

**Internal Revenue Service**

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Person To Contact:  
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December 19, 2014

LEGEND

X =

Y =

Advisor =

Property =

State A =

State B =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Dear \_\_\_\_\_ :

This responds to a letter dated June 23, 2014, and subsequent correspondence, submitted on behalf of X and Y (collectively, "Taxpayers"), requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (1) for Y to file an election under § 301.7701-3(c)(1)(i) to be classified as an association taxable as a corporation for federal tax purposes effective as of Date 3, and (2) for Taxpayers to jointly file an election under § 856(l) of the Internal Revenue Code (Code) to treat Y as a taxable REIT subsidiary (TRS) of X effective as of Date 3.

## FACTS

According to the information submitted, X is a State A corporation incorporated on Date 1, that has elected to be treated for federal income tax purposes as a real estate investment trust (REIT) for its taxable year ended Date 2, and has operated as a REIT since such date.

During Year 1, X acquired numerous properties, including Property. Generally, each of X's properties is held by a limited liability company owned indirectly by X.

Y is a limited liability company, formed under the laws of State B on Date 3. X holds an indirect ownership interest in Y. Y is the owner of Property. Y was eligible to elect to be classified as an association taxable as a corporation for federal tax purposes effective Date 3, but Y did not timely file Form 8832, Entity Classification Election, to make the election effective as of that date.

In Year 2, X discovered facts about Property and filed a request for this relief soon thereafter. Taxpayers represent that, had they been aware of such facts to make timely elections, they would have made the elections to treat Y as a corporation and a TRS of X, effective as of Date 3, to eliminate a risk to the REIT status of X.

Taxpayers submitted statements under penalties of perjury from officers of X, Y, and Advisor in support of this ruling request.

Taxpayers make the following additional representations:

1. Neither X nor Y has used, nor has had the opportunity to use, hindsight in making this request. No facts have changed since the original due dates of the elections that make the elections more advantageous.
2. The request for relief was filed by Taxpayers before the failure to make the regulatory elections was discovered by the Service.
3. Granting the relief will not result in Taxpayers having a lower tax liability in the aggregate for all years to which the regulatory elections apply than it would

have had if the elections had been timely made (taking into account the time value of money).

4. Taxpayers did 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 the relief was requested and the new position requires or permits a regulatory election for which relief is requested.
5. Being fully informed of the required regulatory elections and related tax consequences, Taxpayers did not choose not to file the elections.

#### RULINGS REQUESTED

1. Y requests an extension of time under § 301.9100-3 to make an entity classification election under § 301.7701-3 to be classified as an association taxable as a corporation effective as of Date 3.
2. Taxpayers request an extension of time under § 301.9100-3 to make a joint election under § 856(l) to treat Y as a TRS of X effective as of Date 3.

#### LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with at least two members can elect to be classified as either an association taxable as a corporation or a partnership, and an eligible entity with a single owner can elect to be classified as an association taxable as a corporation or to be disregarded as an entity separate from its owner.

Section 301.7701-3(c)(1) provides that an entity classification election, or change in entity classification, must be filed on Form 8832 and can be effective up to 75 days prior to the date the election is filed or up to 12 months after the date the election is filed.

Section 301.7701-3(c)(2)(i) provides that such an election must be signed by either (A) each member of the electing entity who is an owner at the time the election is filed; or (B) any officer, manager, or member of the electing entity who is authorized (under local law or the entity's organization documents) to make the election and who represents to having such authorization under penalties of perjury. Section 301.7701-3(c)(2)(iii) provides, in part, if an election is made to change the classification of an entity, each person who was an owner on the date that any transactions under section 301.7701-3(g) are deemed to occur, and who is not an owner at the time the election is filed, must also sign the election.

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 new 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 TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. However, the effective date of the election depends upon 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 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, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1)(i) 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(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 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. Section 301.9100-3(c) 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)(i) provides that the interests of the government are prejudiced if granting relief would result in a 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).

## CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Y is granted an extension of time to file a Form 8832 with the appropriate service center to elect to be classified as an association taxable as a corporation

effective Date 3. In addition, Taxpayers are granted an extension of time to jointly elect to treat Y as a taxable REIT subsidiary of X, effective Date 3. The Form 8832, Entity Classification Election, and Form 8875, Taxable REIT Subsidiary Election, must be filed no later than 120 days from the date of this letter with the appropriate service center. A copy of this letter should be attached to each form. Copies of this letter are enclosed for that purpose.

This ruling is contingent on Taxpayers filing and/or amending within 120 days of this letter all required returns for all open years consistent with the requested relief. A copy of this letter should be attached to any such returns.

Except as specifically set forth above, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed with regard to whether X otherwise qualifies as a REIT under subchapter M of the Code.

This ruling is directed only to the Taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Taxpayers' authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

*Joy C. Spies*

By: Joy C. Spies  
Senior Technician Review, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter  
Copy of this letter for section 6110 purposes

cc: