Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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PLR-129931-15

Date:
December 17, 2015`

Parent =

Sub 1 =

Sub 2 =

Manager =

Advisor 1 =

Advisor 2 =

Advisor 3 =

LP =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

State 1 =

State 2 =

p =

Dear :

This is in reply to a letter dated September 8, 2015, submitted by your authorized representative, requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Parent, Sub 1, and Sub 2 jointly to make elections under section 856(l) of the Internal Revenue Code (Code) to treat Sub 1 and Sub 2 as taxable real estate investment trust subsidiaries (TRSs) of Parent.

FACTS

Parent was organized on Date 1 as a corporation under the laws of State 1. On or before Date 2, Parent filed a Form 1120-REIT for the taxable year ended Date 7 on which it elected to be treated as a real estate investment trust (REIT) for federal tax purposes. Parent owns an approximate p % of the interests in LP, a limited partnership.

LP owns all of the interests in Trust. Trust intends to qualify as a real estate mortgage investment conduit (REMIC) under section 860D of the Code. Trust owns all of the interest in Sub 1, a limited liability company formed on Date 3 under the laws of State 2. Sub 1 has filed Form 8832, Entity Classification Election, electing to be treated as a corporation for federal income tax purposes.

LP also owns all of the interest in Sub 2, which was formed on Date 4. Sub 2 has filed Form 8832, Entity Classification Election, electing to be treated as a corporation for federal income tax purposes.

Parent, Sub 1, and Sub 2 have no employees. Their business affairs are externally managed by Manager. Manager engages Advisor 1 for advice on tax and

legal matters. Manager has also engaged Advisor 2 for entities within the LP organization structure, including those involved in the transaction described below. Manager has also engaged Advisor 3 to provide tax compliance and consulting services to Parent and Sub 1.

On Date 5, subsidiaries of an affiliate of LP acquired residential whole loans from unrelated parties. LP split the loans into two pools, a performing pool and a nonperforming pool. The nonperforming pool was acquired by Sub 1. It was intended that Sub 1 qualify as a TRS to avoid possible adverse tax consequences. The performing pool was put into Trust, a REMIC, and the REMIC residual interest was put into Sub 2. It was intended that Sub 2 would also elect to be a TRS.

Although Advisor 1 and Advisor 2 advised Manager on the planning of the acquisition of the whole loans, on the formation of Trust as a REMIC, and on the division of the interests in the loans among the parties, these parties failed to coordinate to ensure that a Form 8875, Taxable REIT Subsidiary Election, was timely prepared and filed for Sub 1 and Sub 2. When the failure to file the Forms 8875 was discovered, Manager engaged Advisor 3 on Date 6 to prepare requests for extensions of time to file the Forms 8875.

The following representations are made in connection with the request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service.

2. Granting the relief requested will not result in Parent, Sub 1, and Sub 2 having a lower tax liability in the aggregate for all years to which the elections apply than they would have had if the elections had been timely made (taking into account the time value of money).

3. Parent, Sub 1, and Sub 2 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, Parent, Sub 1, and Sub 2 did not choose to not file the election.

5. Parent, Sub 1, and Sub 2 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 the taxpayers.

In addition, affidavits on behalf of Parent, Sub 1, and Sub 2 have been provided 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 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 instruction 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. Moreover, a taxpayer will be deemed not to have acted 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 upon the facts and representations submitted, we conclude that Parent, Sub 1, and Sub 2 have shown good cause for granting a reasonable extension of time to elect under section 856(l) to treat Sub 1 and Sub 2 as TRSs of Parent. The extension of time to make the election is 90 days from the date of this letter.

This ruling is limited to the timeliness of the filing of Forms 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Parent otherwise qualifies as a REIT or whether Sub 1 and Sub 2 otherwise qualify as TRSs under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Parent, Sub 1, and Sub 2 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 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.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transactions described above.

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 a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions and Products)