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Dear :

This is in reply to a letter dated October 7, 2013, requesting on behalf of LLC and Sub an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to file a 8875 Taxable REIT Subsidiary (“TRS”) Election for Sub under section 856(l) of the Internal Revenue Code.

#### FACTS

Company is a State 1 trust that has elected to be treated for federal income tax purposes as a REIT since Year 1. Company’s primary business is owning and leasing real properties both directly and also indirectly through other entities.

Company owns an a percent interest in LLC. LLC has elected to be treated as a REIT beginning with its taxable year ending December 31, Year 1.

On Date 1 LLC organized Sub as a wholly owned State 2 limited liability company. Since Date 1 LLC has continuously held a 100% interest in Sub.

Under section 301.7701-2(b)(1)(ii) of the Procedure and Administration Regulations, Sub was as of Date 1 a “disregarded entity “ for federal tax purposes, and was thereby not treated as an entity separate from LLC.

Sub was organized to engage in operations that would produce gross income that would not be qualifying income for a REIT under section 856(c)(2) or 856(c)(3) of the Code. To obviate adverse tax results, LLC decided to elect TRS status for Sub. Because that status is only available to an entity classified as a corporation for federal tax purposes, LLC decided to elect to change Sub’s status from that of a disregarded entity to that of corporation.

LLC anticipated that Sub would begin operations in Year 3. Accordingly, on Date 2 in Year 2 LLC and Sub signed Form 8875 Taxable REIT Subsidiary Election electing TRS status for Sub and filed it about the same time. About twenty days later, on Date 4, LLC and Sub signed Form 8832 Entity Classification Election electing corporation classification for Sub and filed it about the same time.

Both Forms designated Date 3 as the effective date for the respective elections. Date 3 is within 75 days prior to the filing date of the TRS election. Date 3, however, is more than 75 days prior to the filing date of the Form 8832 classification election. Date 3 in the Form 8832 was chosen through inadvertence.

Under section 301.7701-3(c)(1)(iii) of the regulations, if a Form 8832 election specifies an effective date more than 75 days prior to the date of the filing of the election, the effective date is 75 days prior to the filing.

Under the regulation, the effective date of the Form 8832 election for Sub's corporation status is Date 5. The effective date for its TRS status, however, is Date 3, an earlier date. On Date 3 Sub would have been a disregarded entity under section 301.7701-3(b)(1)(ii). It would therefore not have been a corporation, and thus it would have been ineligible for the Form 8875 TRS election.

The effective date on the Form 8875 election was invalid because on that date Sub was not regarded as a corporation.

Tax preparers noticed the discrepancies in the effective dates for the elections in Year 4, the year after Sub started its operations and informed the executive officer responsible for LLC and Sub in Year 4. The executive officer, however, does not recall being advised that serious questions existed about Sub's entity classification and TRS status until Year 5, about two years later.

The following representations are made in connection with the request for an extension of time to file a Form 8875 on behalf of LLC and Sub:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service.
2. Granting the relief requested will not result in LLC or Sub having a lower tax liability in the aggregate for all years to which the election applies than the taxpayers would have had if the election had been timely made (taking into account the time value of money).
3. LLC and Sub 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 the taxpayers requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. LLC and Sub failed to file the election inadvertently. LLC and Sub have not used hindsight to seek an extension of time to make the election. LLC and Sub always had the intent to elect TRS status for Sub. If LLC and Sub had been

advised by their tax professionals of the need for a different effective date they would have specified a different one.

#### 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 taxable REIT subsidiary. To be eligible for treatment as a taxable REIT subsidiary, 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, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (Service) announced the availability of Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a taxable REIT subsidiary. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. 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 elections, 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. Officers of both the REIT and the taxable REIT subsidiary must jointly sign the form, which is filed with the IRS Service Center in Ogden, Utah.

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 (defined in section 301.9100-1(b) as an election whose deadline is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), 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 301.9100-3(a) through (c)(1)(i) of the regulations sets forth rules that the Internal Revenue Service generally will use to determine whether, under the 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(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) 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 years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

## CONCLUSION

Based upon the facts and representations submitted, we conclude that LLC and Sub have shown good cause for granting a reasonable extension of time to elect to have Sub be treated as a taxable REIT subsidiary under section 856(l) of the Code. Accordingly, LLC and Sub are granted 90 days from the date of this letter to file a Form 8875 electing TRS status and designating an effective date in Year 2 on or after the effective date of the Form 8832 election.

This ruling is limited to the timeliness of the filing of LLC and Sub's Form 8875 for purposes of the election under section 856(l) of the Code. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Company or LLC otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of LLC or Sub 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 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.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above. In particular, no opinion is expressed on the timeliness of the Form 8832 or the validity of the effective date therein.

This ruling is directed only to the taxpayer 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 yours,

Thomas M. Preston  
Thomas M. Preston  
Senior Counsel, Branch 2  
Office of the Associate Chief Counsel  
(Financial Institutions and Products)