Internal Revenue Service

Number: **202001011**
Release Date: 1/3/2020

Index Number: 9100.00-00, 856.00-00

Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B01
PLR-110485-19

Date:
October 04, 2019

Legend:

Taxpayer =

Subsidiary =

Parent =

Company 1 =

Company 2 =

Company 3 =

Company 4 =

Company 5 =

Company 6 =

Company 7 =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Firm 1 =

Firm 2 =

Property =

a =

b =

Dear :

This ruling responds to a letter dated April 26, 2019, submitted on behalf of Taxpayer and Subsidiary. Taxpayer and Subsidiary request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under section 856(l) of the Internal Revenue Code ("Code") to treat Subsidiary as a taxable REIT subsidiary ("TRS") of Taxpayer.

FACTS

Taxpayer was formed under the laws of State A. Taxpayer elected to be taxed as a real estate investment trust ("REIT"). Taxpayer is in the business of owning and [leasing] real property. Company 1 is the sole member and manager of Company 2. Company 2 is the general partner of Company 3 and Company 4, which are the two common shareholders of Taxpayer. Company 2 is also the manager of Taxpayer.

Subsidiary was formed on Date 1 under the laws of State A. Since formation, Subsidiary has been wholly owned and managed by Parent, a State A limited liability company that is treated as a partnership for federal income tax purposes. Parent also owns all of the membership interests in Company 5, a State A limited liability company that is disregarded for federal income tax purposes.

Taxpayer, through Company 6, a wholly owned and disregarded entity, became a partner in Parent pursuant to a limited liability company agreement (the "Parent LLC Agreement") effective as of Date 2. Under the Parent LLC Agreement, Company 7 owns the remaining b percent of Parent.

On Date 3, Parent acquired the fee interest to Property through Company 5. On Date 2, Company 5, as landlord, entered into a master lease with Subsidiary, as tenant, pursuant to which Company 5 leased Property to Subsidiary for a term of three years with options to extend (the "Lease"). Subsidiary separately entered into a management

agreement with a third-party operator to manage Property in exchange for a fee (the "Management Agreement").

Taxpayer and Parent engaged an outside law firm, Firm 1, and an outside accounting firm, Firm 2, to structure and provide advice with respect to the transactions governed by the Parent LLC Agreement, Lease, and Management Agreement. Given the ownership structure and operation of Property and upon advice given by Firm 1 and Firm 2, all relevant parties, including Taxpayer, Subsidiary, and Parent, intended to elect to treat Subsidiary as a corporation and a TRS of Taxpayer from the date of its formation. Subsidiary's operating agreement requires that, at all times, Subsidiary have in effect elections to be classified as an association taxable as a corporation and to be TRS of Taxpayer. Similarly, Subsidiary is referred to as "TRS" in the Parent LLC Agreement.

Taxpayer believed that either Firm 1 or Firm 2 was responsible for filing the federal income tax forms required to elect to treat Subsidiary as a TRS, including the preparation and filing of Form 8832, *Entity Classification Election* and Form 8875, *Taxable REIT Subsidiary Election*. Firm 1 believed Firm 2 was responsible for filing the Form 8832 and Form 8875. Firm 2 was unaware that it was expected to file these forms and failed to file them. As a result, neither Firm 1 nor Firm 2 filed the Form 8832 or Form 8875.

On Date 4, the tax director for Company 1 could not locate either the filed Form 8832 or Form 8875 while reviewing Taxpayer's annual compliance. Taxpayer contacted Firm 1, at which point it learned of the miscommunication about who was expected to file the TRS election and that the required forms were not filed. Taxpayer requested advice from Firm 1 as to how to proceed. Firm 1 advised Taxpayer that, because the desired effective date of the TRS election was more than 2 months and 15 days prior to the discovery of the oversight, the Form 8875 could not be timely filed and advised Taxpayer to submit a request for relief under sections 301.9100-1 and 301.9100-3 for an extension of time to file the election under section 856(l) to treat Subsidiary as a TRS of Taxpayer effective as of Date 1. Separately, Subsidiary has prepared and filed Form 8832, pursuant to the late classification relief provided for in Rev. Proc. 2009-41, 2009-39 I.R.B. 439, for Subsidiary to be classified as an association taxable as a corporation, effective as of Date 1.

Taxpayer and Subsidiary make the following additional representations:

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 Taxpayer 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. Taxpayer 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 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, Taxpayer and Subsidiary did not choose to not file the election.

5. Taxpayer and Subsidiary are not using hindsight in requesting relief. No specific facts have changed since the due date for making the election that make the election more advantageous to Taxpayer or Subsidiary.

6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer and 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 Taxpayer and Subsidiary 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 such corporation, and the REIT and such corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the corporation consent to its revocation. In addition, section 856(l) specifically provides that the election, and any revocation thereof, may be made without consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Service announced the availability of 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 of the election 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) 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 the representations made we conclude that Taxpayer 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 Taxpayer, effective as of Date 1. Accordingly, Taxpayer has 90 calendar days from the date of this letter to make the intended election to treat Subsidiary as a TRS of Taxpayer, effective as of Date 1.

This ruling is limited to the timeliness of filing Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations 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 Taxpayer otherwise qualifies as a REIT, or whether Subsidiary otherwise qualifies as a TRS, under part II of subchapter M of chapter 1 of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer and 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 U.S. federal income tax effect.

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 Power of Attorney on file with this office, copies of the letter are being sent to your authorized representatives.

Sincerely,

_____

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

cc: