

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:

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PLR-114904-24

Date:

January 21, 2025

LEGEND:

Taxpayer =

Company =

Investment Fund =

Accounting Firm =

Hotel =

Property Company =

Manager =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Month 1 =

Month 2 =

Month 3 =

Year =

State =

a =

Dear :

This ruling responds to a letter dated August 19, 2024, and supplemental correspondence, submitted on behalf of Taxpayer and Company. Taxpayer and Company request an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a joint election under § 856(l) of the Internal Revenue Code ("Code") to treat Company as a taxable REIT subsidiary ("TRS") of Taxpayer effective Date 2.

FACTS

Taxpayer is a State limited liability company formed on Date 1. Investment Fund indirectly owns all of Taxpayer's common shares. Taxpayer elected to be taxed as a real estate investment trust ("REIT") under §§ 856 through 859 beginning with its taxable year ended Date 4.

Company is a State limited liability company formed on Date 1. Company is a wholly owned indirect subsidiary of Taxpayer.

Investment Fund engaged Accounting Firm to advise on tax matters and to assist with tax compliance for itself and related entities, including Taxpayer and Company, for

the Year calendar year. Investment Fund also entered a separate tax compliance engagement with Accounting Firm in Month 2 to prepare tax returns for it and many of its subsidiaries and affiliates, including Taxpayer and Company.

Property Company, a wholly owned indirect subsidiary of Taxpayer, acquired Hotel on Date 2. Immediately after the acquisition, and consistent with § 856(d)(8)(B), Property Company and Company entered an a-year operating lease of Hotel. Company then entered into a management agreement with a third-party hotel management company to operate Hotel as an eligible independent contractor.

Manager is a private equity firm that manages Investment Fund and invests in travel and leisure assets, including indirect ownership of Hotel. Manager is responsible for the management of financial, tax, and other reporting obligations. The Chief Financial Officer for both Taxpayer and Company, and generally for every entity within the organizational structure of Manager, had overall responsibility for tax compliance and planning for Taxpayer and Company and managed Manager's accounting department ("CFO").

On Date 3, Manager's accounting department directed Accounting Firm to prepare Form 8832, *Entity Classification Election*, and Form 8875, *Taxable REIT Subsidiary Election*, for Taxpayer and Company as may be necessary. Date 3 was before the due date necessary for the election to be effective as of Date 2 to treat Company as a TRS of Taxpayer. Accounting Firm, however, did not initiate the request and confirmation of information for the preparation of Forms 8832 and 8875 until Month 1. In Month 1, Accounting Firm confirmed with Manager's accounting department that Hotel was purchased on Date 2, the desired effective date of Form 8875. At that point, more than two months and fifteen days had passed since Date 2. As a result of the delayed confirmation by Accounting Firm, Forms 8832 and 8875 had inadvertently not been timely filed by Accounting Firm.

In Month 3, Accounting Firm realized that Forms 8832 and 8875 still had not been prepared for Taxpayer and Company. Based on advice from Accounting Firm, CFO agreed that Forms 8832 and 8875 should be filed with the assistance of Accounting Firm. Due to a resignation within accounting department and the retirement of CFO, the coordination between Accounting Firm and Company pursuant to the transition of these employees and the onboarding of a new tax director further delayed the filing of Forms 8832 and 8875.

On Date 5, Company filed Form 8832 pursuant to the late classification relief provided for in Rev. Proc. 2009-41, 2009-39 I.R.B. 439 to be classified as an association taxable as a corporation, effective Date 2. Taxpayer and Company have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to file Form 8875

to make a joint election under § 856(l) to treat Company as a TRS of Taxpayer, effective Date 2.

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

1. The request for relief was filed by Taxpayer and Company before the failure to make the regulatory election was discovered by the Internal Revenue Service (the "Service").
2. Granting the relief will not result in Taxpayer or Company having a lower tax liability in the aggregate for all years to which the regulatory election applies than it would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer and Company did 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. Taxpayer and Company are not using hindsight in requesting this relief. No specific facts have been changed since the due date for making the election that makes this election advantageous to Taxpayer and Company.
5. The period of limitations on assessment under § 6501(a) has not expired for Taxpayer or Company for the taxable year for 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 Company have been provided as required by § 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, § 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, § 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*. The Announcement provides that this form is to be used for taxable years beginning after 2000 for eligible entities to elect to be treated 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 two months and fifteen days prior to the date of filing the election, or more than twelve 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 six 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 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 § 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 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 generally deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under § 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 § 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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under § 301.9100-3.

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayer and Company have satisfied the requirements for granting a reasonable extension of time to jointly elect under § 856(l) to treat Company as a TRS of Taxpayer as of Date 2. Accordingly, Taxpayer and Company have ninety calendar days from the date of this letter to make the intended election to treat Company as a TRS of Taxpayer effective Date 2.

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 Company otherwise qualifies as a TRS of Taxpayer under subchapter M of chapter 1 of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer or Company 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.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and Company and accompanied by penalty 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 rulings, 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

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

cc: