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:B3
PLR-111726-20

Date:
November 09, 2020

Legend

Partner 1:

Partner 2:

JV:

Taxpayer:

Hotel:

DE1:

DE2:

Landlord:

Tenant:

Seller:

Law Firm:

Accounting Firm:

State A:

State B:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Dear :

This ruling responds to a letter dated May 14, 2020, submitted on behalf of Taxpayer and Tenant. Taxpayer and Tenant request an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a joint election under § 856(l) of the Internal Revenue Code ("Code") to treat Tenant as a taxable REIT subsidiary ("TRS") of Taxpayer.

JV is a State A limited liability company and is a joint venture between funds managed by Partner 1 and Partner 2. Partner 1 and Partner 2 retained Law Firm to handle various aspects of the acquisition of Hotel, an operating hotel located in State B. Law Firm was engaged to assist with the acquisition of Hotel to (a) provide corporate and general tax advice; (b) form Taxpayer, DE1, DE2, Landlord, and Tenant; (c) negotiate the Purchase and Sale Agreement for Hotel; and (d) draft the Hotel lease.

Partner 1 retained Accounting Firm to (a) assess and advise upon the Hotel's ability to meet certain REIT income and asset tests; (b) advise whether the Hotel lease constituted a true lease for federal income tax purposes; and (c) provide state and local tax advice on the acquisition of Hotel.

JV owns all the outstanding membership interests in Taxpayer, a State A limited liability company. Taxpayer was formed on Date 1 and elected to be taxed as a REIT under § 856 commencing with its taxable year ending Date 2.

Taxpayer owns all the outstanding membership interests in DE1, a State A limited liability company. DE1 was also formed on Date 1 and its separate existence is disregarded for federal income tax purposes.

DE1 owns all the outstanding membership interests in Landlord, a State A limited liability company. Landlord was formed on Date 3 and its separate existence is disregarded for federal income tax purposes.

DE1 also owns all the outstanding membership interest in DE2, a State A limited liability company. DE2 was formed on Date 4 and its separate existence is disregarded for federal income tax purposes.

DE2 owns all the outstanding membership interests in Tenant, a State A limited liability company. Tenant was formed on Date 5 and filed an election on Form 8832, *Entity Classification Election,* to be treated as an association taxable as a corporation effective as of Date 5. Taxpayer and Tenant represent that they intended to file a joint election on Form 8875, *Taxable REIT Subsidiary Election*, for Tenant to be treated as a TRS of Taxpayer effective no later than Date 6.

On Date 6 Seller, an unrelated third party, sold Hotel to Landlord pursuant to the Purchase and Sale Agreement. Immediately thereafter, Landlord leased Hotel to Tenant pursuant to the Hotel lease. The Hotel lease requires that Tenant, "either will have in effect at *all* times during this Lease an election (jointly with Taxpayer) to be, and Tenant will operate as, a taxable REIT subsidiary of Taxpayer within the meaning of Section 856(l) of the Code."

As a result of miscommunication among the parties, Law Firm, Accounting Firm and Partner 1's internal tax compliance group inadvertently failed to timely file the Form 8875. Partner 1 understood that Law Firm would prepare the TRS election, but Law Firm believed that Accounting Firm would make the TRS election. However, Accounting Firm's engagement was limited, as described above, to specific matters that did not cover filing the Form 8875.

On Date 7, Partner 1's internal tax compliance group discovered that it did not have a copy of the Form 8875 for Tenant. Partner 1 contacted Law Firm to obtain a copy of the Form 8875 and was informed that no such election was filed by Law Firm. The failure to file the Form 8875 was due to miscommunications among Partner 1, Law Firm, and Accounting Firm and was discovered on or about Date 7. Firm advised Taxpayer and Tenant to submit a request for relief with the Internal Revenue Service under §§ 301.9100-1 and 301.9100-3 seeking a private letter ruling granting an extension of time to elect under § 856(l) to treat Tenant as a TRS of Taxpayer with an effective date no later than Date 6.

Taxpayer and Tenant 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 Service.

2. Granting the relief requested will not result in Taxpayer or Tenant having a lower U.S. federal income 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 Tenant do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 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 Tenant did not choose to not file the election.

5. Taxpayer and Tenant 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 Taxpayer or Tenant.

6. The period of limitations on assessment under § 6501(a) has not expired for Taxpayer or Tenant 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 Tenant have been provided as required by § 301.9100-3(e).

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, § 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, § 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 Form 8875. The announcement provides that this form is to be used for taxable years beginning after 2000 for eligible entities to elect to be treated 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) 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 a regulation or 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 § 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 § 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 § 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 § 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 Tenant have satisfied the requirements for granting a reasonable extension of time to jointly elect under § 856(l) to treat Tenant as a TRS of Taxpayer, effective Date 6. Accordingly, Taxpayer and Tenant have 90 calendar days from the date of this letter to make the intended joint election to treat Tenant as a TRS of Taxpayer effective as of Date 6.

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 Taxpayer otherwise qualifies as a REIT, or whether Tenant otherwise qualifies as a TRS of Taxpayer under part II of subchapter M of the Code. No opinion is expressed on the Hotel lease transaction.

No opinion is expressed with regard to whether the tax liability of Taxpayer or Tenant 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 Taxpayer and Tenant 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 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,

_____

Patrick E. White
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:

Copy of this letter for section 6110 purposes

cc: