Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

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Date:
August 01, 2018

LEGEND

Company =

Sub 1 =

Sub 2 =

Partnership =

Member =

Firm 1 =

Firm 2 =

Firm 3 =

State 1 =

State 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

a =

b =

Dear :

This ruling responds to a letter dated June 12, 2018, submitted on behalf of Company, Sub 1, and Sub 2 (collectively, "Taxpayers"). Taxpayers request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("Regulations") to jointly make an election under section 856(l) of the Internal Revenue Code ("Code") to treat Sub 1 and Sub 2 each as a taxable real estate investment trust subsidiary ("TRS") of Company effective Date 1.

FACTS

Company is a trust formed under the laws of State 1 on Date 2. Company intends to timely file its initial federal income tax return for the taxable year ended Date 3 on a Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, on which Company will elect to be treated as a real estate investment trust ("REIT") under section 856 of the Code. Company timely filed a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*. Company will file its initial federal income tax return by the extended due date of Date 4. Company uses an accrual method as its overall method of accounting. Company's taxable year is the calendar year.

Company was formed for the purpose of facilitating the investment by a private equity investment fund into Partnership, a joint venture entity created to pursue a focused real estate investment strategy. Partnership is classified as a partnership for

federal income tax purposes. Partnership wholly owns Sub 1 and Sub 2. Member has a a percent ownership interest in Partnership. Member is an entity classified as a partnership for federal income tax purposes. Company has a b percent ownership interest in Member.

Sub 1 is a limited liability company formed under the laws of State 2 on Date 5. Sub 2 is also a limited liability company formed under the laws of State 2 on Date 6. Partnership intended to treat Sub 1 and Sub 2 each as a TRS of Company. This intention was documented in a *Second Amended and Restated Limited Liability Company Agreement* ("Agreement") executed on Date 1 by Partnership and Company, along with other entities. Section 8.8(f) of the Agreement provides that Partnership was to take all actions necessary or advisable to cause Sub 1 and Sub 2 each to be treated as a TRS of Company.

Partnership relied on Firm 1 for counsel and guidance with respect to Partnership's investment structuring and tax obligations under the Agreement. Firm 1 prepared and provided the instructions to file a Form 8832, *Entity Classification Election*, to Partnership for Sub 1 and Sub 2 to each elect to be classified as an association taxable as a corporation for federal income tax purposes, effective Date 7. A Form 8832 was timely filed for each of Sub 1 and Sub 2. However, Firm 1 failed to prepare and provide the instructions to file a Form 8875, *Taxable REIT Subsidiary Election*, to Partnership for Company and each of Sub 1 and Sub 2 to jointly elect to be treated as a TRS of Company. The deadline to file each Form 8875 for Taxpayers with an effective date of Date 1 was Date 8.

On or about Date 2, Partnership and Company engaged Firm 2 to perform a REIT compliance review. During a Date 9 assessment of Company's REIT compliance, Firm 2 discovered that Company and each of Sub 1 and Sub 2 had not filed a Form 8875. At this time, Taxpayers were made aware that the Forms 8875 were never filed. An officer of Company then retained Firm 3 to seek advice as to how to rectify the missed elections. In Date 10, Taxpayers submitted a Form 8875 for each of Sub 1 and Sub 2 with a requested effective date of Date 1, which is more than 2 months and 15 days prior to the date of filing each election. Firm 3 then assisted Taxpayers with this request for an extension of time under sections 301.9100-1 and 301.9100-3 to elect under section 856(l) to treat Sub 1 and Sub 2 each as a TRS of Company effective Date 1.

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 Company, Sub 1, or Sub 2 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 Company, Sub 1, or Sub 2.

6. The period of limitations on assessment under section 6501(a) has not expired for Company, Sub 1, or Sub 2 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 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 the representations made, we conclude that Taxpayers have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Sub 1 and Sub 2 each as a TRS of Company, effective Date 1. Accordingly, the Forms 8875 filed by Taxpayers in Date 10 will be considered timely filed, and the effective date of the TRS elections is Date 1.

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 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 qualifies as a REIT, or whether either Sub 1 or Sub 2 otherwise qualifies as a TRS of Company 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 U.S. 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 U.S. federal income tax effect.

The ruling contained in this letter is based upon information and representations submitted by Taxpayers and accompanied by penalty of perjury statements executed by the 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 Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

_____

K. Scott Brown
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)