

Internal Revenue Service

Department of the Treasury

Number: **200204029**

Washington, DC 20224

Release Date: 1/25/2002

Index Numbers: 337.00-00
9100.00-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:1 - PLR-133896-01

Date:

October 23, 2001

LEGEND

Parent =

Taxpayer =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

a =

b =

Tax Professionals =

This letter responds to your authorized representative's letter dated June 20, 2001, requesting, on behalf of Taxpayer, an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. Taxpayer is requesting an extension to file an election (the "Election") under § 1.337(d)-5T(b) and (c) to be subject to the rules of § 1374 of the Internal Revenue Code with respect to assets it received from Parent, a C corporation. The material information is summarized below.

Parent is the common parent of an affiliated group of corporations filing a consolidated return. Taxpayer was formed by Parent as a real estate investment trust ("REIT") on Date A. On Date B, Parent transferred real property associated with its operating business to Taxpayer in a transaction in which the basis of the assets received was determined by reference to Parent's basis in the assets. The property transferred had a basis of approximately a and there was net unrealized built-in gain in the assets.

Taxpayer is a calendar year taxpayer that uses the accrual method of accounting. An election to be taxed as a REIT was filed with Taxpayer's first Federal income tax return for the calendar year ending on Date C. Taxpayer is owned by Parent through intervening companies and by over b other investors.

The transfer of assets from Parent to Taxpayer was disclosed on Parent's consolidated Federal income tax return for the fiscal year ending on Date D and on Taxpayer's Federal income tax return for the year ending on Date C. Taxpayer has at all times complied with accounting procedures similar to those required under § 1374.

On February 7, 2000, The IRS and Treasury issued temporary regulations under § 337(d). These regulations provide a special rule in § 1.337(d)-5T(b) and (c) that allows a RIC or REIT to make a retroactive election to apply the rules of § 1374 with respect to assets formerly held by a C corporation, in lieu of recognizing the built-in gain with respect to these assets on the last day of its last C corporation taxable year. In cases where the first taxable year in which the assets of the C corporation become assets of the RIC or REIT ends after June 10, 1987, but before March 8, 2000, the

election is made by attaching the statement described in § 1.337(d)-5T(b)(3) with the first Federal income tax return filed by the RIC or REIT after March 8, 2000.

Taxpayer's first return filed after March 8, 2000, was filed in September of 2000 (on Date E) but, for various reasons, did not contain a § 1374 election. The fact that Taxpayer had not properly made a § 1374 election with this return was discovered in Date F (which is after Date E).

Under § 301.9100-1(c), 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 Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (*i.e.*, § 1.337(d)-5T(c)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Taxpayer to file the Election, provided Taxpayer shows it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits and representations submitted by Taxpayer and Tax Professionals explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the Election, the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service, and that the interests of the government will not be prejudiced if relief is granted. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts, information, and affidavits submitted, and the representations made, we conclude that Taxpayer had shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-1, until 45 days from the date on this letter, for Taxpayer to file the Election, by amending its return for the year ending December 31, 1999, by attaching thereto the statement described in § 1.337(d)-5T(b)(3). A copy of this letter should be attached to the Election.

The above extension of time is conditioned on (1) the filing, within 120 days of the date on this letter, of all returns and amended returns (if any) necessary to report the transaction in accordance with the Election, and (2) the taxpayers' (Parent's consolidated group's and Taxpayer's) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

In addition, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-1, we relied on certain statements and representations made by the taxpayers. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely yours,
Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)