Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

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Refer Reply To:
CC:FIP:B03
PLR-104321-15

Date:
April 20, 2015

LEGEND:

Taxpayer	=
Subsidiary	=
Company A	=
Company B	=
Firm A	=
Firm B	=
Firm C	=
State X	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Year 1	=
Year 2	=

a =

Dear

This ruling responds to a letter dated January 23, 2015, submitted on behalf of Taxpayer and Subsidiary. Taxpayer and Subsidiary request an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 856(l) of the Internal Revenue Code to treat Subsidiary as a taxable REIT subsidiary (TRS) of Taxpayer.

FACTS

Company A is an independent alternative investment management firm and is the parent of Taxpayer. Taxpayer represents that it made an election to be treated as a real estate investment trust (REIT) under § 856 of the Code. Taxpayer was organized in Year 1 and invests in real property through its subsidiaries.

Subsidiary is wholly owned by Taxpayer. Subsidiary was formed on Date 1 as a State X limited liability company and defaulted to a disregarded entity for U.S. federal income tax purposes. Subsidiary subsequently elected to change its classification to a corporation for U.S. federal income tax purposes, effective Date 2.

Subsidiary was wholly owned by Company B, an entity also owned by Company A that Taxpayer represents made an election to be treated as a REIT under § 856 of the Code. An election under § 856(l) of the Code to treat Subsidiary as a TRS of Company B effective Date 2, was jointly made by Company B and Subsidiary in Year 1. In late Year 1, Taxpayer was formed and became the parent company of Company B. Company B distributed a % of the membership interests of Subsidiary to Taxpayer on Date 3.

Company A had consulted Firm A, its tax advisor at the time, to facilitate the transactions described above. Taxpayer represents Company A always intended for Subsidiary to be treated as a TRS by Taxpayer as it had been so treated by Company B. However, Firm A did not realize that upon Taxpayer acquiring ownership of the membership interests of Subsidiary, a joint election should have been made by Taxpayer and Subsidiary by filing Form 8875 to treat Subsidiary as a TRS of Taxpayer. Firm A mistakenly believed that a second TRS election was not necessary because Subsidiary had already elected to be a TRS of its prior owner, Company B, and that such classification would continue with Taxpayer, as the new owner.

Firm B was hired by Company A to issue an opinion on the REIT status of Taxpayer. As part of its due diligence, Firm B requested copies of all TRS elections filed for Subsidiary from Company A and Company A's current tax advisor, Firm C. Around Date 4, an employee of Firm C realized that Form 8875 had not been filed by Taxpayer and Subsidiary after the membership interests of Subsidiary were distributed by Company B to Taxpayer. The matter was brought to the attention of Company A and Firm B. Subsequently, Firm C filed a request for a private letter ruling on behalf of Taxpayer and Subsidiary, requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 856(l) of the Code to treat Subsidiary as a TRS of Taxpayer, effective Date 3.

Taxpayer and Subsidiary assert that the failure to make the required TRS election was an error caused by a misunderstanding concerning the need to file a new Form 8875 after Taxpayer's acquisition of Subsidiary. Furthermore, Taxpayer has represented that since Date 3, Subsidiary has been consistently treated as a TRS of Taxpayer; specifically, Subsidiary has filed its Forms 1120 for Year 1 and Year 2 as a TRS.

Affidavits on behalf of Taxpayer and Subsidiary were provided with the submission as required by § 301.9100-3(e) of the Procedure and Administration Regulations.

Taxpayer and Subsidiary make the following additional representations:

1. The request for relief was filed by Taxpayer and Subsidiary before the failure to make the regulatory election was discovered by the Internal Revenue Service (Service).

2. Granting the relief 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 that Taxpayer or Subsidiary would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer and Subsidiary did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code 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 relief. No specific facts have changed since the due date for making the election that makes this election advantageous to Taxpayer and Subsidiary.

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 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, 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. However, the effective date of the election depends upon when the Form 8875 is filed. The instructions further provide that the effective date on the form 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, 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(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in § 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 § 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 § 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 § 856(l) to treat Subsidiary as a TRS of Taxpayer, effective Date 3. Taxpayer and Subsidiary have 90 calendar days from the date of this letter to make the intended election.

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 first two authorized representatives.

Sincerely,

_____
Julanne Allen
Assistant to the Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes

cc: