Internal Revenue Service

Number: **202334011**
Release Date: 8/25/2023

Index Number: 856.00-00, 9100.00-00

Fax:

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-123138-22

Date:
May 25, 2023

LEGEND:

Taxpayer	=
Subsidiary	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Parent	=
Country	=
State 1	=

State 2 =

Law Firm =

Year =

Dear :

This letter responds to a letter dated October 19, 2022, and subsequent correspondence, 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 to treat Subsidiary as a taxable REIT subsidiary (TRS) of Taxpayer under section 856(l) of the Internal Revenue Code (the Code) effective Date 1.

FACTS

Parent, an entity with its principal offices in and formed under the laws of Country, is engaged in the business of acquiring and managing investments in real estate. This includes providing certain administrative and management services to Taxpayer and Subsidiary.

Taxpayer is a State 1 corporation formed by Parent on Date 2, a date before Date 1, for the purpose of investing in timberland. Taxpayer intends to be taxed as a REIT. Parent controls Taxpayer. Since Taxpayer's formation, Taxpayer has conducted only those operations that would result in substantially all of its income being rents from real property or other categories of income described in section 856(c)(2) and (3).

Subsidiary is a State 2 limited liability company formed by Taxpayer on Date 1 for the purpose of conducting timberland maintenance and related activities that Taxpayer represents may result in impermissible tenant service income (ITSI) within the meaning of section 856(d)(7)(A) if performed directly by Taxpayer. Taxpayer at all times intended to form Subsidiary as a TRS. Taxpayer is the sole shareholder of Subsidiary.

Parent has historically retained Law Firm, a law firm based in the United States, to advise Parent on United States legal matters as Parent may request from time to time, which has included providing United States federal income tax advice on matters related to REITs. In response to the Presidentially declared COVID-19 pandemic (the COVID-19 Pandemic) and on account of the physical distance between the headquarters and principal offices of Parent and Law Firm, Parent and Law Firm became accustomed to conducting all business via electronic communication, including using electronic signatures for substantially all United States legal matters.

In the first quarter of Year, representatives of Parent and Taxpayer sought the

advice of Law Firm with respect to United States federal income tax matters, including REIT matters, in connection with investments in certain timberland projects. A partner of Law Firm and a certified public accountant who holds himself out to the public as a tax specialist with experience in REITs (the Partner), was engaged to assist Parent and Taxpayer on the legal and procedural steps associated with these investments. The Partner had worked with Parent on REIT matters in the past. The Partner advised Taxpayer in part that Subsidiary could be formed as a wholly owned domestic limited liability company of Taxpayer and qualify as a TRS by timely filing Form 8832, *Entity Classification Election*, (to treat Subsidiary as an association taxable as a corporation in accordance with section 301.7701-3) and Form 8875, *Taxable REIT Subsidiary Election* (to treat Subsidiary as a TRS).

On Date 1, Law Firm filed a Certificate of Formation with the office of the Secretary of State of State 2 for Subsidiary and assisted in the preparation of Forms 8832 (to be filed by Subsidiary) and 8875 (to be filed by Taxpayer and Subsidiary). On Date 3, the Partner emailed drafts of Forms 8832 and 8875 to Taxpayer and Subsidiary for their review. In this email correspondence, the Partner failed to advise Taxpayer and Subsidiary that, while Form 8832 may be signed electronically, electronic signatures are not permitted for Form 8875. Consistent with established practice in light of the COVID-19 Pandemic, on Date 4 representatives of Taxpayer and Subsidiary returned via email executed copies of Forms 8832 and 8875 to the Partner, both with electronic signatures. Again, the Partner failed to advise Taxpayer and Subsidiary that Form 8875 could not be electronically signed. On Date 5, Law Firm filed Forms 8832 and 8875, as executed, on Taxpayer's and Subsidiary's behalf, both Forms with a requested effective date of Date 1. The Form 8832 was filed not more than 75 days after, and the Form 8875 was filed not more than 2 months and 15 days after, Date 1.

On or about Date 6, Taxpayer received correspondence from the Internal Revenue Service (the Service) dated Date 7 stating that Taxpayer's and Subsidiary's Form 8875 had been rejected due to the use of an electronic signature (the Rejection Letter). Prior to receiving the Rejection Letter, Taxpayer operated under the assumption that Subsidiary qualified as a TRS at all times since Date 1 in reliance on its belief that Law Firm took all actions necessary to ensure the Forms 8832 and 8875 would be accepted by the Service, and that Law Firm would alert Taxpayer prior to filing if any issues existed.

Taxpayer promptly contacted Law Firm and the Partner for advice on how to address the cited deficiency in the Rejection Letter. As over 2 months and 15 days had elapsed since Date 1, the intended effective date of the Form 8875, the Partner advised Taxpayer that it could either refile the Form 8875 with the earliest possible effective date or file a request for relief from filing a late election under section 301.9100-3. After reviewing the extent of Subsidiary's operations and resulting gross income to date to determine the viability of refiling the Form 8875 with an effective date later than Date 1, Taxpayer and Subsidiary concluded that filing the Form 8875 with an effective date later than Date 1 could risk Taxpayer's REIT status. On Date 8, Taxpayer and Subsidiary

directed Law Firm to submit a request for relief under section 301.9100-3 for an extension of time to file the election under section 856(l) of the Code to treat Subsidiary as a TRS of Taxpayer effective as of Date 1.

REPRESENTATIONS

Taxpayer and Subsidiary make the following representations in connection with this request for an extension of time:

1. 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).

2. 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.

3. Taxpayer and Subsidiary did not choose to not file the election while being informed in all material respects of the required election and related tax consequences.

4. 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 advantageous to Taxpayer or Subsidiary.

5. The period of limitations on assessment under section 6501(a) has not expired for either Taxpayer or Subsidiary for the year in which the election should have been made and has not expired for any taxable years that would be affected by the election had it been timely made.

In addition, affidavits on behalf of Taxpayer and Subsidiary have been provided as required by section 301.9100-3(e)(2) and (3).

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, 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. 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.

As part of the Service's response to the COVID-19 Pandemic, on March 27, 2020, through a memorandum (Control Number NHQ-01-0320-001), the Service temporarily allowed Service employees to accept electronic or digital signatures on documents related to the determination or collection of tax liability. This memorandum was subsequently superseded and extended to allow for broader use of electronic signatures on a wider scope of Forms, including Form 8832, but Form 8875 was not included on the list of paper forms that may temporarily be signed electronically. See IRS Fact Sheet 2021-12 (Sept. 15, 2021) (updated Dec. 8, 2021).

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 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 generally 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, however, 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.

Under all the facts and circumstances of this case as presented by Taxpayer and Subsidiary, we have determined that the interests of the government are not prejudiced under the standards set forth in section 301.9100-3(c)(1)(i).

CONCLUSION

Based on the information submitted and the representations made, including the representations that Taxpayer sought, received, and relied upon advice from Partner and Law Firm regarding the selection, preparation, and filing of Form 8875 under the circumstances described herein, we conclude that Taxpayer and Subsidiary have satisfied the requirements for granting a reasonable extension of time to jointly elect under section 856(l) to treat Subsidiary as a TRS of Taxpayer, effective Date 1. Accordingly, Taxpayer and Subsidiary have 90 calendar days from the date of this letter to make the intended joint election to treat Subsidiary as a TRS of Taxpayer, effective Date 1.

CAVEATS

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 Subsidiary otherwise qualifies as a TRS of Taxpayer. Further, no opinion is expressed or implied regarding any activity or service engaged in or provided by Taxpayer or Subsidiary.

The ruling contained in this letter is based upon information submitted and representations made by Taxpayer and Subsidiary 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 taxpayer who requested it. Section 6110(k)(3) 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,

____

Bernard Audet
Chief, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions & Products)

cc: