Internal Revenue Service

Number: **201738004**
Release Date: 9/22/2017

Index Number: 856.07-00, 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:B01
PLR-107367-17

Date: June 23, 2017

Legend:

Company A =

Company B =

Venture =

Operator =

Owner =

Manager =

Accounting Firm =

CFO =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year I =

Year 2 =

Dear :

This responds to a letter dated February 22, 2017, and subsequent correspondence, 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 to jointly make an election under section 856(l) of the Internal Revenue Code (“Code”) to treat Company B as a taxable REIT subsidiary ("TRS") of Company A effective as of Date 1.

FACTS

Company A has elected for federal income tax purposes to be treated as a real estate investment trust ("REIT") under sections 856 through 860 of the Code.

Company A holds an interest in Venture, a limited liability company that is classified as a partnership for federal income tax purposes. Operator, another limited liability company, holds the remaining interest in Venture. Operator is the operating member of Venture. Venture wholly owns Owner and Company B, below.

Company B is a single member limited liability company that was formed by Venture on Date 1 to lease a hotel from Owner. Company B entered into an agreement with Manager for Manager to be the exclusive operator of the hotel. Manager is an eligible independent contractor within the meaning of section 856(d)(9).

Taxpayers represent that in connection with the above arrangement, Taxpayers intended (1) Company B to make an election on Form 8832, *Entity Classification Election*, to be treated as an association taxable as a corporation, and (2) to jointly make an election on Form 8875, *Taxable REIT Subsidiary Election*, for Company B to be treated as a TRS of Company A; however, for the reasons set forth below, neither election was timely made.

Taxpayers represent that Accounting Firm prepared the Forms 8832 and 8875 on behalf of Taxpayers when Company B had not yet obtained an Employee Identification Number (“EIN”) and that the forms were completed with “APPLIED FOR” in lieu of an EIN. Taxpayers represent that the completed forms were sent to CFO, Chief Financial Officer for Company B, on Date 2 to be signed and submitted, and that CFO submitted the forms to the Internal Revenue Service (“Service”) shortly thereafter.

Taxpayers represent that Company A always has filed consistent with treating Company B as a TRS of Company A. Taxpayers represent further that Company B filed a Form 1120, *U.S. Corporation Income Tax Return*, for its Year 1 and Year 2 taxable years.

On Date 3, Company B received a letter from the Service indicating that its Form 1120 filed for its Year 1 taxable year could not be processed because Service records showed Company B to be a single member limited liability company. Upon receipt of the letter, both Company B and its representatives reviewed their files for proof of mailing with regard to the Form 8832. The fact that the Service did not have record of Company B's entity classification election generated concern as to whether the Service also did not have record of Taxpayers' TRS election. Unable to find proof of mailing, Accounting Firm submitted a Freedom of Information Act ("FOIA") request to the Service seeking evidence of either Form 8832 or Form 8875 under both Company B's current and former names. In addition to the FOIA request, Accounting Firm filed a Form 911, *Request for Taxpayer Advocate Service Assistance*, to obtain assistance in locating evidence of the filing. A copy of the FOIA request and Form 911 were submitted together with the letter ruling request.

Taxpayers represent that the FOIA request failed to reveal evidence of the submissions. Taxpayers represent further that a formal rejection notice was never received from the Service in connection with either Form 8832 or Form 8875 by taxpayers or Accounting Firm.

Taxpayers represent that on Date 4, Company B submitted a request for permission to file a late Form 8832 on behalf of Company B to be effective as of Date 1 under Rev. Proc. 2009-41, 2009-39 I.R.B. 439, through the Taxpayer Advocate Service. Taxpayers represent that Company B received written confirmation from the Service Center that the late election request pursuant to Rev. Proc. 2009-41 has been granted.

Taxpayers make the following additional 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 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. Taxpayers 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, Taxpayers did not choose to not file the election.

5. Taxpayers 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 Taxpayers have been provided as required by section 301.9100-3(e).

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 Procedure and Administration 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 Internal Revenue 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, 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 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 on the information submitted and representations made, we conclude that Taxpayers have satisfied the requirements for granting a reasonable extension of time to jointly elect under section 856(l) to treat Company B as a TRS of Company A, effective as of Date 1. Accordingly, Taxpayers have 90 days from the date of this letter to file the intended election.

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 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. In particular, no opinion is expressed as to whether Company A qualifies as a REIT, whether Company B is classified as an association taxable as a corporation for federal income tax purposes, 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 Taxpayers 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 the powers of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

_____

Robert A. Martin
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:

Copy of this letter for section 6110 purposes