Internal Revenue Service

Number: **202104008**
Release Date: 1/29/2021

Index Number: 9100.00-00, 856.00-00

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:B01
PLR-115339-20

Date:
October 30, 2020

Legend:

Taxpayer	=
Subsidiary	=
Law Firm	=
Tax Preparer	=
Investment Manager	=
Facilities	=
State A	=
Date 1	=
Date 2	=
Date 3	=
Month 1	=
Month 2	=

a =

Dear :

This ruling responds to a letter dated July 9, 2020, 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 make an election under section 856(l) of the Internal Revenue Code ("Code") to treat Subsidiary as a taxable REIT subsidiary ("TRS") of Taxpayer.

FACTS

Taxpayer and Subsidiary are State A limited liability companies which were organized on Date 1 and which filed timely Forms 8832, *Entity Classification Election*, to be treated as corporations as of the date of their formation. Taxpayer timely elected under section 856 of the Code to be treated as a real estate investment trust ("REIT") effective Date 1. Taxpayer owns Facilities and leases Facilities to Subsidiary.

On Date 2, Taxpayer acquired a(n) a% direct ownership interest in Subsidiary. Taxpayer and Subsidiary represent that they intended to make an election on Form 8875, *Taxable REIT Subsidiary Election*, to treat Subsidiary as a TRS as of Date 2, and that all of their tax returns are consistent with having timely made that election. To be effective as of Date 2, the election should have been filed no later than Date 3. However, Taxpayer and Subsidiary now believe that no TRS election was in fact filed.

Taxpayer and Subsidiary represent that a timely TRS election was not filed solely because of a misunderstanding among Law Firm, Tax Preparer, and Investment Manager. Investment Manager oversaw tax elections for Taxpayer and Subsidiary. Law Firm advised Investment Manager on Taxpayer's investment in Subsidiary. Tax Preparer was engaged to prepare income tax returns of Taxpayer and Subsidiary beginning with the year the entities were formed.

Taxpayer and Subsidiary have submitted affidavits from the three agents, each of whom represents that Taxpayer and Subsidiary intended to file a timely TRS election. An affiant for the Investment Manager indicates that he believed that Law Firm would prepare and file the TRS election just as it had prepared and filed the Forms 8832. But an affiant for Law Firm reveals that he assumed based on past practices that either Investment Manager or Tax Preparer would take care of the TRS filing. Likewise, Tax Preparer assumed that either Investment Manager or Law Firm would file the election.

In Month 1, Investment Manager first discovered that two entities under its management had not made an intended TRS election. Investment Manager's subsequent

examination indicated that Taxpayer and Subsidiary had not made their intended TRS election.

Taxpayer and Subsidiary first learned of the missing TRS election during Month 2 from Investment Manager and Tax Preparer and promptly prepared and submitted the request for relief to which this ruling responds.

Taxpayer and Subsidiary make the following additional representations:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service ("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 section 6662 at the time they requested relief.

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 and 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, Subsidiary, Investment Manager, Law Firm, and Tax Preparer have been provided as required by sections 301.9100-3(e)(2) and (3).

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, 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 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 Internal Revenue 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 this section 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 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 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.

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 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 elect under section 856(l) to treat Subsidiary as a TRS of Taxpayer, effective as of Date 2. Accordingly, Taxpayer and Subsidiary have 30 calendar days from the date of this letter to make the intended election to treat Subsidiary as a TRS of Taxpayer effective as of Date 2.

This ruling is limited to the timeliness of filing Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations 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, under part II of subchapter M of chapter 1 of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer and Subsidiary is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the U.S. federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the U.S. federal income tax effect.

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, copies of the letter are being sent to your authorized representatives.

Sincerely,

_____
Steven Harrison
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: