

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:B02
PLR-142203-04

Date:
December 29, 2004

TY:

X =

Year =

State =

Date =

Date 2=

Dear :

This is in reply to a letter dated August 5, 2004, requesting on behalf of X an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make an election under section 856(c) of the Internal Revenue Code to treat X as a real estate investment trust ("REIT").

FACTS

X is a corporation that was incorporated under the law of State in Year. Its taxable year is the calendar year.

X intended to be treated as a REIT beginning with Year, its first taxable year, and was required to elect to be so treated under section 856(c) of the Code. The due date for filing Form 1120-REIT, the form on which the election was to be made for Year, was Date. X filed a timely Form 7004 for an automatic extension of time to file Form 1120-REIT by Date 2. Inadvertently, however, the Form 7004 was filed with the box checked for filing Form 1120, rather than Form 1120-REIT.

A few weeks after filing the Form 7004, an officer of X discovered that it had been filed with the wrong box checked. X was unable to confirm formally with the Internal Revenue Service that the extension would be valid for Form 1120-REIT. X then instructed Firm to request an extension of time to make the election under section 856(c) of the Code.

Because of the potential for Date 2 to pass before the request under section 301.9100 of the regulations could be considered, X stated in its section 301.9100 request that it intends to file its Form 1120-REIT by Date 2 with its election under section 856(c), appending to the Form 1120-REIT a statement that its request under section 301.9100 had been submitted and that consideration of the request was pending.

X makes the following representations:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not 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).
3. The taxpayer does 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 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, the taxpayer did not choose to not file the election.

LAW AND ANALYSIS

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 section 301.9100-1(b) as an election whose deadline 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) of the regulations sets forth rules that the Internal Revenue Service generally will use to determine whether, under the 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(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 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 section 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 upon the facts and representations submitted, we conclude that X has shown good cause for granting a reasonable extension of time to elect under 856(c) to be treated as a REIT beginning with Year. Accordingly, X is granted a period of time ending with Date 2 to make the election under section 856(c) by filing Form 1120-REIT for Year.

This ruling is limited to the timeliness of the filing of the Form 1120-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 X otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of X 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.

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.

This ruling is directed only to the taxpayer requesting 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 representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)