Internal Revenue Service

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Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
May 06, 2026

Legend

Taxpayer =

Subsidiary =

Business 1 =

Entity A =

Entity B =

Entity C =

Entity D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Date 13 =

Year 1 =

Year 2 =

Year 3 =

State 1 =

State 2 =

Accounting Firm =

Dear :

This ruling responds to a letter dated October 1, 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 7.

FACTS

Taxpayer was organized as a limited liability company (LLC) in State 1 on Date 4. 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 10. On Date 12 Taxpayer reorganized as a statutory trust in State 2. Taxpayer is engaged in Business 1.

On Date 1 Entity A was formed as a State 2 statutory trust which elected to be treated as a REIT under sections 856 through 859 of the Code, beginning with its taxable year ended Date 2. Entity A was wholly owned by Entity D.

Entity D has historically relied on external legal and tax advisors for tax planning and tax compliance services. Beginning in Year 1 Entity D engaged Accounting Firm to perform tax compliance service for Entity A. On Date 3 Entity B, an entity disregarded from Entity A for federal income tax purposes, formed Subsidiary, a State 1 limited liability company to be a Taxable REIT Subsidiary (TRS) of Entity A. Subsidiary filed Form 8832, *Entity Classification Election*, electing to be treated as an association taxable as a corporation for federal income tax purposes effective Date 3. Entity A and Subsidiary also timely made a joint election to treat Subsidiary as a TRS of Entity A effective Date 3 by filing a Form 8875, *Taxable REIT Subsidiary Election*.

Pursuant to an equity purchase agreement dated Date 5 Taxpayer indirectly acquired Subsidiary on Date 7, when Taxpayer acquired Entity B. A draft structure chart prepared on Date 6 shows an entity labeled as “TRS” in the new ownership structure. Although Subsidiary’s name was not reflected on the chart, it was Taxpayer’s intent that the entity labeled TRS was to be Subsidiary and that Subsidiary would be a TRS of Taxpayer following the closing of the acquisition. As Accounting Firm was Taxpayer’s tax advisor throughout Year 2, on Date 7 Entity D provided Accounting Firm with a copy of the draft structure chart including the entity labeled TRS because Accounting Firm would be involved in Taxpayer’s post-closing compliance. Accounting Firm was not otherwise involved in the structuring of the acquisition. On Date 8 and Date 9, subsequent to the acquisition, Entity D provided Accounting Firm with another chart reflecting the post-closing structure, but the chart provided on those dates did not include the entity previously labeled TRS or any specific references to Subsidiary.

Because the structure charts did not specifically identify Subsidiary by name, and because Accounting Firm was not involved in the structuring or execution of the acquisition of Entity B, Accounting Firm did not become aware of Taxpayer’s indirect acquisition of Subsidiary until later. Later, on Date 11 Entity C, Taxpayer’s sole owner, engaged Accounting Firm to prepare Taxpayer and Subsidiary’s Year 2 tax returns. The same Accounting Firm team that had been preparing Subsidiary’s returns since Subsidiary’s formation prepared Subsidiary’s Year 2 tax return. Because Accounting Firm was not involved in the structuring or execution of the acquisition of Entity B, the Accounting Firm team preparing Subsidiary’s Year 2 tax return was unaware of the need for Taxpayer and Subsidiary to file a TRS election with respect to Subsidiary.

Due to the inadvertent failure to specifically identify Subsidiary in post-transaction structure charts, the need for Taxpayer and Subsidiary to file a joint TRS election was not identified. However, Subsidiary timely filed Forms 1120 for Year 2 onward and Taxpayer's tax returns filed for Year 2 onward and its REIT qualification testing for the same period reflected Subsidiary's treatment as a TRS of Taxpayer. Since Taxpayer's indirect acquisition of Subsidiary, Taxpayer and Subsidiary have timely filed their tax returns, prepared by Accounting Firm, consistent with the belief that Subsidiary has been a TRS of Taxpayer. In summer of Year 3, Taxpayer forwarded a diligence request from its majority owner to Accounting Firm. While performing the diligence request, Accounting Firm discovered that it only had a TRS election on file for Entity A and Subsidiary, and not for Taxpayer and Subsidiary. Accounting Firm brought this to Taxpayer's attention, and advised Taxpayer that, pursuant to sections 301.9100-1(c) and 301.9100-3, Taxpayer could request an extension of time to make the election under section 856(l) to treat Subsidiary as a TRS.

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 Internal Revenue 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 expired for the taxable year in which the election should have been filed. However, pursuant to section 301.9100-3(c)(1)(ii), Taxpayer has provided a certificate from an independent auditor (other than an auditor providing an affidavit pursuant to section 301.9100-3(e)(3)) certifying that the interests of the Government would

not be prejudiced under the standards set forth in section 301.9100-3(c)(1)(i) if relief were granted as requested by Taxpayer and Subsidiary.

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). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made. 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. The Service may condition a grant of relief on the taxpayer providing the Service with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to section 301.9100-3(e)) certifying that the interests of the Government are not prejudiced under the standards set forth in section 301.9100-3(c)(1)(i).

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 7. 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 7.

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,

____

K. Scott Brown
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: