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:B03
PLR-130367-18

Date:
April 01, 2019

LEGEND:

Parent =

Subsidiary =

Company =

Accounting Firm =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Dear :

This ruling responds to a letter dated October 10, 2018, submitted on behalf of Parent and Subsidiary. Parent and Subsidiary 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 Subsidiary as a taxable REIT subsidiary (TRS) of Parent, effective Date 1.

FACTS

Parent made an election to be treated as a real estate investment trust (REIT) under section 856 of the Code on its U.S. federal income tax return for the taxable year that ended Date 2. Subsidiary was formed under the laws of State on Date 3. Subsidiary is wholly owned by Company, which is a disregarded entity wholly owned by Parent. Subsidiary provides various support services to Parent's facilities. Subsidiary was acquired, along with several other entities, by Parent during Date 4. In conjunction with the acquisition and a reorganization that followed, Parent and Subsidiary intended to file a Form 8832, Entity Classification Election, for Subsidiary to elect to be classified as an association taxable as a corporation, and at approximately the same time file a Form 8875, Taxable REIT Subsidiary Election, for Parent and Subsidiary to jointly elect to treat Subsidiary as a TRS of Parent. Both elections were intended to be effective Date 1.

Consistent with the intent to treat Subsidiary a TRS of Parent, Form 8832 and Form 8875 were prepared by a senior manager employed in Parent's corporate tax department (Senior Manager). Following signature approval by the appropriate corporate officers of Parent and Subsidiary, the Form 8832 and the Form 8875 were filed with the Internal Revenue Service (Service). The Form 8832 was mailed on Date 5 to the Service to make an election for Subsidiary to be classified as an association taxable as a corporation. The Form 8832 was prepared based on the information provided to Parent by the sellers in conjunction with the acquisition transaction. The information that was provided as part of the transaction included an Employer Identification Number (EIN) for Subsidiary that the sellers represented as being assigned to Subsidiary. That EIN was entered on the Form 8832 as the EIN of Subsidiary.

The Form 8875 was also prepared using the same EIN that the seller represented to Parent as being the EIN assigned to Subsidiary. The Form 8875 was mailed to the Service on Date 6. The certified mail receipt shows that the Form 8875 was received by the Service on Date 7. Parent and Subsidiary represent that at the

time each of the forms was filed, each election would have been timely made to be effective Date 1.

Subsequent to mailing both of the forms, Parent received correspondence during Date 8 from the Service relating to the Form 8832. The correspondence, dated Date 9, indicated that the EIN listed for Subsidiary on the Form 8832 was not a valid EIN, and consequently the Form 8832 was being returned unprocessed. Because the Form 8875 had already been filed using the same invalid EIN for Subsidiary, the Senior Manager determined that the Form 8875 would also not be processed by the Service. At that time, however, no correspondence from the Service relating to the Form 8875 had been received by either Parent or Subsidiary. By the time this determination was made, the time period during which a TRS election effective Date 1 could be timely made had passed.

Upon learning that the EIN used for Subsidiary on the Form 8832 and the Form 8875 was invalid, the Senior Manager contacted a partner of Accounting Firm, Parent's tax advisors. After consultation, the Senior Manager decided to have Accounting Firm submit a request for a private letter ruling that would grant Parent and Subsidiary a reasonable extension of time to elect under section 856(l) to treat Subsidiary as a TRS of Parent, effective Date 1.

Parent and Subsidiary make the following additional representations in connection with this 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 Service.

2. Granting the relief requested will not result in Parent or Subsidiary 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. Parent and Subsidiary 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, Parent and Subsidiary did not choose to not file the election.

5. Parent and Subsidiary 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 Parent or Subsidiary.

6. The period of limitations on assessment under section 6501(a) has not expired for Parent or Subsidiary 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 Parent and Subsidiary 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 on the information submitted and the representations made, we conclude that Parent and Subsidiary have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Subsidiary as a TRS of Parent effective Date 1. Accordingly, Parent and Subsidiary have 90 calendar days from the date of this letter to make the intended election to treat Subsidiary as a TRS of Parent effective Date 1.

This ruling is limited to the timeliness of the filing the 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. No opinion is expressed as to whether Parent qualifies as a REIT, or whether Subsidiary otherwise qualifies as a TRS of Parent, under part II of subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Parent or Subsidiary 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 federal income tax effect.

This ruling is directed only to the taxpayers who requested 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 representatives.

Sincerely,

_____

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

Enclosures:
Copy of this letter
Copy for section 6110 purposes