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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Date:
December 14, 2017

LEGEND:

Company A =

Company B =

Company C =

Company D =

Company E =

Company F =

Company G =

Entity 1 =

Entity 2 =

Firm 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

State =

a =

b =

Dear :

This letter responds to a letter dated July 21, 2017, and subsequent correspondence, submitted on behalf of Company A, Company B, Company C, Company D, Company E, Company F, and Company G (collectively, "Taxpayers"). Taxpayers request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (the "Regulations") to jointly make elections under section 856(l) of the Internal Revenue Code ("Code") to treat Company B, Company C, Company D, Company E, Company F, and Company G as taxable REIT subsidiaries ("TRSs") of Company A effective as of Date 3.

FACTS

Taxpayers represent that, historically, Entity 1, a real estate investment trust within the meaning of sections 856 through 859 ("REIT"), owned a health care portfolio that included qualified health care properties, as defined in section 856(e)(6)(D) of the Code and Company B, Company C, Company D, Company E, Company F, and Company G ("Health Care Portfolio"). Taxpayers represent that before the Acquisition Transaction (defined below), each of Company B, Company C, Company D, Company E, Company F, and Company G had elected (1) on Form 8832, *Entity Classification Election,* to be taxed as an association taxable as a corporation and (2) together with Entity 1, on Form 8875, *Taxable REIT Subsidiary Election,* to be treated as a TRS of Entity 1. Taxpayers represent that qualified health care properties in the Healthcare Portfolio were leased to Company B, Company C, Company D, Company E, Company F, and Company G, or disregarded entities of these companies, and that these companies engaged eligible independent contractors, within the meaning of section 856(d)(9) to operate and manage the qualified healthcare properties.

Taxpayers represent that on Date 1, Entity 1 formed Company A, a State limited liability company. On Date 2, Entity 1 merged with and into Entity 2. Entity 1 continues to exist as a subsidiary of Entity 2 and Entity 2 is the common parent of both Company A and Entity 1. On Date 3, Company A acquired from Entity 1 an interest of approximately a% of the Health Care Portfolio, which includes Company B, Company C, Company D, Company E, Company F, and Company G ("Acquisition Transaction"). Entity 1, through an operating partnership, owns the remaining b% of the Health Care Portfolio. Company A intends to elect to be treated as a REIT for federal income tax purposes commencing in Year 1. Taxpayers are calendar year taxpayers on the accrual method of accounting.

As a result of the Acquisition Transaction on Date 3, Taxpayers were required to make elections pursuant to section 856(l) on Forms 8875 to treat each of Company B, Company C, Company D, Company E, Company F, and Company G as a TRS of Company A. The tax director of each of Taxpayers ("Tax Director") was responsible for ensuring that these elections were timely made by timely filing the Forms 8875. However, due to an extended illness suffered by the Tax Director, the elections were not filed within the two-month, fifteen-day period after Date 3.

On Date 4, the Tax Director realized that the elections had not been filed and filed them that day, with an effective date of Date 5, the then earliest effective date possible. Subsequent to filing these forms, the Tax Director realized that filing the elections with an effective date of Date 5 would result in Company A recognizing over two months of income that did not qualify for purposes of sections 856(c)(2) and (3) and would therefore prevent Company A from qualifying as a REIT for Year 1. After consultation with Firm 1, the decision was made to request an extension of time under sections 301.9100-1 and 301.9100-3 of the Regulations to elect pursuant to section 856(l) to treat each of Company B, Company C, Company D, Company E, Company F, and Company G as a TRS of Company A effective as of Date 3.

Taxpayers make the following additional representations in connection with their 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 ("Service").

2. Granting the relief requested will not result in any of 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 election and related tax consequences, Taxpayers did not choose to not file the election.

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 make 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 section 301.9100-3(e) of the 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 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 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, a revenue procedure, a notice, or an 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 upon the facts and representations submitted, we conclude that Taxpayers have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Company B, Company C, Company D, Company E, Company F, and Company G as TRSs of Company A, effective as of Date 3. Accordingly, Taxpayers have 90 days from the date of this letter to file their intended elections.

This ruling is limited to Taxpayers' 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 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 as to whether Company A qualifies as a REIT, whether any of Company B, Company C, Company D, Company E, Company F, or Company G 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 Taxpayers 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

_____

Julanne Allen
Assistant Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions and Products)

Enclosure:
Copy for section 6110 purposes

cc: