

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:2
PLR-104408-26

Date:
March 27, 2026

Legend

- Taxpayer =
- Subsidiary =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Year 1 =
- Year 2 =
- State 1 =
- State 2 =
- Facility =
- Accounting Firm =

Dear _____ :

This ruling responds to a letter dated October 14, 2025, 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 as of Date 3.

FACTS

Taxpayer is a domestic trust organized in State 1 in Year 1. Taxpayer elected to be treated as a real estate investment trust (“REIT”) under sections 856 through 859 of the Code, beginning with its taxable year ended Date 1. Taxpayer is engaged primarily in the business of acquiring, developing, managing and leasing income producing real estate projects involving senior living facilities.

Taxpayer engaged Accounting Firm to prepare tax returns for itself and its subsidiaries. Taxpayer routinely meets with Accounting Firm to discuss business events that are relevant to the preparation of its tax returns. Taxpayer and Accounting firm hold calls on a quarterly basis.

On Date 2, Subsidiary was organized as a State 2 limited liability company wholly owned by Taxpayer that is disregarded from Taxpayer for federal income tax purposes. On Date 3 Taxpayer acquired Facility through Subsidiary. Prior to that time, Subsidiary had no activity. Facility was then leased to an operating entity that provides services to the tenants of Facility. Typically, when Taxpayer acquired a property, Accounting Firm would ensure that a TRS was formed and that elections were made for the TRS to be treated as a corporation and to be a TRS. Taxpayer represents that it intended to make those elections for Subsidiary effective as of Date 3.

Early in Year 2, due to scheduling conflicts, Accounting Firm was unable to attend the normally scheduled quarterly meeting that followed the purchase of Facility. On Date 4, a date that is more than 75 days past Date 3, Taxpayer informed Accounting Firm about the formation of Subsidiary and the purchase of Facility. At that point, Accounting Firm realized that it had failed to file Form 8832 and Form 8875 for Subsidiary. The failure to file Form 8832 and Form 8875 was not discovered until after the filing deadline in order to be effective as of Date 3.

On Date 5, Subsidiary filed Form 8832, electing to be treated as an association taxable as a corporation for federal income tax purposes effective Date 3, pursuant to Rev. Proc. 2009-41.

REPRESENTATIONS

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

1. Taxpayer and Subsidiary have filed this request for relief before the failure to timely make the regulatory election on Form 8875 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 regulatory 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 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 more 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 sections 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 a regulation 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 3. Accordingly, Taxpayer and Subsidiary have 90 calendar days from the date of this letter to make the intended election to treat Subsidiary as a TRS of Taxpayer, effective Date 3.

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 who requested it. Section 6110(k)(3) 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,

Matthew P. Howard
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: