

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-114955-21

Date:

December 20, 2021

LEGEND

Taxpayer =

Managing Entity

Subsidiary =

Accounting Firm =

Law Firm =

City =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =
Year 1 =
Year 2 =

Dear :

This ruling responds to a letter dated July 19, 2021, submitted on behalf of Taxpayer and Subsidiary. Taxpayer and Subsidiary request an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a joint election under § 856(l) of the Internal Revenue Code ("Code") to treat Subsidiary as a taxable REIT subsidiary ("TRS") of Taxpayer effective as of Date 1.

FACTS

Managing Entity was formed under the laws of State on Date 2. Managing Entity is a limited partnership that is treated as a partnership for federal income tax purposes. Managing Entity is a real estate developer and asset manager that provides certain administrative and management services to Taxpayer and Subsidiary, including overseeing tax matters.

Taxpayer was formed under the laws of State on Date 3. Taxpayer elected to be treated as a real estate investment trust ("REIT") for federal income tax purposes, effective for the year ended Date 4. Since its formation, Taxpayer has invested in several real estate projects indirectly through entities treated as partnerships for federal income tax purposes.

From Year 1 to present, Managing Entity retained Accounting Firm and Law Firm to provide tax consulting services in connection with the structuring of transactions relating to Taxpayer. Managing Entity engaged Accounting Firm to timely comply with various tax filing requirements, review quarterly and annual REIT testing, and advise on selected tax compliance matters.

On Date 5, Managing Entity requested that Accounting Firm assist Taxpayer with the tax structuring of an acquisition of land outside of City. Accounting Firm advised, in part, that Taxpayer form Subsidiary as a wholly owned subsidiary of Taxpayer. Accordingly, on Date 6, Accounting Firm advised Managing Entity that Subsidiary should elect to be treated as an association taxable as a corporation for federal income tax purposes by filing Form 8832, *Entity Classification Election*. Accounting Firm also advised Managing Entity that Taxpayer and Subsidiary should make a joint election on Form 8875, *Taxable REIT Subsidiary Election*, to treat Subsidiary as a TRS of Taxpayer for federal income tax purposes. Accounting Firm did not provide details with respect to the timing of filing Form 8875.

On Date 7, Managing Entity confirmed with Accounting Firm that Form 8832 had to be filed for Subsidiary. Managing Entity did not confirm with Accounting Firm that Form 8875 also had to be filed. Subsidiary was formed under the laws of State on Date

8 as a limited liability company (“LLC”), with Taxpayer as the sole member. Subsidiary’s LLC Agreement states that Taxpayer and Subsidiary shall jointly elect that Subsidiary shall be treated as a TRS of Taxpayer for federal income tax purposes. Managing Entity did not file Form 8832 on behalf of Subsidiary or Form 8875 on behalf of Taxpayer and Subsidiary.

Accounting Firm assumed that Managing Entity would prepare Form 8832 and Form 8875 in-house or engage Law Firm to prepare the forms. Managing Entity assumed that either Accounting Firm or Law Firm would prepare the Form 8832. Taxpayer represents that, based on Managing Entity’s lack of experience forming a TRS and on a misunderstanding between Managing Entity and Accounting Firm, Managing Entity was not fully aware that it had to file a Form 8875. Taxpayer represents that the Form 8875 should have been filed with the Internal Revenue Service (“Service”) by Date 9 to elect a Date 1 effective date.

During Date 10, while preparing the Subsidiary's Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, Accounting Firm requested Managing Entity to provide filed copies of the Form 8832 and Form 8875. Managing Entity confirmed that it did not have these forms in its records. Accounting Firm then confirmed with the Service that Form 8832 and Form 8875 had not been filed.

Accordingly, Managing Entity engaged Accounting Firm to submit a request for relief under §§ 301.9100-1 and 301.9100-3 for an extension of time to file the election under § 856(l) to treat Subsidiary as a TRS of Taxpayer effective as of Date 1. On Date 11, Subsidiary filed Form 8832 requesting late classification relief under Rev. Proc. 2009-41, 2009-2 C.B. 439, for Subsidiary to be classified as an association taxable as a corporation effective as of Date 1.

Taxpayer and Subsidiary make the following additional representations in connection with this 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 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 § 6662 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 requesting relief. 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 § 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 § 301.9100-3(e)(2) and (3).

LAW AND ANALYSIS

Section 856(l) 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 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 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) 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 a regulation or 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 § 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 § 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 generally 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, however, if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based on the information submitted and the representations made, we conclude that Taxpayer and Subsidiary have satisfied the requirements for granting a reasonable extension of time to jointly elect under § 856(l) to treat Subsidiary as a TRS of Taxpayer, effective as of Date 1. Accordingly, Taxpayer and Subsidiary have 90 calendar days from the date of this letter to make the intended joint election to treat Subsidiary as a TRS of Taxpayer, effective as of 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 regulation 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.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and Subsidiary and accompanied by penalty 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 taxpayers that requested 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
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:

Copy of this letter
Copy for § 6110 purposes

cc: