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Person To Contact:
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CC:FIP:B01
PLR-142072-13

Date:
March 14, 2014

Legend

LLC 1 =

LLC 2 =

LLC 3 =

LP =

Firm =

Hotel Property =

Tax Director =

Representative 1 =

Representative 2 =

State A =

a =

b =

c =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Dear :

This ruling responds to a letter dated September 24, 2013, and subsequent correspondence submitted on behalf of LLC 1 and LLC 2 (collectively, "Taxpayers"). Taxpayers request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations so that the election for LLC 2 to be treated as a taxable REIT subsidiary ("TRS") of LLC 1 under section 856(l) of the Internal Revenue Code ("Code") made on Form 8875, Taxable REIT Subsidiary Election, filed on Date 1 be effective as of Date 2.

FACTS

LP is a global investment firm. One of its fastest growing investment portfolios is its real estate sector. As described below in further detail, LP acquired a a percent interest in Hotel Property through a real estate investment trust ("REIT") structure that includes Taxpayers.

LLC 1 is a State A limited liability company that was formed on Date 3. It was organized and has operated in a manner intended to satisfy the REIT requirements under sections 856 through 860. LLC 1 plans to make an election to be treated as a REIT, pursuant to section 1.856-2(b) of the Income Tax Regulations ("Regulations"), when timely filing its tax return, Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts, for the tax year ending Date 4.

LLC 2 is a State A limited liability company that was formed on Date 5. It was organized and has operated in a manner intended to be treated as a TRS of LLC 1 under section 856(d)(8)(B). LLC 2 commenced operations on Date 2.

On Date 2, LLC 3, a State A limited liability company in which LLC 1 indirectly holds a a percent interest, acquired Hotel Property from a third party. LLC 3 is classified as a disregarded entity for U.S. federal income tax purposes. On the same date (Date 2), LLC 3 entered into a b-year, nonrenewable lease agreement with LLC 2 wherein LLC 3 leased Hotel Property to LLC 2, and LLC 2 engaged an eligible independent contractor to undertake the daily operation and management of Hotel Property in exchange for a management fee from LLC 2. Under this arrangement, LLC 2 receives all revenue and bears all expenses of operating Hotel Property, less the rent payment made to LLC 3 and management fees paid to the independent contractor. This structure is intended to conform to the requirements of section 856(d)(8).

LLC 2 always has intended to be treated as a TRS of LLC 1. To this purpose, on Date 6, LLC 2 filed an Entity Classification Election (Form 8832) in which it elected to be treated as an association taxable as a corporation for U.S. federal income tax purposes. The election listed an effective date of Date 2. This election was approved by the Internal Revenue Service ("Service") on Date 7.

Taxpayers also intended to timely file Form 8875 to make a TRS election for LLC 2 that would have an effective date of Date 2. Taxpayers understand that failure to do so could result in potential adverse tax consequences for LLC 1. This is because for any period during which LLC 2 is not treated as a TRS of LLC 1, the rental income LLC 1 receives from LLC 2 through its indirect ownership in LLC 3 would not be considered "rents from real property" pursuant to section 856(d)(8). Taxpayers anticipate that the rental income attributable to the period beginning on Date 2 and ending Date 8, the date the TRS election filed on Date 7 will be effective in the absence of relief, will exceed c percent of LLC 1's gross income for Year 1. If LLC 1 were to elect REIT status for Year 1, LLC 1 would be disqualified as a REIT for failing to meet section 856(c)(2). As a practical matter, therefore, without the requested relief, LLC 1 cannot elect REIT status for Year 1.

During the time surrounding LP's acquisition of Hotel Property, LP also was involved in numerous other real estate and private equity transactions that were either

in progress or closing, all of which required a substantial time commitment from LP's tax department. LP's tax department is led by Tax Director. Tax Director's day-to-day responsibilities include managing a tax department and providing tax advice and tax compliance services for numerous LP-sponsored global investment portfolios in the private equity, hedge fund, and real estate sectors.

In addition to managing LP's internal tax department, Tax Director also works closely with LP's external tax advisor, Firm, on tax compliance projects and regularly consults with Firm on tax matters throughout the year. LP has engaged Firm to provide it with professional tax services since late Year 2.

On Date 9, Firm representatives, Representative 1 and Representative 2, both tax partners and primary Firm contacts for LP's real estate investment portfolio, contacted Tax Director to inquire whether Tax Director's team would need assistance with preparing and filing the TRS election for LLC 2. On the same day, Tax Director informed Representative 1 and Representative 2 that LP's tax team had been handling Entity Classification Elections for applicable entities and represented that his team would be responsible for preparing and filing the TRS election as well.

On Date 10, Representative 2 requested Tax Director to forward a filed copy of the Form 8875 for LLC 2. Later that day, after reviewing his records, Tax Director determined that the requested Form 8875 had not been filed. Due to a miscommunication within LP, Tax Director mistakenly believed that the Form 8875, with an effective date of Date 2, already had been filed with the Service and executed along with other tax filings that included numerous Forms 8832 submitted in Year 1. Immediately after learning of the failure to timely file the Form 8875, Tax Director recognized that not having a valid TRS election for LLC 2 effective as of Date 2 would have a serious tax consequence. On the same day, Tax Director approached Firm for guidance.

Once Tax Director informed Firm of the failure to file, Firm advised that it would be prudent for Taxpayers to request relief under sections 301.9100-1 and 301.9100-3. Taxpayers authorized Firm to prepare and file the request for relief addressed herein. In addition, on Date 1, Tax Director's team filed the Form 8875 election for LLC 2 to be treated as a TRS of LLC 1 with an effective date of Date 2. Because this effective date was retroactive by more than two months and 15 days, if the relief requested were not granted, it would be deemed effective on Date 8.

In light of the facts set forth above, Taxpayers request under sections 301.9100-1 and 301.9100-3 that the TRS election pursuant to section 856(l) on the Form 8875 filed on Date 1 be effective as of Date 2.

Taxpayers make the following additional representations:

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 that 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.

In addition, affidavits on behalf of Taxpayers were provided with the submission, as required by section 301.9100-3(e) of the Procedure and Administration 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 taxable REIT subsidiary. To be eligible for treatment as a taxable REIT subsidiary, 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, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (Service) announced the availability of Form 8875, Taxable REIT Subsidiary Election. The Announcement provides that this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a taxable REIT subsidiary. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. 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 elections, 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. Officers of both the REIT and the taxable REIT subsidiary must jointly sign the form, which is filed with the IRS Service Center in Ogden, Utah.

Section 301.9100-1(c) of the Income Tax Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) 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), 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 301.9100-3(a) through (c)(1)(i) sets forth rules that the Internal Revenue 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(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith. Section 301.9100-3(c) 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 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).

CONCLUSION

Based on the information submitted and representations made, we conclude Taxpayers have shown good cause for granting a reasonable extension of time to file an election under section 856(l) for LLC 2 to be treated as a TRS of LLC 1. We conclude further that Taxpayers' joint TRS election made pursuant to section 856(l) on the Form 8875 filed on Date 1 is effective as of Date 2, which is the date Taxpayers always have intended that their joint TRS election be effective.

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. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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.

Sincerely,

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

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes

cc: