

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.

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Refer Reply To:

CC:FIP:B03

PLR-110462-21

Date:

November 05, 2021

LEGEND:

Taxpayer =

Subsidiary =

Accounting Firm =

Law Firm =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Dear _____ :

This letter responds to a letter dated May 6, 2021, and subsequent correspondence, submitted on behalf of Taxpayer and Subsidiary (collectively, "Taxpayers"). Taxpayers request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election to treat Subsidiary as a taxable REIT subsidiary (TRS) of Taxpayer under section 856(l) of the Internal Revenue Code (the Code) effective as of Date 3.

FACTS

Taxpayer is a State limited liability company formed on Date 1 that has elected to be treated as a real estate investment trust ("REIT") for federal income tax purposes beginning with Taxpayer's taxable year ended Date 5.

Subsidiary is a State limited liability company formed on Date 2 that has elected to be classified as an association taxable as a corporation for federal income tax purposes. Subsidiary is indirectly owned in part by Taxpayer. Subsidiary owns interests in various real properties and provides property management and other services to its own properties and properties held by other entities. Taxpayers represent that Subsidiary and Taxpayer intended to treat Subsidiary as a TRS of Taxpayer effective as of Date 3.

To make a TRS election for Subsidiary effective as of Date 3, Form 8875, *Taxable REIT Subsidiary Election*, should have been properly completed and filed with the Service by Date 7. Taxpayers represent that the Form 8875 for Subsidiary was filed prior to Date 7 on Date 6. The Form 8875 was signed by an individual who was then an officer of both Taxpayer and Subsidiary, but only in the officer's capacity as an officer of the electing TRS. On Date 8, Accounting Firm, the accounting firm responsible for auditing Taxpayer's financial statements, discovered that the filed copy of the Form 8875 was missing a signature on the line provided for the signature of an officer of the electing REIT.

The signing officer was not aware that two signatures on the Form 8875 was required: one in their capacity as an officer of the electing TRS and one in their capacity as an officer of the electing REIT. When Accounting Firm discovered the missing signature on the Form 8875, Taxpayer contacted Law Firm to discuss the best course of action to rectify the situation. Law Firm advised Taxpayers to (i) file a new Form 8875 as soon as possible with the earliest possible effective date and with the officer's signature on both signature lines, and (ii) request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make the election under section 856(l) of the Code to treat Subsidiary as a TRS of Taxpayer effective as of Date 3. On Date 9, Taxpayers filed the new Form 8875

electing to treat Subsidiary as a TRS of Taxpayer effective as of Date 4. This Form 8875 was signed by an officer on both the line provided in the form for signature of an officer of the electing TRS and the line provided in the form for signature by an officer of the electing REIT.

Accordingly, Law Firm submitted a request on behalf of Taxpayers to the Service seeking a private letter ruling granting a reasonable extension of time for Taxpayers to elect under section 856(l) to treat Subsidiary as a TRS of Taxpayer, effective as of Date 3.

REPRESENTATIONS

Taxpayers make the following representations in connection with this request for an extension of time:

1. The request for relief was filed by Taxpayers before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Taxpayers having a lower tax liability in the aggregate for all years to which the regulatory election applies than they would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayers did 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 requesting this relief. No specific facts have changed since the due date for making the election that make this election advantageous to Taxpayers.
6. The period of limitations on assessment under section 6501(a) of the Code has not expired for Taxpayers for the taxable year for which the election should have been filed, nor for any taxable years that would have been affected by the election had it been timely made.

In addition, affidavits on behalf of Taxpayers 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 generally 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, however, 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.

Under all the facts and circumstances of this case as presented by Taxpayer and Subsidiary, we have determined that the interests of the Government are not prejudiced under the standards set forth in section 301.9100-3(c)(1)(i).

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayers have satisfied the requirements for granting a reasonable extension of time so that Taxpayer can elect under section 856(l) to treat Subsidiary as a TRS of Taxpayer as of Date 3.

Accordingly, due to the reasonable extension of time granted to Taxpayer and Subsidiary, the Form 8875 filed by Taxpayer and Subsidiary on Date 9 will be considered timely filed, and the effective date of the TRS election is Date 3.

CAVEATS

This ruling is limited to the timeliness of the filing of the Forms 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 Taxpayer qualifies as a REIT, or whether Subsidiary 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 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 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.

The ruling contained in this letter is based upon information submitted and representations made by Taxpayer and Subsidiary and accompanied by penalties of perjury statements executed by the 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 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,

Grace Cho
Assistant to the Branch Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: