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-103934-17

Date: March 29, 2017

Legend

Taxpayer	=
Parent	=
Company	=
Accounting Firm	=
Individual 1	=
Individual 2	=
Individual 3	=
Individual 4	=
State A	=
City A	=
Year 1	=
Year 2	=
Month	=
Date 1	=
Date 2	=

Date 3 =

Date 4 =

Date 5 =

Date 6 =

a =

b =

Dear :

This responds to a letter dated January 27, 2017, 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 single member limited liability company that was formed on Date 1 to hold through disregarded entities a industrial buildings (collectively, "Properties") specified in the limited partnership agreement for Parent, Taxpayer's owner. Properties are located in b states across the U.S. Taxpayer commenced operations on Date 2.

Parent is an entity within the Company group of funds. Taxpayer represents that Properties are leased to tenants as warehouse space and are used for such things as the storage of goods and manufacturing activities.

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 partnership agreement for Parent specifically identifies that a REIT subsidiary will be formed "the REIT Subsidiary" and notes that Parent "shall cause each REIT Subsidiary to elect, on its U.S. federal income tax return for the fiscal year during which such REIT Subsidiary was formed to be treated as a REIT." The limited partnership agreement also provides that Parent "shall use its commercially reasonable efforts to continue thereafter to cause such REIT Subsidiary to operate in a manner that would permit such REIT Subsidiary to continue to qualify as a

REIT." Excerpts from the limited partnership agreement for Parent were submitted together with the ruling request.

Taxpayer does not have its own tax department. Company engaged outside legal advisors to assist in complying with necessary filings when Taxpayer was formed. This would include creation of the REIT entity under local law and purchasing the property to be held by the REIT. In addition, Company also engaged Accounting Firm to provide guidance on tax related matters and assistance with tax compliance for Parent and its subsidiaries. Included within the scope of Accounting Firm's engagement was the preparation of certain federal and state tax filings, including extensions and returns. Individual 1, a Principal in Accounting Firm's City A office, was assigned to the engagement.

Accounting Firm believed that Taxpayer would be formed in Year 1, but, as a single member limited liability company, would default to a disregarded entity in that year, and activities, if any, would therefore be reported on Parent's Year 1 tax return. Accounting Firm believed that Taxpayer would not acquire any properties until Year 2 and would elect to be treated as a REIT in Year 2. However, due to a miscommunication between Taxpayer, its legal advisors, and Accounting Firm, Accounting Firm was unaware that Taxpayer acquired properties on Date 2. Pursuant to its engagement and belief as to the operations of Taxpayer, Accounting Firm prepared Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for Parent for the tax year ending Date 3, to be filed by its due date, Date 4. However, because Accounting Firm was not aware that Taxpayer acquired assets prior to Date 3, Accounting Firm did not file a Form 7004 to extend the Form 1120-REIT for Taxpayer. Taxpayer represents that at all times it intended to elect to be treated as a REIT in the year in which assets were acquired. The Chief Financial Officer of Company, Individual 2, was aware of the need to make an election for Taxpayer to be treated as a REIT but did not specifically communicate the year for which the REIT election should be first effective.

In Month of Year 2, Individual 3, the Controller of Company, and Individual 4, Accounting Firm Director, were discussing the group's required filings for the year ended Date 3. Accounting Firm noted that Taxpayer was considered a disregarded entity as of Date 3, and that a separate Form 1120-REIT would not need to be filed. Taxpayer indicated that assets were acquired in Year 1 and, therefore, a Form 1120-REIT should be filed for the year ended Date 3. It was during this discussion that it was identified that the election to treat Taxpayer as a REIT would not be valid as to Year 1 because the election must be made on a timely filed return, and, as a Form 7004 had not been filed to extend the Form 1120-REIT, it could not then be timely filed. On Date 5, Individual 1 discussed the missed election, as well as the availability of relief to make the election out of time with Individual 2, Chief Financial Officer. After learning that such relief was available, Individual 2 made the determination to proceed with submitting a request for relief to make the late REIT election, pursuant to sections 301.9100-1 and

301.9100-3. Taxpayer filed a Form 1120-REIT by Date 6, for the Year 1 year. That return contained an election to be treated as a REIT and a disclosure that a request for relief would be filed.

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 Section 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.

5. Taxpayer is not using hindsight in requesting this 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 Section 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) through (c)(1) 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(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 in 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)(1) 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)(1)(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)(1)(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,

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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