

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:01

PLR-118272-24

Date:

March 04, 2025

LEGEND

Taxpayer =

Subsidiary =

Affiliate =

Accounting Firm =

Law Firm =

Restaurant Services Provider =

Trust =

DRE =

State =

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	=
Month 1	=
Year 1	=
Year 2	=
Year 3	=

Dear :

This ruling responds to a letter dated October 2, 2024, 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 (“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 Date 6.

FACTS

Taxpayer was formed as a limited liability company, under the laws of State. Taxpayer has elected to be treated as a real estate investment trust (“REIT”) under sections 856 through 859 of the Code for federal income tax purposes beginning with Taxpayer’s taxable year ended Date 1.

Subsidiary was formed as a limited liability company, under the laws of State, on Date 2, and was disregarded from Taxpayer for federal income tax purposes. From

inception to Date 5, Subsidiary was directly and wholly owned by Taxpayer. Pursuant to Subsidiary's limited liability company operating agreement dated Date 3, Subsidiary was formed to be a TRS of Taxpayer and to directly or indirectly acquire interests in real property and provide certain services with respect to real property.

Affiliate is an affiliate of Taxpayer and provides certain administrative services to Taxpayer, including overseeing tax matters for Taxpayer and Subsidiary. Affiliate does not have an in-house tax department. Instead, Affiliate's finance and accounting department relies on external legal and tax advisors, including Accounting Firm and Law Firm, for tax planning and tax compliance services. Around the time of Subsidiary's formation, Accounting Firm and Law Firm advised Affiliate that Taxpayer and Subsidiary should jointly make a TRS election for Subsidiary on or before the date Subsidiary opened a restaurant.

On Date 4, Subsidiary entered into an agreement to lease property from DRE, an entity wholly owned by Taxpayer and disregarded from Taxpayer for federal income tax purposes. Also, on Date 4, Taxpayer and Subsidiary entered into an agreement for Subsidiary to operate a restaurant on the property.

On or around Date 5, Taxpayer granted its entire interest in Subsidiary to the trustees of Trust to facilitate the acquisition of the restaurant's liquor license. Trust's sole beneficiary is Taxpayer and is disregarded from Taxpayer for federal income tax purposes. Subsidiary remained disregarded from Taxpayer for federal income tax purposes. The trustees executed an amended and restated limited liability company operating agreement dated Date 5 for Subsidiary, which reiterated that Subsidiary was formed to be a TRS of Taxpayer.

While Taxpayer and Subsidiary initially expected the restaurant to open in Month 1, the expected opening was delayed to early Year 3. On Date 7, Affiliate, in accordance with its standard operating procedures, engaged Accounting Firm to prepare a Form 8832, *Entity Classification Election*, for Subsidiary to elect to be classified as an association taxable as a corporation. Around this time, and unbeknownst to Affiliate's finance and accounting department, Accounting Firm, or Law Firm, the restaurant began operations. On Date 8, Subsidiary filed Form 8832, requesting late classification election relief under Rev. Proc. 2009-41, 2009-2 C.B. 439 to be classified as an association taxable as a corporation, effective Date 2.

Due to an internal miscommunication, Affiliate's finance and accounting department remained unaware that the restaurant opened until Affiliate received invoices related to the restaurant on Date 11. Affiliate shortly thereafter informed Accounting Firm that operations at the restaurant were underway. On Date 12, Accounting Firm informed Affiliate that a Form 8875, *Taxable REIT Subsidiary Election*, needed to be filed because the restaurant began operations. On Date 13, Accounting Firm prepared, and Taxpayer and Subsidiary filed a Form 8875, effective Date 9. However, in order for the TRS election to be effective prior to the restaurant beginning

operations, the effective date should have been Date 6. Subsequently, Taxpayer filed this request seeking to treat the Form 8875 filed on Date 13, as having been timely filed for an effective date of Date 6.

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

- 1) Taxpayer and Subsidiary are filing this request for relief before the failure to timely make the regulatory election on Form 8875 was discovered by the Service.
- 2) 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.
- 3) Being fully informed of the required regulatory election and related tax consequences, Taxpayer and Subsidiary did not choose to not file the election.
- 4) 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.
- 5) 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 election applies than they would have had if the election had been timely made (taking into account the time value of money).
- 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 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 section 301.9100-3 will be granted when the taxpayer provides 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.

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 6. Accordingly, the Form 8875 filed by Taxpayer and Subsidiary to treat Subsidiary as a TRS of Taxpayer will be treated as timely filed and effective as of Date 6.

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 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 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, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Vanessa Mekpong
Assistant to the Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: