

**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-103080-16

Date:

June 29, 2016

**Legend:**

Parent =

Subsidiary =

Investment Adviser =

Law Firm =

Accounting Firm =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Month 1 =

Month 2 =

Year 1 =

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

This responds to a letter dated January 13, 2016 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").

### Facts

Parent is a State A limited liability company formed on Date 1 and began operations on Date 2. As of formation, Parent defaulted to an entity disregarded as separate from its owner for federal income tax purposes. Parent has not yet filed an initial federal income tax return. Parent intends to elect to be treated for federal income tax purposes as a real estate investment trust ("REIT") under § 856 by filing Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, on or before Date 3. Parent was formed with the intention of holding, through a subsidiary, a hotel property.

Subsidiary is a State A limited liability company that was formed on Date 1 and began operations on Date 2. Subsidiary submitted a Form 8832, *Entity Classification Election*, seeking late election relief under Rev. Proc. 2009-41, 2009-39 I.R.B. 439, prior to the due date of its first income tax return to make an election to be classified as a domestic corporation effective Date 2. Form 8832 was filed on Date 4 and is currently pending with the Internal Revenue Service ("Service") Entity Control Unit. Taxpayers represent that they always intended to make an election for Subsidiary to be a TRS to satisfy the requirements of § 856(d)(8).

Taxpayers were formed by, and currently are managed by, Investment Advisor. Investment Advisor engages outside tax professionals for tax advice relating to many of the tax obligations of the entities it manages. Investment Advisor engaged Law Firm and Accounting Firm to advise Investment Advisor with respect to certain legal and tax matters related to the hotel property transaction involving Taxpayers.

Investment Advisor believed that its external tax advisors filed the federal income tax forms required to elect to treat Parent as a REIT and to treat Subsidiary as a TRS, including the preparation of Form 8875, *Taxable REIT Subsidiary Election*. In Month 1 of Year 1, however, individuals from Law Firm and Accounting Firm participated in a conference call to discuss a different real estate transaction in which Law Firm was preparing REIT-related elections for Investment Advisor. During the call, the TRS election that was believed to have been filed on behalf of Taxpayers was discussed. It was realized that due to an apparent miscommunication on who was to prepare and file the TRS election, the election inadvertently might not have been filed timely. When the TRS election could not be located, Accounting Firm, in Month 2 of

Year 1, contacted the Service and determined that there was no TRS election on Subsidiary's account in the Master File.

Investment Advisor requested advice from Accounting Firm on how to proceed. Because the desired effective date of Date 2 for Subsidiary's TRS election is more than 2 months and 15 days prior to the discovery of the oversight, Form 8875 cannot be timely filed with an effective date of Date 2. As such, Accounting Firm advised Investment Advisor to submit a request for relief under § 301.9100-1 for an extension of time to file the election under § 856(l).

Taxpayers represent that, notwithstanding the fact that no TRS election was made by Taxpayers for Subsidiary, Parent and Subsidiary have continually been treated as a REIT and TRS, respectively, since Date 2. All relevant tax years of Taxpayers remain open and are not closed under the statute of limitations.

In support of their letter ruling request, Taxpayers submitted affidavits from Investment Advisory, Accounting Firm, and Law Firm as required by § 301.9100-3(e).

Taxpayers make the following additional representations:

1. The request for relief was filed by Taxpayers before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Parent or Subsidiary having a lower tax liability in the aggregate for all years to which the election applies than they would have had if the elections had been timely made (taking into account the time value of money).
3. Taxpayers 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 Taxpayers 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, Taxpayers did not choose to not file the election.
5. Taxpayers have not used hindsight to seek an extension of time to make the TRS election. No specific facts have changed since the due date for making the election that makes this election advantageous to either Parent or 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, § 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 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 for automatic extensions under § 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 2. Accordingly, Taxpayers have 90 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 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 Taxpayers 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 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 representative.

Sincerely,

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

Enclosures (2):

Copy of this letter  
Copy for section 6110 purposes

cc: