

Internal Revenue Service

Number: **202532001**

Release Date: 8/8/2025

Index Number: 856.00-00, 9100.00-00

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:B02

PLR-100779-25

Date:

May 7, 2025

Legend

Taxpayer =

Firm =

OldCo =

Name =

Accounting Firm =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Month 1 =

Month 2 =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated January 7, 2025, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under section 856(c) of the Internal Revenue Code (the Code) to be treated as a real estate investment trust (REIT) effective Date 1.

FACTS

Firm is a global real estate investment firm with a number of investment structures. Historically, one of these structures included investments through OldCo, which was treated as a partnership for federal tax purposes. OldCo was originally called Name before subsequently changing its name to its current name.

Taxpayer was formed under State law as a limited liability company and commenced operations on Date 1. Upon formation, Taxpayer had multiple owners and was a partnership, pursuant to section 301.7701-3(b)(1) of the Income Tax Regulations, for federal tax purposes. At formation, Taxpayer was originally named Name which was OldCo's old name. After Firm realized that Taxpayer's name was identical to OldCo's old name, Taxpayer was renamed to its current name on Date 2.

Taxpayer had an initial tax year of Date 1 to Date 3. Taxpayer intended to make an election under section 856(c)(1) to be treated as a REIT on its initial Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*.

It was the past practice of Firm for its REITs to timely file their initial Forms 1120-REIT to make elections under section 856(c)(1). Similarly, Taxpayer intended to timely file its initial Form 1120-REIT to make such election. Taxpayer timely prepared its initial year tax provision, tax footnotes, and financial statements consistent with its treatment as a REIT, as the intention was always for Taxpayer to be a REIT. Additionally, Taxpayer intended to timely file its Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for Form 1120-REIT on or before Date 5 (i.e., the original due date for Taxpayer's Year 1 Form 1120-REIT) and intended to timely file such Form 1120-REIT on or before Date 7 (i.e.,

the extended due date of its Year 1 Form 1120-REIT).

Firm engaged Accounting Firm to prepare Taxpayer's Year 1 Form 1120-REIT, including all relevant forms and statements. As part of this engagement, Accounting Firm was engaged to prepare and timely electronically file Form 7004 to extend the due date for the initial Form 1120-REIT from Date 5 to Date 7. A timely filed Form 1120-REIT would effectuate the election under section 856(c)(1) to treat Taxpayer as a REIT. Accounting Firm was also engaged to prepare Year 1 extensions and returns for other related Firm taxpayers, including OldCo. On or before Date 4, an extension for the Year 1 Form 1065, *U.S. Return of Partnership Income*, was correctly filed for OldCo using OldCo's current name and correct EIN.

On or before Date 5, Accounting Firm and Firm intended to file an extension for the Year 1 Form 1120-REIT for Taxpayer. Based on the information reviewed by both Accounting Firm and the Firm tax team in advance of the extension deadline, including but not limited to emails, structure charts, and other internal documents, the name of the entity at Taxpayer's place in the investment structure was Name which was Taxpayer's name at formation rather than Taxpayer's updated, current name. Because of an inadvertent oversight, Taxpayer's name had not been updated on this information. An updated master list of several thousand Firm entities was provided to Accounting Firm in Month 1 of Year 2 that contained Taxpayer's updated, current name. However, Accounting Firm's systems were not fully updated with that information prior to the extension deadline. As a result, Taxpayer's extension was inadvertently filed using Name (Taxpayer's name at formation and OldCo's old name) and OldCo's EIN rather than Taxpayer's updated, current name and correct EIN.

In Month 2 of Year 2, as part of the tax return preparation for OldCo and Taxpayer, Accounting Firm identified that the same EIN was being used on the draft Year 1 returns for both OldCo and Taxpayer. After identifying this issue, both Accounting Firm and Firm reviewed their files and realized that Taxpayer's extension had been inadvertently filed using OldCo's old name and EIN. Accounting Firm immediately advised Taxpayer that Taxpayer's REIT election, which is required to be made as part of a timely filed Form 1120-REIT, would be considered late because the Form 1120-REIT would be considered late without a timely and correct Form 7004 using Taxpayer's current name and EIN. Accounting Firm informed Taxpayer that Taxpayer could seek relief under sections 301.9100-1 and 301.9100-3 for an extension of time to make the REIT election. Taxpayer authorized Accounting Firm to prepare and file this request for section 9100 relief.

Taxpayer mailed its Year 1 Form 1120-REIT on or about Date 6 (i.e., before the extended due date of Date 7, if the Form 7004 had been timely filed using the correct name and EIN). Taxpayer's return was prepared as if a valid REIT election had been made.

REPRESENTATIONS

Taxpayer makes the following representations in connection with this request for an extension of time:

1. Taxpayer filed the request for relief before the failure to make the election was discovered by the Service.
2. The interests of the government are not prejudiced within the meaning of section 301.9100-3(c). Granting the relief will not result in Taxpayer having a lower U.S. income 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 does not seek to alter a return position for which an accuracy-related penalty has been or could be imposed under section 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 not to 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 for which the election should have been made, nor for any taxable year(s) that would have been affected by the election had it been timely made.

In addition, affidavits on behalf of Taxpayer have been provided as required by section 301.9100-3(e)(2) and (3).

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 section 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 section 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 section 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 generally 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, however, if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or 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.

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)(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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

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 section 856(c) to be treated as a REIT effective Date 1. Accordingly, due to the reasonable extension of time granted to Taxpayer, Taxpayer's Form 1120-REIT filed on Date 6 is considered a timely election under section 856(c) for Taxpayer to be treated as a REIT under subchapter M of the Code effective Date 1.

CAVEATS

This ruling is limited to the timeliness of the filing of Taxpayer's election under section 856(c). This ruling's application is limited to the facts, representations, and Code and regulation sections cited herein. Except as 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. In particular, no opinion is expressed regarding the timeliness of Taxpayer's federal income tax return. Furthermore, no opinion is expressed or implied regarding whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of chapter 1 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,

K. Scott Brown
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)

PLR-100779-25

7

cc: