Internal Revenue Service

Number: **201550025**
Release Date: 12/11/2015

Index Number: 856.07-00, 9100.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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Refer Reply To:
CC:FIP:B01
PLR-111185-15
Date:
September 4, 2015

Legend

Taxpayer =

Sub 1 =

Sub 2 =

Member =

LLC 1 =

Law Firm =

Accounting Firm =

State A =

State B =

State C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Business A =

a =

Dear :

This responds to a letter dated March 20, 2015 and subsequent correspondence, submitted on behalf of Taxpayer, Sub 1, and Sub 2. Taxpayer and Sub 1 request an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to elect to treat Sub 1 as a taxable REIT subsidiary ("TRS") of Taxpayer under § 856(l) of the Internal Revenue Code ("Code"). Taxpayer and Sub 2 request an extension of time under §§ 301.9100-1 and 301.9100-3 to elect to treat Sub 2 as a TRS of Taxpayer under § 856(l).

FACTS

Taxpayer is a State A corporation formed on Date 1 and will elect to be treated for federal income tax purposes as a real estate investment trust ("REIT") under § 856 beginning with its taxable year ended on Date 5. Taxpayer's primary business is leasing real properties to unrelated parties.

Sub 1 is a State B limited liability company that Taxpayer formed on Date 2 to engage in operations that would produce gross income that would not be qualifying income for a REIT under §§ 856(c)(2) or 856(c)(3). Taxpayer has owned a percent of the membership interests in Sub 1 since Date 2. Sub 1 filed a late Form 8832, Entity Classification Election, pursuant to Rev. Proc. 2009-41, 2009-39 I.R.B. 439, prior to the due date of its first income tax return to be treated as a corporation for federal income tax purposes effective as of Date 2. Subsequently, Sub 1 received a letter from the Service approving its Form 8832 electing to be classified as an association taxable as a corporation effective Date 2. A copy of this letter was submitted on behalf of taxpayers in connection with their ruling request.

Sub 2 is a State C limited liability company that Taxpayer formed on Date 3 to engage in operations that would produce gross income that would not be qualifying income for a REIT under §§ 856(c)(2) or 856(c)(3). Taxpayer has owned a percent of

the membership interests in Sub 2 since Date 3. Sub 2 filed a late Form 8832 pursuant to Rev. Proc. 2009-41 prior to the due date of its first income tax return to be treated as a corporation for federal income tax purposes effective as of Date 3. Subsequently, Sub 2 received a letter from the Service approving its Form 8832 electing to be classified as an association taxable as a corporation effective Date 3. A copy of this letter was submitted on behalf of taxpayers in connection with their ruling request.

LLC 1 is a State C limited liability company. Prior to the formation of Taxpayer, LLC 1 was treated as a partnership for tax purposes and conducted the leasing business now conducted by Taxpayer as well as Business A..

In Year 1, LLC 1 engaged Law Firm to prepare documents to (i) convert LLC 1 into a REIT, and (ii) separate its operations that would produce gross income that would not be qualifying income for a REIT under §§ 856(c)(2) or 856(c)(3) (the "Non-qualifying Operations"). In connection with the foregoing, all of the partners of LLC 1 contributed their interests in LLC 1 to Taxpayer in exchange for stock of Taxpayer, at which point LLC 1 became wholly owned by Taxpayer and became a disregarded entity of Taxpayer for federal income tax purposes. Taxpayer then contributed the assets used in connection with the Non-qualifying Operations to Sub 1 and Sub 2 in exchange for all of the membership interests in each entity. Taxpayer holds its interest in Sub 1 through Member, a limited liability company and disregarded entity of Taxpayer.

In connection with the formation of Sub 1, Taxpayer adopted an operating agreement effective as of Date 4 between Member and Sub 1 memorializing the intent of Member and Taxpayer that Sub 1 be treated as an association taxable as a corporation, that Member and Taxpayer file the appropriate election to effectuate that intent, that Sub 1 be treated as a "taxable REIT subsidiary" as defined under section 856(l), and that Sub 1 join Taxpayer in filing the appropriate election.

In connection with the formation of Sub 2, Taxpayer adopted an operating agreement effective as of Date 4 between Taxpayer and Sub 2, memorializing the intent of Taxpayer that Sub 2 be treated as an association taxable as a corporation, that Taxpayer file the appropriate election to effectuate that intent, that Sub 2 be treated as a "taxable REIT subsidiary" as defined under section 856(l), and that Sub 2 join Taxpayer in filing the appropriate election.

Taxpayer represents that at all times Taxpayer was advised on the tax issues by its outside accountant, Accounting Firm. The employee at Accounting Firm who was responsible has since left Accounting Firm and joined Taxpayer as its CFO. Each of Law Firm and Accounting Firm thought the other firm would file the Forms 8832 for Sub 1 and Sub 2 and the Forms 8875 for Taxpayer and Sub 1 and Taxpayer and Sub 2, respectively. As a result, no forms were filed. Taxpayer discovered the failure to file the Forms 8832 and 8875 when its tax return preparer was preparing extensions for Taxpayer, Sub 1 and Sub 2.

In support of their letter ruling request, Taxpayer, Sub 1, and Sub 2 submitted affidavits from Taxpayer, Law Firm, and the responsible individual from Accounting Firm as required by § 301.9100-3(e).

Taxpayer, Sub 1, and Sub 2 make the following additional representations:

1. The request for relief was filed by Taxpayer, Sub 1, and Sub 2 before the failure to make the regulatory elections was discovered by the Internal Revenue Service ("Service").

2. Granting the relief will not result in Taxpayer, Sub 1 or Sub 2 having a lower tax liability in the aggregate for all years to which the elections apply than they would have had if the elections had been timely made (taking into account the time value of money).

3. Taxpayer, Sub 1, and Sub 2 are not seeking 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, Sub 1, and Sub 2 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 elections and related tax consequences, none of Taxpayer, Sub 1, or Sub 2 chose to not file the TRS elections.

5. Taxpayer, Sub 1, and Sub 2 have not used hindsight to seek an extension of time to make the TRS elections. No specific facts have changed since the due date for making the elections that makes these elections advantageous to Taxpayer, Sub 1, and Sub 2.

6. 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) 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) 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(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 the taxpayer having a lower tax liability in the aggregate for all taxable 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 on the information submitted and representations made, we conclude that Taxpayer, Sub 1, and Sub 2 have satisfied the requirements for granting a reasonable extension of time for Taxpayer and Sub 1 to elect under § 856(l) to treat Sub 1 as a TRS of Taxpayer, effective as of Date 2, and for Taxpayer and Sub 2 to elect under § 856(l) to treat Sub 2 as a TRS of Taxpayer, effective as of Date 3. Accordingly, Taxpayer, Sub 1, and Sub 2 have ninety days from the date of this letter to file their intended elections.

This ruling is limited to the timeliness of the filing of Forms 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 Sub 1 or Sub 2 otherwise qualify as a TRS under part II of subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer, Sub 1, and Sub 2 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.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer, Sub 1, and Sub 2 and accompanied by a penalty of perjury statements executed by appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to Taxpayer, Sub 1, and Sub 2. Section 6110(k)(3) of the Code 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 representative.

Sincerely,

_____

Steven Harrison
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: