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.
Telephone Number:

Refer Reply To:
CC:FIP:B03
PLR-113027-16

Date:
June 15, 2016

LEGEND:

Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Investment Fund = .

Law Firm 1 =

Law Firm 2 =

Law Firm 3 =

Accounting Firm =

State =

City =

Hotel =

Date 1 =

Year 1 =

Year 2 =

Month 1 =

Dear :

This ruling responds to a letter dated April 15, 2016 submitted on behalf of Parent and Subsidiary 1 (collectively, "Taxpayers"). Taxpayers request an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to jointly make an election under § 856(l) of the Internal Revenue Code to treat Subsidiary 1 as a "taxable REIT subsidiary" ("TRS") of Parent effective Date 1.

FACTS

Parent was formed on Date 1 as a corporation under the laws of State. Parent has not yet filed an initial federal income tax return. Parent intends to elect to be treated for federal income tax purposes as a real estate investment trust ("REIT") under § 856 by filing Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*.

Subsidiary 1 was formed on Date 1 as a limited liability company under the laws of State. Subsidiary 1 filed a Form 8832, *Entity Classification Election*, on which Subsidiary 1 elected to be classified as a corporation for federal income tax purposes effective Date 1. Subsidiary 1 is a wholly-owned subsidiary of Parent. Taxpayers intended to file a Form 8875, *Taxable REIT Subsidiary Election*, to treat Subsidiary 1 as a TRS of Parent effective Date 1. Taxpayers represent that they intended to make the TRS election to comply with the lodging exception for rents from real property under § 856(d)(8)(B). Taxpayers further represent that, had they timely filed Form 8875, Subsidiary 1 would otherwise qualify as a TRS of Parent under § 856(l).

Subsidiary 2 is a State limited liability company. Subsidiary 2 is wholly-owned by Subsidiary 1 and is treated as a disregarded entity for tax purposes.

Subsidiary 3 is a State limited liability company. Subsidiary 3 is wholly-owned by Parent and is treated as a disregarded entity for tax purposes.

Parent, Subsidiary 1, Subsidiary 2, and Subsidiary 3 were formed by, and are managed by, Investment Fund, a limited partnership organized under the laws of State. Investment Fund is an investment fund focused on real estate, including hotels. To facilitate the acquisition of the Hotel in City, Investment Fund engaged Law Firm 1 to draft the incorporation documents for Parent, Subsidiary 1, Subsidiary 2, and Subsidiary 3. Investment Fund engaged Law Firm 2 to represent Subsidiary 3 in the acquisition. Investment Fund also engaged Law Firm 2 to draft the lease of the Hotel by Subsidiary

3 to Subsidiary 2. To determine the amount of rent to be paid for the lease of the Hotel, Investment Fund engaged Accounting Firm to perform a transfer pricing study. None of Law Firm 1, Law Firm 2, or Accounting Firm (collectively, "Advisers") filed or recommended filing a TRS election for Subsidiary 1. Taxpayers represent that Advisers each focused narrowly on their respective portion of the acquisition, and, consequently, Taxpayers neglected to file Form 8875 to make Subsidiary 1 a TRS of Parent at Subsidiary 1's formation on Date 1.

In Month 1 of Year 2, Accounting Firm began to prepare Taxpayers' returns for the Year 1 tax year. Accounting Firm asked Taxpayers for a copy of Subsidiary 1's executed Form 8875. Investment Fund and Taxpayers searched their files for Form 8875, but could not locate it. Taxpayers determined that they had not filed Form 8875 with the Service, and thus had not elected to make Subsidiary 1 a TRS of Parent. Investment Fund contacted Law Firm 3 to discuss how to correct the failure to file Form 8875. Because the desired effective date of Date 1 for Taxpayers' TRS election precedes the discovery of the oversight by more than 2 months and 15 days, Form 8875 cannot be timely filed with an effective date of Date 1. Law Firm 3 advised Investment Fund to seek an extension of time to file Taxpayers' TRS election under §§ 301.9100-1 and 301.9100-3. Pursuant to Law Firm 3's advice, Taxpayers request an extension of time to file Form 8875.

Taxpayers represent that, notwithstanding the lack of a timely TRS election for Subsidiary 1, Parent's Articles of Incorporation, the legal name of Subsidiary 1, and the ownership structure demonstrate an intention to treat Parent and Subsidiary 1 as a REIT and TRS, respectively, since Date 1. No income tax returns for Parent or Subsidiary 1 have been filed. Investment Fund represents that it intends to cause Parent to file its Year 1 tax return as a REIT.

In support of their letter ruling request, Taxpayers submitted affidavits from Parent and Subsidiary 1 and Accounting Firm as § 301.9100-3(e) requires.

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 IRS.

2. Granting the relief will not result in Parent or Subsidiary 1 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).

3. Taxpayers are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of

the Code at the time Taxpayers 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 elections and related tax consequences, Taxpayers did not choose to not file the election.

5. Taxpayers have not used hindsight to seek an extension of time to make the TRS election. No specific facts have changed since the due date for making the election that makes this election advantageous to either Parent or Subsidiary 1.

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, § 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, § 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) 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 § 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 § 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 § 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) 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 § 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 Taxpayers have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Subsidiary 1 as a TRS of Parent, effective as of Date 1. Accordingly, Taxpayers have 90 days from the date of this letter to file their intended election.

This ruling is limited to the timeliness of the filing of Form 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 Subsidiary 1 otherwise qualifies as a TRS under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Parent and Subsidiary 1 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 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 and representations submitted by Taxpayers and accompanied by a penalty of perjury statements executed by 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 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 representative.

Sincerely,

_____

Jason G. Kurth
Assistant to the Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Financial Institutions and Products)

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

cc: