Internal Revenue Service

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Department of the Treasury
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Person To Contact:
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CC:FIP:B01
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Date:
September 06, 2017

Legend

Parent =

Sub 1 =

Sub 2 =

Partnership =

LLC 1 =

LLC 2 =

LLC 3 =

Company =

Investment Firm =

Accounting Firm =

Law Firm =

Individual 1 =

Individual 2 =

Individual 3 =

Individual 4 =

Individual 5 =

State A =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Month 1 =

Month 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

a =

Dear :

This responds to a letter dated May 11, 2017, and subsequent correspondence, submitted on behalf of Parent, Sub 1, and Sub 2 (collectively, “Taxpayers”). Taxpayers request extensions of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Parent and Sub 1 to jointly make an election under section 856(l) of the Internal Revenue Code to treat Sub 1 as a taxable REIT subsidiary ("TRS") of Parent, effective as of Date 6, and for Parent and Sub 2 to jointly make an election under section 856(l) to treat Sub 2 as a TRS of Parent, effective as of Date 4.

FACTS

Parent is a State A limited liability company formed on Date 3 that has elected to be treated for federal income tax purposes as a real estate investment trust ("REIT") as of the beginning of its first taxable year. Taxpayers represent that Parent was formed to hold multiple investments, including, but not limited to, hotel properties.

Sub 1 is a State A limited liability company formed on Date 2 that is classified as an association taxable as a domestic corporation for U.S. federal income tax purposes.

Sub 2 is a State A limited liability company formed on Date 1 that is classified as an association taxable as a domestic corporation for U.S. federal income tax purposes.

Parent owns Sub 1 and Sub 2 indirectly through other entities, which include Partnership and LLC 1, described below.

Partnership is a State A limited liability company that is classified as a partnership for U.S. federal income tax purposes. Partnership has the following members, each of which is a State A limited liability company that is classified as a partnership for U.S. federal income tax purposes: LLC 1, LLC 2, and LLC 3. Taxpayers represent that Partnership is a joint venture that was formed to develop a hotel chain.

Taxpayers represent that some of properties in the joint venture structure are owned and leased by entities sitting directly below Partnership. For each of these properties, Sub 2 is the sole member of a disregarded entity (lessee) that leases the property from a related property owner. All other properties in the joint venture are part of a sub-joint venture involving Sub 1 that owns and operates certain hotel properties.

Parent is affiliated with Investment Firm, a subsidiary of a global real estate investment firm. Taxpayers represent that Investment Firm was formed in Year 1 to manage real estate funds and provide investment advisory services. Taxpayers represent that it was intended that Form 8875, *Taxable REIT Subsidiary Election*, would be filed on behalf of Parent and Sub 1, and Parent and Sub 2, respectively, effective as of Date 6 and Date 4, respectively, and that, to be timely, the elections should have been filed by Date 7 and Date 5, respectively.

Taxpayers represent that Investment Firm began seeking out investments in hospitality and office properties for its real estate investment fund, and that its real estate investment fund intended to hold its investments in a REIT. Investment Firm employed Individual 1 as President and Chief Operating Officer to assist with investigating potential investments. Individual 1 engaged in negotiations with other investors, including LLC 2 and LLC 3. Taxpayers represent that Individual 1 knew that

LLC 2, the majority member of Partnership, also would be investing through a REIT. Taxpayers represent that, consequently, Individual 1 was ensured during the negotiations that the investment structure would satisfy the REIT qualification requirements. Investment Firm entered the investment structure on Date 4.

Investment Firm had limited internal tax expertise when it entered into the investment structure, and it engaged outside tax advisors at Accounting Firm in late Year 2 to assist with its U.S. tax compliance obligations and to consult on tax matters. Among these responsibilities was that Accounting Firm would review compliance with REIT qualification requirements. At that time, Investment Firm's internal accounting team included Individual 2, who was tasked with various tax matters including the preparation and filing of Forms 8875. Individual 2 left Investment Firm in early Year 3 and his role was not filled until Investment Firm hired Individual 3 in Month 1 Year 3. Specifically with respect to TRS elections for Sub 1 and Sub 2, Law Firm, which had been involved in planning the investment structure, advised Individuals 1 and 2 that TRS elections would need to be made. Individual 1 is also no longer affiliated with Investment Firm.

While Investment Firm had been advised that TRS elections would need to be made for Sub 1 and Sub 2, neither election was made. With respect to Sub 1, while Sub 1 was formed on Date 2, some of the properties in the sub-joint venture required significant renovations prior to commencing operations. Although Individual 2 had been advised that a TRS election would be necessary when the renovations were completed and the hotel properties began operations, the hotel properties did not commence operations until Date 6. That was a months after Individual 2 had left employment with Investment Firm. Due to the length of time intervening since Investment Firm's entry into the investment structure on Date 4, as well as Individual 2's departure a months prior to the hotel properties commencing operations, Investment Firm's internal personnel were not aware that the TRS election still needed to be made.

Moreover, with respect to Sub 2, LLC 3, the operator of Partnership, had assisted Company, the ultimate parent of LLC 2, and its subsidiary make their joint TRS election. Taxpayers represent that Investment Firm believed that LLC 3 would similarly assist with the joint TRS election of Parent and Sub 2. However, this did not occur and neither Individual 1 nor Individual 2 followed up with LLC 3 personnel to ask about the election.

Consequently, no Form 8875 was filed by Parent and Sub 1or by Parent and Sub 2.

In Month 2 Year 4, Investment Firm learned that the owner of LLC 3 was unable to confirm that a TRS election had been made on behalf of Sub 1 and Company. Investment Firm then contacted the owner of LLC 3 to determine if it had any record of TRS elections being made on behalf of Sub 1 and Sub 2 with Parent as the parent REIT. At the same time, Investment Firm reviewed its own records in an attempt to

locate any copies of the elections or correspondence from the Service confirming acceptance. Neither review revealed that the required TRS elections had been made. After consulting with Individual 4, a partner with Accounting Firm, Individual 5, Vice President of Parent and Chief Operating Officer at Investment Firm, determined to submit a request for relief to make the TRS elections out of time, pursuant to sections 301.9100-1 and-3 of the Procedure and Administration Regulations.

Taxpayers represent that Parent's Form 1120-REIT for its Year 2 and Year 3 taxable years were timely filed, pursuant to extension, and that the returns were filed consistent with TRS elections being in effect for Sub 1 and Sub 2. Taxpayers represent further that Form 1120, *U.S. Corporation Income Tax Return*, was timely filed for the Year 2 taxable year for Sub 2 and for the Year 3 taxable year for both Sub 1 and Sub 2, also consistent with TRS elections being in effect. Taxpayers represent that Sub 1 was not required to file Form 1120 for its initial taxable year, the Year 2 taxable year.

Taxpayers 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 Taxpayers 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 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, Taxpayers did not choose to not file the elections. Taxpayers always intended for timely taxable REIT subsidiary elections to be filed on behalf of Parent and Sub 1 and Parent and Sub 2.

5. Taxpayers 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 Taxpayers.

6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayers 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 Taxpayers 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 Taxpayers have satisfied the requirements for granting Taxpayers a reasonable extension of time for Parent and Sub 1 to elect under section 856(l) to treat Sub 1 as a TRS of Parent, effective as of Date 6, and for Parent and Sub 2 to elect under section 856(l) to treat Sub 2 as a TRS of Parent, effective as of Date 4. Accordingly, Taxpayers have 90 days from the date of this letter to file their intended elections.

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, a copy of this letter is being sent to your authorized representative.

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)

Enclosure:
Copy of this letter for § 6103 purposes