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Date:

June 06, 2025

LEGEND:

Taxpayer =

Subsidiary =

Date 1 =

Parent =

Partnership =

Date 2 =

V =

Year 1 =

Year 2 =

W =

Manager =

Tenant =

X =

Y =

Z =

AA =

Law Firms =

Accounting Firm =

Date 3
=

Dear :

This ruling responds to a letter dated December 11, 2024, and supplemental 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 jointly make an election under section 856(l) of the Internal Revenue Code (“Code”) to treat Subsidiary as a taxable REIT subsidiary (“TRS”), as such term is defined in section 856(l)(3), of Taxpayer effective Date 1.

FACTS

Taxpayer is a State limited liability company that elected to be taxed as a real estate investment trust (“REIT”) under sections 856 through 859 of the Code, beginning with its initial taxable year that ended Date 2.

Parent through Partnership indirectly owns V% of the common stock of Taxpayer. Taxpayer and Partnership together indirectly own a portfolio of independent retirement facilities (the “IL Facilities”) and assisted living facilities (the “AL Facilities” and together with the IL Facilities, the “Facilities”), which were acquired in Year 1. Following the acquisition of the Facilities in Year 1, The Facilities were indirectly owned by both Taxpayer and Partnership through several partnerships.

The IL Facilities were the subject of a private letter ruling issued to Taxpayer which, among other things, held that (1) the IL Facilities do not meet the definition of a “health care facility” under section 856(e)(6)(D)(ii) and (2) the direct or indirect operation or management of the IL Facilities by a TRS does not prevent such TRS from being treated as a TRS for purposes of section 856(l)(3).¹ Under master management agreements (“Master Agreements”) between owner of the IL Facilities and Manager,

¹ PLR 202317018

Manager was responsible for providing certain resident services as well as general staffing, managerial oversight, other general property management and “back-office” services at the IL Facilities (collectively, the “Services”). Manager was a TRS of Taxpayer. Manager in turn entered into an agreement with a third-party manager (“Original Service Provider”) in the business of providing the Services under a master management subcontract agreement (“Original Subcontract Agreement”) on arm’s length terms.

Pursuant to lease agreements (“Original RIDEA Leases”), each of the AL Facilities were leased to Tenant. Tenant was a TRS with respect to Taxpayer and a subsidiary of Subsidiary. Pursuant to management agreements (“Original RIDEA Management Agreements”), Tenant engaged eligible independent contractors within the meaning of Section 856(d)(9) (“EIKs”) to manage the AL Facilities.

In Year 2, Taxpayer and Partnership terminated Original Subcontract Agreement with Original Service Provider and transitioned the management of the IL Facilities under new contracts to W different third-party managers (“New Service Providers” under “New Subcontract Agreements”). Additionally, Manager was removed from the Master Agreements and replaced with W new LLCs, each wholly owned by Subsidiary, under new agreements (“New Master Agreements”). Because of the decision to form and utilize the New Service Providers, on Date 1, Taxpayer subscribed for and was issued \$X of new preferred units in Subsidiary (“Preferred Stock”) and the limited liability company agreement of Subsidiary was also amended to admit Taxpayer as a member. Additionally, in Year 2, Taxpayer and Partnership terminated the Original RIDEA Leases and pursuant to new lease agreements (“New RIDEA Leases”), each of the AL Facilities were leased to AA newly formed, wholly owned subsidiaries of Subsidiary (the “AL Lessees”). The Original RIDEA Management Agreements were also terminated and each AL Lessee engaged an EIK, under a new management agreement to manage each AL Facility.

As a result of these transactions (“Transactions”) Taxpayer believes Subsidiary is properly viewed as the entity with whom Taxpayer has contracted with for services under the New Master Agreements and leased to under the New RIDEA Leases. Taxpayer and Subsidiary should have jointly filed a Form 8875 to elect to treat Subsidiary as a TRS of Taxpayer.

Parent’s tax department (“Tax Department”) was and is responsible for all tax support, tax compliance, and elections with respect to Parent and all its subsidiaries and properties in its portfolio (“Portfolio”), including Facilities. The Portfolio is owned directly and indirectly by over Y legal entities, including Taxpayer. At the time of the Transactions, Tax Department had approximately Z professionals who were very knowledgeable in the operation of REITs and REIT tax structures, including the necessity of timely filing TRS elections. Parent has operational procedures in place to complete, review, and timely file all required tax elections, including Form 8832, *Entity Classification Election*, and Form 8875, *Taxable REIT Subsidiary Election*. Within the

Tax Department, the compliance team is responsible for preparing all tax elections (the “Tax Compliance Team”) and keeping track of elections on an elections tracker the Tax Compliance Team maintains. The members of Tax Department on the transaction team (the “Transaction Tax Team”) are responsible for notifying the Tax Compliance Team of required entity and TRS elections and then reviewing the completed forms for filing. To advise Parent and its subsidiaries on the Transactions, Parent engaged Law Firms. One of the Law Firms produced a “master steps plan” (“Plan”) for the Transaction in close collaboration with the Tax Department, in part to ensure REIT tax compliance. The Plan noted the requirement for Taxpayer and Subsidiary to jointly file a Form 8875 to elect to treat Subsidiary as a TRS of Taxpayer. The Tax Department was responsible for following through with this part of the Plan under their internal processes for preparing, executing, and timely filing the TRS election for Subsidiary.

It was later discovered that the Transaction Tax Team failed to notify the head of the Tax Compliance Team to add Subsidiary to the elections tracker and to file a Form 8875 for Taxpayer and Subsidiary. Thus, such Form 8875 was never entered into the election tracker, Parent’s internal systems for processing and filing tax election forms.

Accounting Firm is the outside tax advisor for Taxpayer, who annually prepares the Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, and prepares REIT testing on a quarterly and annual basis. Following the end of each calendar quarter, Accounting Firm and Tax Department review transactions that closed in the prior quarter. As part of their review, on Date 3, Accounting Firm requested a copy of the Form 8875 filed on behalf of Taxpayer and Subsidiary at which point Tax Department discovered their failure to file the Form 8875. Tax Department immediately contacted Accounting Firm and filed a Form 8875 on Date 3 with an effective date 2 months and 15 days prior to the date of filing (as permitted by Form 8875). After Consulting with a Law Firm and Accounting Firm, members of Tax Department were advised that relief under sections 301.9100-1 and 301.9100-3 by the IRS could rectify the error of not timely making the election to treat Subsidiary as a TRS of Taxpayer effective Date 1.

Therefore, Taxpayer and Subsidiary request an extension of time to jointly make the election under section 856(l) of the Code to treat Subsidiary as a TRS of Taxpayer with an effective date of Date 1.

Taxpayer makes the following additional representations in connection with this request for an extension of time:

- 1) Taxpayer and Subsidiary have filed this request for relief before the failure to timely make the regulatory election was discovered by the 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 regulatory 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 Taxpayer and Subsidiary 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 this relief. No specific facts have changed since the due date for making the election that make the election advantageous to Taxpayer or Subsidiary.
- 6) The period of limitations on assessment under section 6501(a) has not expired for Taxpayer or Subsidiary for the taxable year for 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 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 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 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) 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 section 301.9100-3 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 section 301.9100-3 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. If specific facts have changed since the due date for making the election that make the election more advantageous to the taxpayer, the Service will not ordinarily grant relief. In such case the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

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 section 301.9100-3.

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 Date 1. Accordingly, the Form 8875 filed by Taxpayer and Subsidiary on Date 3 will be considered timely filed, and the effective date of the TRS election 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, Code sections, 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 Taxpayer otherwise qualifies as a REIT or whether Subsidiary otherwise qualifies as a TRS of Taxpayer under subchapter M of chapter 1 of the Code. Additionally, no opinion is expressed as to any tax liability of Subsidiary.

The ruling contained in this letter is based upon information submitted and representations made by Taxpayer and Subsidiary and accompanied by penalties 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 a ruling, 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 representatives.

Sincerely,

Andrea M. Hoffenson
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

cc: