

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person To Contact:

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Telephone Number:

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Date: June 12, 2017

Legend

Subsidiary =

Company A =

Company B =

Company C =

Company D =

Partnership =

Advisor =

Accounting Firm =

State A =

State B =

Date 1 =

Date 2 =

Year 1 =

a =

Dear :

This responds to a letter dated April 3, 2017, submitted on behalf of Company A, Company B, Company C, and Company D (collectively, "Owners") and Subsidiary. Each Owner and Subsidiary request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to jointly make an election under section 856(l) of the Internal Revenue Code ("Code") to treat Subsidiary as a taxable REIT subsidiary ("TRS") of the respective Owner effective as of Date 2.

FACTS

Each Owner is a State A limited liability company that was formed on Date 1 to hold a parcel of land for development of office, retail, multi-family, and hotel properties in State B and has elected for federal income tax purposes to be treated as a real estate investment trust ("REIT") under sections 856 – 860 of the Code effective as of Date 1.

Subsidiary is a State B corporation that was formed on Date 2 to hold a parcel of land that would contain a parking garage to be shared by the other property types. Since Subsidiary was intended to hold a "common interest development" (i.e., the parking garage) under State B law, Subsidiary was also required to be formed as a nonprofit corporation under State B law.

Each Owner owns Subsidiary indirectly through other entities described below. Subsidiary is directly owned by a entities, each of which is a State A limited liability company that is classified as a disregarded entity for U.S. federal income tax purposes, and each of which is directly and wholly owned by Partnership. Partnership is a State A limited liability company that is classified as a partnership for U.S. federal income tax purposes. Partnership has a partners: Owners.

Upon the granting of the requested ruling letter, Subsidiary will be identified on each Owners' Year 1 Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*, Schedule 0, *Consent Plan and Apportionment Schedule for a Controlled Group*. Any dividend distributions by Subsidiary will be included on the respective Form 1120-REIT. Each Owner intends to file a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, and will file its Form 1120-REIT on or before the extended due date.

Owners and Subsidiary were formed by, and are managed by, Advisor. Advisor is a real estate investment and development company based in State B. Advisor handles all aspects of the investment and development process, including

acquisition/disposition, financing, planning/government entitlement, design, construction, leasing, and property management.

Advisor has no internal tax department and therefore relies on the advice of outside tax professionals relating to the tax obligations of the entities it manages. None of the employees of Advisor have particular experience or knowledge of U.S. federal tax law. Consequently, Advisor engages Accounting Firm to assist with U.S. federal and state tax compliance services for numerous entities managed by Advisor. Advisor fully 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.

Owners and Subsidiary represent that by the time Accounting Firm learned of Subsidiary's formation and informed Advisor of the advisability of the TRS election, the election would have been considered late. Accordingly, Advisor was advised that relief for the late election could be pursued by Owners and Subsidiary pursuant to section 301.9100-1, and, soon thereafter, a ruling request was submitted on behalf of Owners and Subsidiary pursuant to that recommendation.

Owners and Subsidiary represent that notwithstanding the fact that no TRS election was made by Owners and Subsidiary, Subsidiary has continually been treated as a TRS as of Date 2, the desired effective date for the late TRS election at issue.

Owners and Subsidiary make the following additional representations:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service ("Service").
2. Granting the relief requested will not result in Owners 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 election had been timely made (taking into account the time value of money).
3. Owners and Subsidiary do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 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 elections and related tax consequences, Owners and Subsidiary did not choose to not file the election.
5. Owners and Subsidiary are not using hindsight in making the decision to seek the relief requested. No specific facts have changed since the due

date for making the election that makes the election advantageous to Owners or Subsidiary.

6. The period of limitations on assessment under section 6501(a) has not expired for Owners or Subsidiary for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

In addition, affidavits on behalf of Owners and Subsidiary have been provided as required by sections 301.9100-3(e)(2) and (3).

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, section 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, section 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 taxable 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 taxable year. However, the effective date of the election depends on when the Form 8875 is filed. The instructions further provide that the effective date 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) 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. A taxpayer will be deemed to have not acted reasonably and 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)(1) 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)(1)(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)(1)(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 Subsidiary and each Owner have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Subsidiary as a TRS of the respective Owner, effective as of Date 2. Accordingly, Subsidiary and each Owner have 90 days from the date of this letter to file their intended election.

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 as to whether any Owner 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 each Owner and 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.

The ruling contained in this letter is based upon information and representations submitted by Owners and Subsidiary and accompanied by 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 Powers of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Robert A. Martin
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes