

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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CC:FIP:B01

PLR-126944-20

Date:

March 15, 2021

Legend

Taxpayer =

Subsidiary =

Law Firm =

Accounting Firm =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year =

Dear \_\_\_\_\_ :

This letter is in response to a letter from your authorized representative, dated November 20, 2020, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer and Subsidiary to make an election under § 856(l) of the Internal Revenue Code (“Code”) to treat Subsidiary as a taxable REIT subsidiary (“TRS”) of Taxpayer.

#### FACTS

According to the information submitted and representations made, Taxpayer was organized as a State limited liability company on Date 1. Taxpayer elected under § 856 to be treated as a real estate investment trust (“REIT”) for federal income tax purposes effective Date 2. On Date 3, Taxpayer acquired an indirect ownership interest in Subsidiary, a State corporation. Taxpayer did not own any stock directly or indirectly in Subsidiary prior to Date 3.

Taxpayer and Subsidiary intended for Subsidiary to be treated as a TRS effective Date 3. On Date 4, Law Firm, Taxpayer’s legal counsel, filed on behalf of Taxpayer and Subsidiary an election on Form 8875, *Taxable REIT Subsidiary Election*, to treat Subsidiary as a TRS of Taxpayer. Inadvertently, however, Law Firm indicated on the Form 8875 that the election was effective Date 1, prior to both the start of Taxpayer’s first REIT taxable year on Date 2 and Taxpayer’s indirect ownership of stock in Subsidiary on Date 3.

During Year, Accounting Firm, whom Taxpayer had engaged to perform REIT compliance, discovered the error. Accounting Firm promptly reported the error to Taxpayer and Law Firm, which in turn prepared and submitted the ruling request for relief.

Taxpayer makes the following additional representations:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service (“IRS”).
2. Taxpayer and Subsidiary are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662.
3. Taxpayer and Subsidiary are not using hindsight in requesting this relief. No specific facts have changed since the due date for making the election that make the election more advantageous to Taxpayer or Subsidiary.
4. Granting the relief requested will not result in Taxpayer or Subsidiary 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).

5. The period of limitations on assessment under § 6501(a) has not expired for Taxpayer and Subsidiary for the taxable year in which the election should have been filed, or for any taxable year(s) that would have been affected by the election had it been timely filed.
6. Being fully informed of the required regulatory election and related tax consequences, Taxpayer and Subsidiary did not choose to not file the election.

In addition, affidavits on behalf of Taxpayer and Subsidiary have been provided as required by § 301.9100-3(e).

### 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, § 856(l)(1) provides that the REIT must directly or indirectly own stock in such corporation, and the REIT and such corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the corporation consent to its revocation. In addition, § 856(l)(1) 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 IRS announced the availability of Form 8875. 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 of the election 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 IRS.

Section 301.9100-1(c) provides, in part, 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) provides, in part, that the term "election" includes an application for relief in respect of tax; a request to adopt, change, or retain an accounting method or accounting period; but does not include an application for an extension of time for filing a return under § 6081. Section 301.9100-1(b) also provides, in part, that the term "regulatory election" means an election whose due date is prescribed by a regulation published in the Federal Register, or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3 sets forth rules for determining whether the Commissioner will grant a reasonable extension of time for regulatory elections that do not meet the requirements of § 301.9100-2 for an automatic extension. In general, requests for relief subject to this section will be granted when the taxpayer provides evidence (including any required affidavits) 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)(1) provides, in part, that, except as provided in paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the IRS, the taxpayer will be deemed to have acted reasonably and in good faith.

Section 301.9100-3(b)(3)(i) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested. Section 301.9100-3(b)(3)(ii) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election. Section 301.9100-3(b)(3)(iii) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100-3(c) provides, in part, 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 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). Further, the interests of the Government are 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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under § 301.9100-3.

## CONCLUSION

Based solely on the information submitted and representations made, we conclude that Taxpayer and Subsidiary have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Subsidiary as a TRS of Taxpayer, effective Date 3. Accordingly, Taxpayer and Subsidiary have 90 calendar days from the date of this letter to file with the IRS a new Form 8875 and elect to treat Subsidiary as a TRS of Taxpayer effective Date 3.

## CAVEATS

This ruling is limited to the timeliness of filing a Form 8875. Except as expressly provided herein, no opinion is expressed or implied concerning the application of any other provisions of the Code or regulations or 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 as to whether Taxpayer otherwise qualifies as a REIT, or whether Subsidiary otherwise qualifies as a TRS under part II of subchapter M of chapter 1 of the Code.

Moreover, no opinion is expressed with regard to whether the tax liability of Taxpayer and Subsidiary is not lower in the aggregate for all years to which the regulatory 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, Exam Division, will determine the relevant tax liability, treatment, and effect for the taxable years involved.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. Because this office has not verified any of the material submitted in support of the request for rulings, such material is subject to verification on examination.

This ruling is directed only to the taxpayer requesting 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel  
(Financial Institutions and Products)

By: \_\_\_\_\_  
JIAN H. GRANT  
Senior Technician Reviewer, Branch 5  
Office of Associate Chief Counsel  
(Financial Institutions and Products)

Enclosure (1):  
Copy for § 6110 purposes

cc: