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Department of the Treasury

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Date:

April 14, 2021

LEGEND:

Taxpayer =

Subsidiary =

Sponsor =

State =

Accounting Firm =

Law Firm-1 =

Law Firm-2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Year 1 =

Year 2 =

Dear :

This ruling responds to a letter dated November 16, 2020, and subsequent correspondence, submitted on behalf of Taxpayer and Subsidiary. Taxpayer and Subsidiary request an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (the "Regulations") to make an election under section 856(l) of the Internal Revenue Code (the "Code") to treat Subsidiary as a taxable REIT subsidiary ("TRS") of Taxpayer effective as of Date 1.

FACTS

Sponsor is a real estate investment company that was formed on Date 2. Sponsor formed Taxpayer, a State limited liability company, on Date 3, to invest in single family rental homes (the "Real Property"). Taxpayer made an initial entity classification election on Form 8832, *Entity Classification Election*, to be classified as an association taxable as a corporation for federal income tax purposes effective as of Taxpayer's date of formation. Taxpayer elected to be treated as a real estate investment trust ("REIT") for federal income tax purposes beginning with Taxpayer's taxable year that ended Date 4. Taxpayer owns the Real Property through its ownership of (i) a series of single-member limited liability companies that are treated as disregarded entities from their owner for federal income tax purposes, and (ii) a series of limited liability companies that are intended to be treated as taxable REIT subsidiaries (the "TRS Entities") of Taxpayer. The TRS Entities are comprised of Subsidiary and two other related entities.

Subsidiary is a State limited liability company that was formed on Date 5. Subsidiary is indirectly owned by Taxpayer through a series of entities that are disregarded from their owner for federal income tax purposes. Subsidiary received a Notice CP277 from the Internal Revenue Service (the "Service") dated Date 6, notifying Subsidiary that the Form 8832, *Entity Classification Election*, that Subsidiary filed to make an election to be treated as a corporation for federal income tax purposes was approved by the Service effective Date 1. When forming Subsidiary, Sponsor and

Taxpayer intended to treat Subsidiary as a TRS of Taxpayer. To make a timely TRS election that would have been effective on Date 1, Taxpayer and Subsidiary needed to have filed a Form 8875, *Taxable REIT Subsidiary Election*, with the Service no later than Date 7.

Sponsor provides certain administrative and management services to Taxpayer and Subsidiary. These services include overseeing tax matters, for which Sponsor relies on external legal and tax advisors to manage tax compliance and tax planning. During the relevant time period, Year 1 and Year 2, neither Sponsor, Taxpayer, nor Subsidiary maintained an internal tax department or had tax professionals within their employ. Sponsor retained Accounting Firm and Law Firm-1 in connection with the structuring transactions relating to Taxpayer and Subsidiary. The scope of the services provided by Accounting Firm and Law Firm-1 included advising on tax matters related to Taxpayer and Subsidiary, including the REIT provisions. Additionally, Sponsor engaged Accounting Firm to assist with certain income tax compliance matters related to Taxpayer and Subsidiary, including the preparation and timely filing of their federal and state income tax returns, and the review of quarterly and annual REIT compliance testing.

During Year 1 and Year 2, Sponsor also engaged Law Firm-2 to provide legal counsel with respect to third party loan agreements for the Real Property. Consistent with the intent that certain properties of the Real Property would be owned and operated by the TRS Entities, it was determined that the TRS Entities should be added as borrowers to the loan agreements. Accordingly, Law Firm-2 prepared the necessary documents for Subsidiary to be included in the loan agreements, which Sponsor properly filed with State to be effective on Date 5.

Sponsor relied on Accounting Firm to ensure that all significant tax matters, including making the necessary TRS election, were properly handled in a timely manner. Accounting Firm, however, was under the assumption that Sponsor had engaged external legal counsel to prepare the TRS election, based on the premise that Sponsor had historically engaged external legal counsel to prepare tax-related filings relating to the legal formation of an entity. Sponsor, however, did not engage any law firm to prepare the TRS election, nor did Sponsor timely notify Accounting Firm that Subsidiary had been formed because Sponsor was unaware of the requirement to make the TRS election. Consequently, the misunderstanding and gaps in coordination and communication resulted in Sponsor inadvertently failing to timely file a Form 8875 on behalf of Taxpayer and Subsidiary for Subsidiary to be treated as a TRS of Taxpayer effective as of Date 1.

On Date 8, in the course of assisting with the preparation of an extension request for Subsidiary's federal income tax return for the taxable year that ended Date 9, Accounting Firm discovered that a Form 8875 had not been filed with the Service on behalf of Taxpayer and Subsidiary. Accounting Firm informed Sponsor that the deadline had passed for Taxpayer and Subsidiary to timely file a Form 8875 that would

have been effective Date 1. On Date 10, Sponsor caused the filing of a Form 8875 on behalf of Taxpayer and Subsidiary with the Service, making an election for Subsidiary be treated as a TRS of Taxpayer.

Subsequently, Sponsor engaged Accounting Firm to prepare a request for a private letter ruling under sections 301.9100-1 and 301.9100-3 of the Regulations to seek an extension of time to allow Taxpayer and Subsidiary to make an election pursuant to section 856(l) for Subsidiary to be treated as a TRS of Taxpayer effective as of Date 1.

Taxpayer and Subsidiary make the following additional representations in connection with their request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief requested will not result in Taxpayer or Subsidiary having a lower U.S. federal 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. Taxpayer 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 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 making the decision to seek the relief requested. No specific facts have changed since the due date for making the election that make the election advantageous to Taxpayer or Subsidiary.
6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer 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 Taxpayer and Subsidiary have been provided as required by section 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, 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 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) 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 Taxpayer and Subsidiary have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Subsidiary as a TRS of Taxpayer effective as of Date 1. Accordingly, the Form 8875 filed by Taxpayer and Subsidiary on Date 10 will be considered timely filed, and the effective date of the TRS election is Date 1.

This ruling is limited to the timeliness of the filing of Form 8875. This ruling's application is limited to the facts, representations, and Code and Regulations sections cited herein.

Except as 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 Taxpayer otherwise qualifies as a REIT or whether Subsidiary otherwise qualifies as a TRS of Taxpayer under part II of subchapter M of Chapter 1 of the Code.

No opinion is expressed with regard to whether the tax liability of 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.

The ruling contained in this letter is based upon information submitted and representations made by Taxpayer and Subsidiary and accompanied by penalties of perjury statements executed by the 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 taxpayer 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,

K. Scott Brown
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:

cc: