

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:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B01

PLR-117586-15

Date:

September 22, 2015

Legend

Parent =

Subsidiary =

Partnership =

LLC 1 =

Investment Advisor =

Accounting Firm =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Year 1 =

Dear :

This responds to a letter dated May 21, 2015, and subsequent correspondence, submitted on behalf of Parent and Subsidiary (collectively, "Taxpayers"). Taxpayers request an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to elect to treat Subsidiary as a taxable REIT subsidiary ("TRS") of Parent under § 856(l) of the Internal Revenue Code ("Code"), effective as of Date 3.

FACTS

Parent is a State A corporation that was formed on Date 1 and has elected to be treated for federal income tax purposes as a real estate investment trust ("REIT") under § 856. Parent owns Subsidiary through interests in LLC 1 and Partnership.

Subsidiary is a State A limited liability company that was formed on Date 2 to operate a facility associated with a building acquired by Parent on Date 3. Taxpayers represent that Subsidiary filed a late Form 8832, Entity Classification Election, to elect to be classified as an association taxable as a corporation for federal income tax purposes, and to request relief for its late Form 8832 pursuant to Rev. Proc. 2009-41, 2009-39 I.R.B. 439. By letter dated Date 7, the Internal Revenue Service ("Service") approved Subsidiary's late Form 8832. The letter from the Service, a copy of which was submitted on behalf of Taxpayers in connection with their ruling request, provides that the effective date of this classification election is Date 3.

Partnership is a State A limited liability company that is classified as a partnership for federal income tax purposes. Partnership directly owns Subsidiary. Partnership has two partners. Parent owns one partner, LLC 1, directly and wholly. LLC 1 is a limited liability company that is classified as a disregarded entity for federal income tax purposes.

Taxpayers were formed by, and currently are managed by, Investment Advisor, a privately-held registered investment advisor. Investment Advisor relies on the advice of outside tax professionals relating to the tax obligations of the entities it manages. Investment Advisor engages Accounting Firm to assist with federal and state tax compliance services for numerous entities managed by Investment Advisor. Investment Advisor relies on Accounting Firm's advice and preparation of relevant tax forms in order to meet the managed entities' federal and state tax compliance obligations.

Accounting Firm was engaged to provide advice and assist in the preparation of a Form 8875, Taxable REIT Subsidiary Election, by which Taxpayers would make an election for Subsidiary to be a TRS of Parent effective Date 3. Taxpayers represent that

Subsidiary always intended to make a TRS election, and that its operating agreement explicitly provided that it would make an election to be a TRS under § 856(l).

On Date 5 a member of Investment Advisor's accounting team contacted Accounting Firm's tax engagement team to inquire as to whether the TRS election had been prepared and filed for Taxpayers. Accounting Firm determined that it had not gathered the necessary organizational documentation from Investment Advisor's outside legal counsel, and therefore had not prepared and filed a Form 8875. After receiving the necessary documentation to prepare the Form 8875, Accounting Firm immediately prepared the form.

On Date 6, Taxpayers filed the Form 8875 with the Service with an intended effective date of Date 3. Accounting Firm, however, determined that Date 4, a date before Date 6, was the last day for Taxpayers to have timely filed a TRS election with an effective date of Date 3, and that because they filed their intended TRS election on Date 6 with an effective date of Date 3, their intended election was filed late and would not be an effective TRS election unless Taxpayers were to obtain the relief requested.

Accounting Firm notified Investment Advisor of Taxpayers' late Form 8875 and the resulting untimely election for Subsidiary to be treated as a TRS of Parent under § 856(l). Parent, Subsidiary, and Investment Advisor were advised to submit a request for relief under § 301.9100-1 for an extension of time to file their Form 8875.

Taxpayers represent that notwithstanding the fact that Taxpayers' Form 8875 filed on Date 6 was not a TRS election effective as of Date 3, Subsidiary continually has been treated as a TRS since Date 3, Date 3 was the intended effective date for the TRS election filed on Date 6, and Date 3 remains the desired effective date for the TRS election at issue.

Taxpayers represent that upon the granting of Taxpayers' requested ruling: (1) Parent will identify Subsidiary on Parent's Year 1 Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts, Schedule K, when filed, and (2) any distributions by Subsidiary will be included in Parent's Year 1 Form 1120-REIT. Taxpayers represent further that (1) for Parent's Year 1 taxable year, Parent has timely filed a Form 7004, Application for Automatic 6-month Extension of Time to File Certain Business Income Tax, Information, and Other Returns, and (2) Parent will file its Year 1 Form 1120-REIT on or before the extended due date for filing such return.

Parent and Subsidiary make the following additional representations:

1. The request for relief was filed by Parent and Subsidiary before the failure to make the regulatory election was discovered by the Service.

2. Granting the relief requested will not result in Parent or Subsidiary having a lower tax liability in the aggregate for all years to which the regulatory

election applies than they would have had if the election had been timely made (taking into account the time value of money).

3. Parent 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 they 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, Parent and Subsidiary did not choose to not file the election.

5. Neither Parent nor Subsidiary has used hindsight in making its decision to seek the relief requested.

6. Granting the requested relief will not affect any tax years which are closed under the statute of limitations.

In support of their letter ruling request, Taxpayers submitted affidavits required by § 301.9100-3(e).

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 Taxpayers have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Subsidiary as a TRS of Parent, effective as of Date 3. Accordingly, the Form 8875 filed by Taxpayers on Date 6 will be considered timely filed, and the effective date of this TRS election is Date 3.

This ruling is limited to the timeliness of the filing of 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 Parent qualifies as a REIT, or whether Subsidiary otherwise qualifies as a TRS under part II of subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayers 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 the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. 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 the taxpayers requesting it. 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 representatives.

Sincerely,

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

cc: