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:B03
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Date:
March 29, 2017

LEGEND:

Company A =

Company B =

Manager =

Firm A =

Firm B =

State X =

State Y =

City =

Owner =

Investor =

Investors LP =

Investors GP =

Tenant =

Tenant Investor =

TRS Investors, LP =

TRS Investors, GP =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Year =

a =

b =

c =

d =

Dear

This ruling responds to a letter dated December 2, 2016, submitted on behalf of Company A and Company B (collectively, “Taxpayers”). Taxpayers request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and

Administration Regulations (the "Regulations") to make an election under section 856(l) of the Internal Revenue Code (the "Code") to treat Company B as a taxable REIT subsidiary (TRS) of Company A effective as of Date 3.

FACTS

Company A was incorporated under the laws of State X on Date 1. Company A represents that it made an election to be treated as a real estate investment trust ("REIT") under section 856 of the Code commencing with its taxable year that ended on Date 2. Company A uses the accrual method as its overall method of accounting, and Company A's taxable year is the calendar year. Company A's primary business activity is real estate investment by investing in pass-through entities that acquire, own, and lease real estate assets.

Company B was incorporated under the laws of State Y on Date 3. Company B uses the accrual method as its overall method of accounting and Company B's taxable year is the calendar year. Company A has owned a % of the stock of Company B since Company B was created. Company B's primary business activity is investing in flow-through entities, one of which leases a hotel property from a pass-through entity that is owned in part by Company A. Company A and Company B are managed by Manager.

Negotiations were entered into during Date 4 for the purchase of a hotel property located in City ("Hotel"). Manager engaged Firm A to provide tax and legal advice about structuring the acquisition transaction. Firm A structured the transaction so that Hotel would be purchased by Owner. Owner is a partnership is owned approximately b % by Investor. Investor is a single member entity disregarded for federal income tax purposes, and owned a % by Investors LP. Investors LP is a partnership that is owned approximately c % by Company A and approximately d % by Investors GP. Investors GP is a partnership and owned approximately c % by Company A.

Furthermore, Firm A structured the transaction so that Hotel would be leased to Tenant. Tenant is a partnership and owned approximately b % by Tenant Investor. Tenant Investor is a single member entity disregarded for federal income tax purposes that is owned a % by TRS Investors, LP. TRS Investors, LP is a partnership that is owned approximately c % by Company B and approximately d % by TRS Investors, GP. TRS Investors, GP is a partnership and owned approximately c % by Company B.

Company A was created by Manager for the specific purpose of qualifying as a REIT and acquiring partnership interests in both Investors LP and Investors GP. Investors LP owns interests in entities that own real estate assets. Company B was created by Manager for the specific purpose of qualifying as a TRS of Company A, and

to own a partnership interest in Tenant through an investment in TRS Investors, GP, TRS Investors, LP, and Tenant Investor.

During Date 5, Owner completed the acquisition of Hotel and immediately leased Hotel to Tenant. Company A represents that Tenant has hired an eligible independent contractor within the meaning of section 856(d)(9) to operate Hotel on its behalf.

Company A and Company B both represent that Company A and Company B always intended to make a joint election under § 856(l) to treat Company B as a TRS of Company A, effective Date 3. However, due to a staff administrative oversight, a completed Form 8875 (Taxable REIT Subsidiary Election) for Company A and Company B was not filed in a timely manner.

Firm B was engaged to prepare the Year tax returns for Company A and Company B, as well as to provide ongoing advice related to REIT tax compliance issues. During Date 6, while responding to an information request from an employee of Firm B that related to the preparation of the Year tax returns for Company A and Company B, Manager discovered that the necessary TRS election had not yet been made. Manager immediately consulted with Firm B about the appropriate action that should be taken. Firm B advised Company A and Company B to immediately file a Form 8875 with the Internal Revenue Service (Service), and then seek a private letter ruling from the Service requesting an extension of time to make a timely TRS election.

On Date 7, Company A and Company B filed a Form 8875 with the Service requesting an effective date of Date 3. Subsequently Firm B submitted a request to the Service under sections 301.9100-1 and 301.9100-3 of the Regulations seeking an extension of time to treat the Form 8875 filed on Date 7 by Company A and Company B, as having been timely filed for an effective date of Date 3.

Company A and Company B make the following additional representations in connection with their request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Service.

2. Granting the relief requested will not result in Company A or Company B having a lower tax liability in the aggregate for all years to which the election applies than they would have had if the election had been timely made (taking into account the time value of money).

3. Company A and Company B do 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 they 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, Company A and Company B did not choose to not file the election.

5. Company A and Company B are not using hindsight in making the decision to seek the relief requested. No specific facts have changed since the due date for making the election that make the election advantageous to Company A or Company B.

6. The period of limitations on assessment under section 6501(a) has not expired for Company A or Company B 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.

In addition, affidavits on behalf of Company A and Company B have been provided as required by section 301.9100-3(e) of the Regulations.

LAW AND ANALYSIS

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, section 856(l) specifically provides that the election, and any revocation thereof, may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Service announced the availability of new Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for taxable years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the taxable year. However, the effective date of the election depends on when the Form 8875 is filed. The instructions further provide that the effective date cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

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, 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 Code except subtitles E, G, H, and I. Section

301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an 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 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 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 the 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Company A and Company B have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Company B as a TRS of Company A, effective as of Date 3. Accordingly, the Form 8875 filed by Taxpayers on Date 7 will be considered timely filed, and the effective date of this TRS election is Date 3.

This ruling is limited to the timeliness of the filing of Form 8875. 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 as to whether Company A qualifies as a REIT, or whether Company B otherwise qualifies as a TRS under part II of subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Company A and Company B 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.

The ruling contained in this letter is based upon information and representations submitted by Company A and Company B and accompanied by a penalty of perjury statements executed by appropriate parties. 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 taxpayers that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

_____
Julanne Allen
Assistant to the Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:

Copy of this for section 6110 purposes