") of Taxpayer within the meaning of § 856(l).

Taxpayer represents that it always intended that Taxpayer would elect to be treated as a REIT by filing Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, for its initial taxable year.

Taxpayer represents that the limited liability company agreement for Taxpayer specifically identifies Taxpayer as "the REIT" and provides that "the REIT will elect to be taxed as a real estate investment trust under §§ 856-860 of the Code." The limited liability company agreement also provides that Parent "shall use commercially reasonable efforts to cause the REIT to qualify for U.S. Federal income tax treatment as a real estate investment trust under §§ 856 through 860 of the Code." Excerpts from the limited liability agreement were submitted together with the ruling request.

Taxpayer has no employees. Pursuant to the joint venture agreement for Parent, Taxpayer's manager, a Company 3 affiliate, is responsible for the day-to-day operations of the joint venture. This includes tax matters associated with Taxpayer and other entities that are part of the joint venture. However, Company 3 does not have an internal tax department. Company 3's internal administrative staff members have a general understanding of REITs but they are unfamiliar with the tax rules applicable to them. Company 3 has thus engaged Accounting Firm to provide it with guidance on tax-related matters and assistance with tax compliance. Included within the scope of Accounting Firm's engagement was the preparation of certain federal and state tax filings, including extensions and returns, for entities affiliated with the joint venture. Company 3's Corporate Controller, Individual 1, was aware of the need to make an election for Taxpayer to be treated as a REIT. Individual 1 is also Vice President of Taxpayer.

Pursuant to its engagement, Accounting Firm prepared Forms 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for the joint venture entities with tax years ending on Date 3, to be filed electronically by their due date, Date 4. However, due to an administrative oversight, the Form 7004 for Taxpayer was not filed timely. Accounting Firm believed the extension was timely filed electronically on Date 4. On Date 5, upon checking to confirm that the extensions had been submitted and accepted, Accounting Firm determined that the extension for Taxpayer had not been filed. Accounting Firm then submitted the Form 7004 on Date 5, and, following this submission, received confirmation of acceptance from the software. However, because the Form 7004 was submitted after the filing deadline of Date 4, the extension request was late and was not accepted by the Service.

Shortly after the extension was filed on Date 5, it was identified that the election to treat Taxpayer as a REIT would also be late. On Date 6, Individual 2, a partner in Accounting Firm's State B office, discussed the missed election with Accounting Firm's national tax practice, as well as the availability of relief to make the election after the due date. After learning that such relief was available, Individual 2 spoke with Individual 1 at Company 3. During the course of this discussion, Individual 1 made the determination to proceed with submitting a request for relief to make the late REIT election, pursuant to the authority of §§ 301.9100-1 and 301.9100-3. Taxpayer

represents that if the requested relief is not granted by the time Taxpayer's tax return is filed, a Form 1120-REIT will nevertheless be filed with appropriate disclosure of this request, and that, therefore, an amended return will not be necessary if the requested relief is granted.

Taxpayer makes the following additional representations:

1. To its knowledge, Taxpayer filed the request for relief 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 it would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 at the time it 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.

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

6. The period of limitations on assessment under § 6501(a) has not expired for Taxpayer for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

The affidavits required by § 301.9100-3(e) were provided with Taxpayer's request.

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 an election for a previous taxable year, and such election has not been terminated or revoked. Pursuant to § 1.856-2(b) of the Income Tax Regulations, the election shall be made by the trust 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) 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 six 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 to mean an election whose due date is prescribed by a regulation, or a revenue ruling, revenue procedure, notice, 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 (including affidavits described in § 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 is deemed to have acted reasonably and good faith if the taxpayer (i) requests relief under this section 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 if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 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 of the required election, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c) 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)(i) provides that the interests of the Government are prejudiced if granting relief would result in a 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)(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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Conclusion

Based on the information submitted and the 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 effective as of the first day of the taxable year that commenced on Date 2 and ended on Date 3.

This ruling is limited to the timeliness of the filing of Taxpayer's election under § 856(c). 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.

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.

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.

This ruling is directed only to the taxpayer requesting 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

_____

Jason G. Kurth
Assistant to the Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: