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:B01
PLR-134367-16

Date:
March 16, 2017

Legend:

Company A	=
Company B	=
Partnership 1	=
Partnership 2	=
Owner	=
Investment Advisor	=
Hotel Property	=
Law Firm 1	=
Law Firm 2	=
Accounting Firm	=
Individual 1	=
Individual 2	=
Individual 3	=
State A	=

Month =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This responds to a letter dated October 21, 2016, and subsequent correspondence, submitted on behalf of Company A and Company B. Company A and Company B request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to jointly make an election under section 856(l) of the Internal Revenue Code to treat Company B as a taxable REIT subsidiary ("TRS") of Company A effective as of Date 6.

FACTS

Company A is a State A corporation formed on Date 1 that has elected to be treated for federal income tax purposes as a real estate investment trust ("REIT") under section 856 for its initial taxable year that commenced on Date 1 and ended on Date 2 by filing Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, on Date 3.

Company B is a State A limited liability company that was formed on Date 4. Company A and Company B represent that Company B was formed to lease Hotel Property from Owner and has engaged a third party to manage and operate the hotel.

Company A owns Company B indirectly through other entities, which include Partnership 1 and Partnership 2, each a State A limited liability company that is treated as a partnership for federal income tax purposes.

Investment Advisor, an affiliate of Company A and Company B, manages Partnership 1 and its subsidiaries, as well as Company A's tax compliance needs and REIT qualification requirements. Investment Advisor does not have in-house tax expertise or a tax department and, therefore, Investment Advisor utilizes external tax advisors and service providers to manage tax compliance needs.

Investment Advisor and Partnership 1 retained Law Firm 1 to advise them in connection with Partnership 2 as well as other matters concerning Partnership 1. Company A retained Law Firm 2 to advise it in connection with Partnership 2 and related matters. Investment Advisor engaged Accounting Firm in Year 1. Accounting Firm was also engaged by Investment Advisor to prepare Company A's federal and state income tax returns beginning with its taxable year ended Date 2.

Company A and Company B represent that it was agreed among Company A, Investment Advisor, and their respective tax advisors that Company B would elect to be (a) classified as an association taxable as a corporation, and (b) a TRS of Company A when Hotel Property commenced operation; however, as described below, neither election was timely made.

On Date 5, Company B filed a Form 8832, *Entity Classification Election*, to elect to be classified as an association taxable as a corporation effective Date 6 for federal income tax purposes, pursuant to Rev. Proc. 2009-41, 2009-39 I.R.B. 439.

Company A and Company B represent that Individual 1, a member of Law Firm 1, agreed and communicated to Investment Advisor and Law Firm 2 that he would be responsible for the timely preparation and filing of the Form 8875, *Taxable REIT Subsidiary Election*. Company A and Company B further represent that Individual 1 failed to file the Form 8875 and failed to follow up with any of Company A, Company B, Investment Advisor or their representatives. Company A and Company B represent that Individual 2, a partner of Law Firm 2, did not follow up with Individual 1 or any representative of Company A, Company B, or Investment Advisor concerning the status of the Form 8875 filing. Company A and Company B represent that they relied on Investment Advisor, Individual 1, Individual 2, Individual 3, Vice President and Controller of the controlling member of Investment Advisor, and other tax professionals to ensure that the filing would be timely prepared and filed; however, none of these professionals caused the Form 8875 to be prepared and filed.

In Month, Year 2, it was discovered that no election to treat Company B as TRS of Company A was made. It was also discovered that no election had been made to treat Company B as an association taxable as a corporation. Immediately upon the discovery, advisors to Company A, Company B, and Investment Advisor recommended that relief for a late election be sought. At the same time, Law Firm 1 was engaged to prepare a request for reasonable cause relief to file a late Form 8832 on behalf of Company B with an effective date of Date 6 pursuant to Rev. Proc. 2009-41.

Company A and Company B make the following additional representations:

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

2. Granting the relief will not result in Company A and Company B 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. Company A and Company B 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 elections and related tax consequences, Company A and Company B did not choose to not file the election. Company A and Company B always intended for a timely taxable REIT subsidiary election to be filed on behalf of Subsidiary.

5. Company A and Company B 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 election that makes the election advantageous to Company A and Company B.

6. The period of limitations on assessment under section 6501(a) has not expired for Company A and Company B for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

In addition, affidavits on behalf of Company A and Company B have been provided as required by sections 301.9100-3(e)(2) and (3).

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 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 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. 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 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 on the information submitted and representations made, we conclude that Company A and Company B have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Company B as a TRS of Company A, effective as of Date 6. Accordingly, Company A and Company B 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.

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. In particular, no opinion is expressed with regard to whether Company A qualifies as a REIT, or whether Company B otherwise qualifies as a TRS under part II of subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Company A and Company B 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 Company A and Company B and accompanied by 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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Powers of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes

cc: