

Internal Revenue Service

Number: **202551037**

Release Date: 12/19/2025

Index Number: 856.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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CC:FIP:B03

PLR-109723-24

Date:

July 21, 2025

LEGEND:

Taxpayer =

Subsidiary =

Joint Venture =

Managing Group =

Accounting Firm =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

X =

Dear _____ :

This ruling responds to a letter dated May 23, 2024, and supplemental 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 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 Taxpayer effective Date 1.

FACTS

Taxpayer is a State limited liability company that elected to be taxed as a real estate investment trust ("REIT") under sections 856 through 859 of the Code, beginning with its initial taxable year that ended Date 2.

Taxpayer owns an interest in Joint Venture, a partnership for federal income tax purposes. Joint Venture wholly owns Subsidiary, which was formed as a State limited liability company on Date 1.

Managing Group manages various funds that own, directly or indirectly, Taxpayer and Subsidiary. Managing Group's tax department serves as the tax department for Taxpayer and Subsidiary.

Managing Group engaged various external advisors, including Accounting Firm, to provide tax compliance and consulting services on behalf of Taxpayer and Subsidiary. Accounting Firm has historically assisted Managing Group and related entities with a range of tax related matters, including with the preparation and timely filing of approximately x tax elections, which included Form 8832, *Entity Classification Election*, and Form 8875, *Taxable REIT Subsidiary Election*.

Managing Group specifically engaged Accounting Firm and various other external advisors to discuss the formation and structuring of Taxpayer and Subsidiary and maintaining operational compliance with requirements imposed on REITs under the Code. Managing Group's tax department understood from prior transactions that to qualify as a TRS, the REIT and TRS must elect TRS status on a Form 8875. Therefore, when discussing the operations of the REIT and TRS and corresponding structuring considerations, Managing Group represents it was understood that a TRS election would be required, consistent with previous similar transactions. In accordance with its historic practice, it was the intent of Managing Group for Taxpayer and Subsidiary to jointly elect on Form 8875 for Subsidiary to be treated as a TRS of Taxpayer effective as of Date 1. To timely make this election as of Date 1, Form 8875 needed to be filed no later than Date 3. Managing Group provided Accounting Firm with all necessary information and Taxpayer assumed that it was compliant with its qualification as a REIT.

There was no explicit discussion regarding filing Form 8875 on behalf of Taxpayer and Subsidiary, but due to Managing Group's experience from prior transactions it was understood that a TRS election would be required. No one particular advisor was explicitly requested to assist with the filing of Form 8875, and due to the number of external advisors and complexity of the structuring transactions, Accounting Firm did not appreciate the need for them to assist with preparing and filing the Form 8875 even though they had historically assisted Managing Group with similar elections. As a result of this miscommunication among Managing Group, Accounting Firm, and the other external advisors involved with advising on Taxpayer's structuring, Taxpayer and Subsidiary inadvertently failed to timely file Form 8875 to treat Subsidiary as a TRS of Taxpayer.

On Date 4, one of the other external advisors emailed Accounting Firm asking whether Taxpayer would elect REIT status for the taxable year ended Date 2. Accounting Firm promptly responded affirmatively and notified the team typically engaged for preparing tax elections. Accounting Firm then discussed with Managing Group's tax department and the other external advisors to confirm whether the Form 8832 was filed for Subsidiary or the Form 8875 was filed for Subsidiary and Taxpayer. It was at this time that Taxpayer discovered these forms had not been filed.

Upon discovery of the failure, on Date 5 Taxpayer and Subsidiary filed Form 8875 to jointly elect to treat Subsidiary as a TRS of Taxpayer effective Date 6. Taxpayer then filed this ruling request to request an extension of time to elect to treat Subsidiary as a TRS of Taxpayer on Date 1.

Taxpayer represents that Subsidiary was granted an extension of time to make the entity classification election effective Date 1 in a private letter ruling dated Date 7. Taxpayer also represents that Subsidiary intends to elect to be treated as a corporation for federal income tax purposes effective Date 1, and will be eligible within the meaning of section 301.7701-3(a) on the date the retroactive election to treat Subsidiary as a TRS of Taxpayer becomes effective.

In connection with this request for an extension of time, Taxpayer makes the following additional representations:

- 1) Taxpayer and Subsidiary are filing this request for relief before the failure to timely make the regulatory election on Form 8875 was discovered by the Service.
- 2) Granting this request for relief will not result in Taxpayer or Subsidiary having a lower U.S. federal tax liability in the aggregate for all years to which the regulatory election applies than if Taxpayer and Subsidiary had timely made the election (taking into account the time value of money).

- 3) The period of limitations on assessment under section 6501(a) has not expired for Taxpayer or Subsidiary for the taxable year for which the election should have been made, nor for any taxable year(s) that would have been affected by the election had it been timely made.
- 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 seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 at the time Taxpayer and Subsidiary are requesting relief, (taking into account any qualified amended return filed within the meaning of section 1.6664-2(c)(3) of the Income Tax Regulations) and the new position requires or permits a regulatory election for which relief is requested.
- 6) Taxpayer and Subsidiary are not using hindsight in requesting this relief. No specific facts have changed since the due date for making the TRS election that make this election advantageous to Taxpayer or Subsidiary.

In addition, affidavits on behalf of Taxpayer and Subsidiary have been provided as required by section 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, section 856(l)(1) provides that the REIT must directly or indirectly own stock in such corporation, and the REIT and such corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the corporation 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) 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, 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 section 301.9100-3 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 generally is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under section 301.9100-3 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 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. If specific facts have changed since the due date for making the election that make the election more advantageous to the taxpayer, the Service will not ordinarily grant relief. In such case the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

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 section 301.9100-3.

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 elect under section 856(l) to treat Subsidiary as a TRS of Taxpayer, effective Date 1. Accordingly, the Form 8875 filed by Taxpayer and Subsidiary on Date 5 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, Code sections, 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. No opinion is expressed as to whether Taxpayer otherwise qualifies as a REIT or whether Subsidiary otherwise qualifies as a TRS of Taxpayer under subchapter M of chapter 1 of the Code. Additionally, no opinion is expressed as to any tax liability of Subsidiary.

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 a ruling, 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 terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Andrea M. Hoffenson
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)