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:

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CC:FIP:B01
PLR-124269-17

Date:
September 28, 2017

Legend

Parent =

Subsidiary =

OldParent1 =

OldParent2 =

OldParent3 =

OldParent4 =

OldSub1 =

OldSub2 =

OldSub3 =

OldSub4 =

Fund =

Company =

Firm 1 =

Firm 2 =

State A =

State B =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This responds to a letter dated August 7, 2017, and subsequent correspondence, submitted on behalf of Parent, in its capacity as successor to OldParent1 and OldParent2, and Subsidiary, in its capacity as successor to OldSub1 and OldSub2 ("Taxpayers"). Taxpayers request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations so that (i) Parent, in its capacity as successor to OldParent1, and Subsidiary, in its capacity as successor to OldSub1, can elect under section 856(l) of the Internal Revenue Code (the "Code") to treat OldSub1 as a taxable REIT subsidiary ("TRS") of OldParent1 as of Date 1, and (ii) Parent, in its capacity as successor to OldParent2, and Subsidiary, in its capacity as successor to OldSub2, can elect under section 856(l) to treat OldSub2 as a TRS of OldParent2 as of Date 3.

FACTS

Parent is a State A corporation that has elected to be treated as a real estate investment trust ("REIT") for U.S. federal income tax purposes. Subsidiary is a State B limited liability company. Parent directly or indirectly owns stock in Subsidiary.

Formation and Succession

As described below, Parent is the successor to OldParent1 and OldParent2, and Subsidiary is the successor to OldSub1 and OldSub2.

Fund formed each of OldParent1, OldParent2, OldParent3, and OldParent4 (the "Original Parents") on Date 1 as a State B limited liability company to acquire properties. Each of OldParent1, OldParent3, and OldParent4 elected to be treated as a REIT for U.S. federal income tax purposes beginning on Date 1. OldParent2 elected to be treated as a REIT for U.S. federal income tax purposes beginning on Date 3. Each of the Original Parents formed a State B limited liability company as its subsidiary: OldSub1, OldSub2, OldSub3, and OldSub4 (the "Original Subs"). Each of OldSub1, OldSub3, and OldSub4 filed a Form 8832, *Entity Classification Election*, to elect to be classified as an association taxable as a corporation for U.S. federal income tax purposes effective on Date 1. OldSub2 elected to be classified as an association taxable as a corporation for U.S. federal income tax purposes effective on Date 3.

On Date 5, through a series of transactions, Fund caused each of the Original Parents to merge into Parent, with Parent surviving the merger. Additionally, Parent caused OldSub1, OldSub2, and OldSub3 to merge with and into OldSub4. Taxpayers represent that, in each case, the merger transactions described in this paragraph were "reorganizations" within the meaning of section 368(a), resulting in (1) Parent's succession to the tax attributes of the Original Parents and (2) OldSub4's succession to the tax attributes of OldSub1, OldSub2, and OldSub3, under section 381.

On Date 6, as a result of a requirement imposed by a lender, OldSub4 transferred all of its assets to Subsidiary in an exchange that Taxpayers represent was a reorganization within the meaning of section 368(a), resulting in Subsidiary's succession to the tax attributes of OldSub4 under section 381.

TRS Elections

Taxpayers represent that (1) OldParent1 and OldSub1 always intended to jointly elect under section 856(l) to treat OldSub1 as a TRS of OldParent1 as of Date 1, and (2) OldParent2 and OldSub2 always intended to jointly elect under section 856(l) to treat OldSub2 as a TRS of OldParent2 as of Date 3. To make TRS elections effective on the

intended dates, Forms 8875, *Taxable REIT Subsidiary Election*, should have been properly completed and filed with the Service by Date 2 for OldParent1 and OldSub1 and by Date 4 for OldParent2 and OldSub2.

Taxpayers represent that both Forms 8875 were filed by the foregoing dates. Each Form 8875 was signed by an individual who was the Chief Financial Officer of both the electing REIT and the intended TRS ("CFO"). In connection with the pending acquisition of Parent by Company, it was discovered that the file copies of the Forms 8875 were missing a signature on the line provided in the form for signature of an officer of the electing REIT.

At the time the Original Parents and Original Subs were formed, neither they nor Fund had an internal tax department. Fund and its subsidiaries relied on outside tax advisors including Firm 1 and Firm 2 for assistance with tax planning and compliance in connection with the Year 1 acquisitions and how they were structured.

CFO relied upon Firm 1 and Firm 2 for advice on tax matters related to the Original Parents and the Original Subs. Parent's Director of Tax was not personally involved in the filing of the Forms 8875.

Firm 1 and Firm 2 recommended that each of the Original Parents form a TRS to provide tenant services. Firm 1 also assisted with tax compliance, including the filing of the Forms 8875. Firm 2 personnel were not involved with the process of filing the Forms 8875.

CFO, who is no longer employed by Taxpayers or Fund, does not remember whether she signed either Form 8875 as an officer of the electing REIT. CFO believes that she may have signed both forms properly, but that a file copy was not made of the fully executed forms.

Taxpayers request relief under sections 301.9100-1 and 301.9100-3 because of their uncertainty about the effectiveness of the elections described above.

Taxpayers represent that the statute of limitations has closed for Taxpayers' Year 1 and Year 2 taxable years.

Taxpayers make the following additional representations:

(1) The request for relief was filed by Taxpayers before the failure to make the regulatory elections properly 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 elections

apply than Taxpayers would have had if the regulatory elections had been properly 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 at the time they requested relief and the new position requires or permits the regulatory elections for which relief is requested.

(4) Being fully informed of the required regulatory election and related tax consequences, Taxpayers did not choose not to file the regulatory elections.

(5) No specific facts have changed since the due date for making the regulatory elections that make the regulatory elections advantageous to Taxpayers.

In addition, affidavits on behalf of Taxpayers have been provided as required by section 301.9100-3(e)(2).

LAW AND ANALYSIS

Section 856(l) 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 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.

Under all the facts and circumstances of this case as represented by Taxpayers, we have determined that the interests of the Government are not prejudiced under the standards set forth in section 301.9100-3(c)(1)(i).

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayers have satisfied the requirements for granting a reasonable extension of time so that (i) Parent, in its capacity as successor to OldParent1, and Subsidiary, in its capacity as successor to OldSub1, can elect under section 856(l) to treat OldSub1 as a TRS of OldParent1 as of Date 1, and (ii) Parent, in its capacity as successor to OldParent2, and Subsidiary, in its capacity as successor to OldSub2, can elect under section 856(l) to treat OldSub2 as a TRS of OldParent2 as of Date 3. Accordingly, Parent and Subsidiary have 90 days from the date of this letter to file the intended elections.

This ruling is limited to the timeliness of the filing of Form 8875. This ruling's application is limited to the facts, representations, and Code and regulation sections 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 on (a) the qualification of Parent, OldParent1, or OldParent2 as a REIT, (b) the classification of Subsidiary, OldSub1, or OldSub2 as an association taxable as a corporation for U.S. federal income tax purposes, or (c) the qualification of Subsidiary, OldSub1, or OldSub2 as a TRS.

No opinion is expressed with regard to whether the tax liability of Parent, OldParent1, OldParent2, Subsidiary, OldSub1, and OldSub2 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.

The rulings contained in this letter are based upon information and representations submitted by Taxpayers and accompanied by a penalty of perjury statement 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 Taxpayers. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of the powers of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

_____

Steven Harrison
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:
Copy of this letter for section 6110 purposes

cc: