Internal Revenue Service

Number: **202632020**
Release Date: 8/7/2026

Index Number: 856.00-00, 9100.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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CC:FIP:B03
PLR-119994-25

Date:
May 06, 2026

LEGEND:

Taxpayer =

Subsidiary =

Limited Partnership =

Company =

Entity =

Tax Return Preparer =

State =

Township =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Year 1 =

Year 2 =

Dear :

This ruling responds to a letter dated November 20, 2025, that was submitted on behalf of Taxpayer and Subsidiary. Taxpayer and Subsidiary seek an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations ("Regulations") to make an 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

Taxpayer is a State limited liability company that elected to be treated as a real estate investment trust ("REIT") under §§ 856 through 859 of the Code beginning with its taxable year that ended Date 2. Taxpayer is owned directly or indirectly by various funds managed by Limited Partnership.

Company is owned by Taxpayer and Entity, its joint venture partner. Subsidiary, a State limited liability company, is wholly owned by Company. Thus, Taxpayer owns an interest in Subsidiary through Company. Company is treated as a partnership for federal tax purposes and owns real property within the meaning of § 1.856-10 of the Regulations. Company uses Subsidiary to provide services to tenants, hold certain assets, and to receive income. Subsidiary commenced its operations and acquired assets on Date 3.

Company was formed to acquire, develop, construct, own, and operate a senior living facility located in Township (the "Project"). The Project was intended to qualify as a "qualified healthcare property" within the meaning of § 856(e)(6)(D). Taxpayer and Subsidiary planned to file a Form 8875, *Taxable REIT Subsidiary Election*, with the Internal Revenue Service ("Service") and jointly make an election to treat Subsidiary as a TRS of Taxpayer effective as of Date 1. To have made a timely election, a Form 8875 would have had to have been filed by Taxpayer and Subsidiary no later than Date 4.

After discussions in Year 1 among Tax Return Preparer, employees in the Limited Partnership's tax, finance, and asset management department (the "Department"), and a tax director at Entity, a decision was reached that although the real estate was purchased in Year 1 and Taxpayer's REIT election was made in Year 1, making a TRS election for Subsidiary would not be undertaken until completing such an action was actually necessary – after construction was completed and the Project became operational.

During the summer of Year 2, the tax director at Entity who had participated in the discussions left Entity. Additionally, during Date 5, Limited Partnership experienced some employee turnover, and the lead asset manager for Entity left. Entity was responsible for informing members of the Department, legal counsel, and Tax Return Preparer of the completion of construction of the Project, which would trigger the necessity for Taxpayer and Subsidiary to jointly make a TRS election to treat Subsidiary as a TRS of Taxpayer.

During Date 6, construction on the Project was completed and the asset became operational. However, because of employee turnover at both Limited Partnership and Entity, and the ensuing poor communications, members of the Department and Tax Return Preparer only became aware on Date 7 that construction on the Project had been completed and that the asset had become operational. This information only became known because Tax Return Preparer had requested an update on the status of the Project.

Upon discovery of the failure of Taxpayer and Subsidiary to timely make a TRS election, Taxpayer and Subsidiary filed a Form 8875 on Date 8, reflecting the earliest possible effective date, Date 9. Taxpayer and Subsidiary then filed this request for a private letter ruling seeking an extension of time to elect to treat Subsidiary as a TRS of Taxpayer on Date 1. Taxpayer and Subsidiary represent that since Date 1 the accounting and tax reporting of Taxpayer, Subsidiary, and Company have clearly and consistently reflected Taxpayer's and Subsidiary's intent to properly and timely elect to make Subsidiary a TRS of Taxpayer effective as of Date 1. Taxpayer also represents that Subsidiary elected to be treated as a corporation for federal income tax purposes by filing Form 8832, *Entity Classification Election*, effective as of Date 1.

Taxpayer and Subsidiary make the following additional representations in connection with their request for an extension of time to make the election under § 856(l):

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 federal income 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 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 § 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.

Affidavits on behalf of Taxpayer and Subsidiary were provided by knowledgeable individuals associated with Taxpayer, Subsidiary, and Tax Return Preparer, as required by § 301.9100-3(e)(2) and (3) of the Regulations.

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, § 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, 2001-8 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 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 published in the Federal Register, 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 uses 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 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 § 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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under § 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 § 856(l) to treat Subsidiary as a TRS of Taxpayer effective Date 1. Accordingly, the Form 8875 treating Subsidiary as a TRS of Taxpayer that was filed on Date 8 will be considered as timely filed, with an effective date 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, 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 part II of 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 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 terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Adam G. Province
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes

cc: