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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Date:
October 02, 2020

Legend

Taxpayer =

Trust =

Corporation A =

Corporation B =

Corporation C =

Corporation D =

Corporation E =

Corporation F =

Holdco =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Month 1 =

Month 2 =

Month 3 =

Year =

State =

Law Firm X =

Law Firm Y =

Accounting Firm =

Dear :

This letter responds to a letter dated April 10, 2020, and subsequent correspondence, submitted on behalf of Taxpayer (in its capacity as the successor-in-interest to Trust) and Taxpayer's subsidiaries Corporation A, Corporation B, Corporation C, Corporation D, Corporation E, and Corporation F (the subsidiaries collectively, the Corporations). Taxpayer and the Corporations request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file elections to treat each of the Corporations as a taxable REIT subsidiary (TRS) of Taxpayer under section 856(l) of the Internal Revenue Code (the Code) effective Date 3.

FACTS

Taxpayer intends to elect to be treated as a real estate investment trust (REIT) under sections 856 through 859 of the Code beginning with its initial taxable year ending Date 9.

Taxpayer was formed on Date 1 and made a valid and timely election to be treated as an association taxable as a corporation for U.S. federal income tax purposes effective Date 5. On Date 2, Trust was formed as a State limited liability company and made a valid and timely election to be treated as an association taxable as a corporation for U.S. federal income tax purposes effective Date 3. Immediately prior to Date 5, Taxpayer and Trust were wholly owned directly or indirectly by Holdco. Taxpayer and Trust were both formed to be REITs. Taxpayer was formed to indirectly own certain hotel properties and lease them to its TRSs pursuant to section 856(d)(8)(B).

On Date 5, Taxpayer acquired substantially all of the properties held by Trust, including the Corporations, in a reorganization that Taxpayer represents is described in section 368(a)(1)(F) (the Transaction). Taxpayer represents that, as a result of the Transaction, Taxpayer became a successor-in-interest to Trust for U.S. federal income tax purposes. Accordingly, Date 3, the first day of the tax year ending Date 9 for Trust, became the first day of the tax year ending Date 9 for Taxpayer.

Taxpayer and Trust generally relied on the advice of their outside tax counsel regarding qualification as a REIT, including for all filing obligations. Taxpayer and Trust also relied on their outside tax counsel regarding the tax consequences of the Transaction. Law Firm X was Taxpayer's and Trust's outside tax counsel in Month 1 of Year. At the time of the Transaction, it was intended that each of Taxpayer and Trust would qualify as a REIT for Year. It was also intended that the Corporations would be treated as TRSs before and after the Transaction as part of the Taxpayer-Trust ownership structure. However, Law Firm X failed to advise Taxpayer and Trust that the Transaction was a reorganization under section 368(a)(1)(F), with the result that Taxpayer became a successor-in-interest to Trust. Law Firm X also failed prior to Date 4 to advise Trust to make (with the Corporations) section 856(l) TRS elections via Form 8875, *Taxable REIT Subsidiary Election*, to treat the Corporations as TRSs of Trust. In order to be effective Date 3, the elections needed to have been filed on or before Date 4. Despite the fact that Date 4 had passed without the elections having been filed and that the Transaction had already occurred, on Date 6 Law Firm X rendered an unqualified opinion that each of Taxpayer and Trust would qualify as a REIT for Year.

In Month 2 of Year, Accounting Firm was performing an audit of Taxpayer and Trust and discovered that Trust and the Corporations had failed to make section 856(l) TRS elections for the Corporations. Upon discovery of this failure, on Date 8, Trust and the Corporations made section 856(l) TRS elections for the Corporations with the

earliest possible effective date of Date 7. Because Taxpayer and Trust had not yet been advised that Taxpayer had become a successor-in-interest to Trust as a result of the Transaction, these elections were not only untimely, but also were incorrectly filed by Trust rather than by Taxpayer.

Subsequently, Taxpayer and Trust engaged Law Firm Y as their outside tax counsel. In Month 3 of Year, Law Firm Y advised Taxpayer and Trust of the correct tax consequences of the Transaction, and advised Taxpayer to request relief under sections 301.9100-1 and 301.9100-3 to extend the time to file section 856(l) TRS elections for the Corporations effective Date 3.

REPRESENTATIONS

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

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

2. Granting the relief will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory elections apply than Taxpayer would have had if the elections had been timely made (taking into account the time value of money).

3. Taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under Code section 6662 at the time Taxpayer requested relief and the new position requires or permits regulatory elections for which relief is requested.

4. Being fully informed of the required regulatory elections and related tax consequences, Taxpayer did not choose to not file the elections.

5. Taxpayer and the Corporations 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 elections that make the elections advantageous to Taxpayer or the Corporations.

6. The period of limitations on assessment under Code section 6501(a) has not expired for Taxpayer and the Corporations for the taxable year in which the elections should have been filed, nor for any taxable year(s) that would have been affected by the elections had they been timely filed.

7. Taxpayer has not yet filed a federal income tax return for Year.

In addition, affidavits on behalf of Taxpayer and the Corporations have been

provided as required by section 301.9100-3(e)(2) and (3).

LAW AND ANALYSIS

Section 856(l) 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) 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 on the information submitted and representations made, we conclude that Taxpayer, as the successor-in-interest to Trust, and the Corporations have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat each Corporation as a TRS of Taxpayer effective Date 3. Accordingly, Taxpayer, as the successor-in-interest to Trust, and the Corporations have 90 calendar days from the date of this letter to make the intended elections to treat each Corporation as a TRS of Taxpayer effective Date 3.

CAVEATS

This ruling is limited to the timeliness of the filing the 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 or implied regarding whether the Transaction was a reorganization under section 368(a)(1)(F). Further, no opinion is expressed or implied regarding whether Taxpayer otherwise qualifies as a REIT, or

whether any Corporation otherwise qualifies as a TRS of Taxpayer under part II of subchapter M of chapter 1 of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer is not lower in the aggregate for all years to which the elections apply than such tax liability would have been if the elections had been timely made (taking into account the time value of money). Upon audit of the U.S. 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.

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 representative.

Sincerely,

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Bernard J. Audet, Jr.
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: