Internal Revenue Service

Number: **201516049**
Release Date: 4/17/2015

Index Number: 9100.00-00, 856.00-00

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:B02
PLR-133299-14

Date:
January 13, 2015

Legend:

Taxpayer =

Subsidiary =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Year 2 =

x =

y =

Firm 1 =

Firm 2 =

Dear :

This ruling responds to a letter dated September 5, 2014, 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 under section 856(l) of the Internal Revenue Code ("Code") to treat Subsidiary as a taxable REIT subsidiary ("TRS") of Taxpayer.

FACTS

Taxpayer was originally formed on Date 1 as a State A corporation and was reorganized as a State B corporation in Year 2. Taxpayer elected to be taxed as a real estate investment trust ("REIT") in Year 1, and represents that it has operated as a REIT continuously since such election. Subsidiary was formed on Date 2. Initially, Taxpayer owned x% of Subsidiary. Due to subsequent share issuances to additional shareholders, Taxpayer presently owns approximately y% of Subsidiary.

Taxpayer recently began negotiations with an investor regarding a potential financing transaction. During the due diligence phase of the negotiation, the investor requested a copy of the TRS election filed by Taxpayer and Subsidiary electing to treat Subsidiary as a TRS of Taxpayer. Upon review of its files, Taxpayer discovered that the TRS election was never filed.

In connection with the formation of Subsidiary, Taxpayer engaged an outside law firm to prepare or review all of the underlying formation documents. Further, Taxpayer engaged its tax return preparer, Firm 1, to prepare the tax return for Subsidiary. Taxpayer and Subsidiary had intended to make the TRS election effective as of Date 2 (the date of formation of Subsidiary), because Taxpayer would lose its status as a REIT as soon as its ownership of Subsidiary fell below 100% unless Subsidiary was a TRS. Taxpayer and Subsidiary have filed their respective tax returns consistent with and based on the understanding that the election was timely filed.

In light of the intention to make a TRS election and the involvement of outside professionals, Taxpayer's officers believed the appropriate elections would be timely filed to treat Subsidiary as a TRS either by outside counsel or by Firm 1. As such, no officer of Taxpayer or Subsidiary filed a TRS election. The officers of Taxpayer intended

that Firm 1 would file any forms needed to have Subsidiary treated as a TRS. At no point did those officers ask Firm 1 to make the required filings, though it was their intent to do so. For its part, Firm 1 understood that outside counsel involved with the formation of Subsidiary had taken the necessary steps to complete the TRS election; as such, Firm 1 did not prepare and file the forms, but prepared Taxpayer's and Subsidiary's respective returns accordingly.

Upon discovering that the TRS election had not been made, Taxpayer contacted outside tax counsel at Firm 2. Firm 2 prepared and submitted this PLR request on behalf of Taxpayer. While this request was pending, Taxpayer and Subsidiary executed Form 872, Consent to Extend the Time to Assess Tax, with the Internal Revenue Service ("Service") to extend the statute of limitations for the taxable years ending Date 3 and Date 4 to Date 5. Taxpayer and Subsidiary request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file a Form 8875, Taxable REIT Subsidiary Election, under section 856(l)(1) to elect to treat Subsidiary as a TRS of Taxpayer, effective as of the beginning of Subsidiary's Year 2 taxable year.

Taxpayer has submitted the affidavit of its Chief Financial Officer and its Certified Public Accountant from Firm 1 in support of this requested ruling.

Taxpayer and Subsidiary make the following representations:

1. Taxpayer and Subsidiary filed this ruling request prior to the Service discovering the failure to make an election under section 856(l)(1) to treat Subsidiary as a TRS of Taxpayer.

2. Taxpayer and Subsidiary did not choose to forgo making the TRS election after being informed in all material aspects of the required election and the related tax consequences.

3. Taxpayer and Subsidiary are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 of the Code.

4. Neither Taxpayer nor Subsidiary is using hindsight by basing this request on knowledge of events occurring after the due date of the election.

5. No intervening events have occurred to make the TRS election more advantageous to Taxpayer or Subsidiary.

6. Granting the requested relief will not result in Taxpayer or Subsidiary having a lower tax liability than if the TRS election had been timely.

7. Granting relief will not affect any tax years that are closed under the statute of limitations.

LAW AND ANALYSIS

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) jointly may elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, section 856(l) 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, the election and the revocation 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, "Taxable REIT Subsidiary Election." The Announcement provides that 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. The effective date of the election, however, depends on when the Form 8875 is filed. Specifically, the instructions 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) of the Procedure and Administration Regulations 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 Internal Revenue 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, revenue procedure, notice, or 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 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 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. Moreover, a taxpayer will be deemed not to have acted 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 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) 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 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)(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.

CONCLUSION

Based on the information submitted and 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 as of the beginning of Subsidiary's Year 1 tax year. Taxpayer and Subsidiary have 90 calendar days from the date of this letter to make the intended election. Taxpayer should attach a copy of the executed Form 872 to the Form 8875 to which this ruling applies.

This ruling is limited to the timeliness of the filing of the Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as expressly 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 with regard to whether Taxpayer qualifies as a REIT or whether Subsidiary otherwise qualifies as a TRS under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of either Taxpayer or Subsidiary 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.

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 representatives.

Sincerely,

Andrea M. Hoffenson
Andrea M. Hoffenson
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions & Products)