

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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CC:FIP:B01

PLR-100297-25

Date:

July 03, 2025

## LEGEND

Taxpayer =

Subsidiary 1 =

Subsidiary 2 =

Master TRS =

Investment Firm =

Seller =

Hotel Manager =

Tenant =

Accounting Firm =

Law Firm =

State =

Year =

Quarter A =

Quarter B =

|         |   |
|---------|---|
| Month 1 | = |
| Month 2 | = |
| Date 1  | = |
| Date 2  | = |
| Date 3  | = |
| Date 4  | = |
| Date 5  | = |
| Date 6  | = |
| Date 7  | = |

Dear :

This ruling responds to a letter dated December 31, 2024, submitted on behalf of Taxpayer and Subsidiary 1. Taxpayer and Subsidiary 1 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 1 as a taxable REIT subsidiary (“TRS”) of Taxpayer effective as of Date 1.

## FACTS

Taxpayer was formed on Date 2 as a State limited liability company. Taxpayer has elected to be treated as a real estate investment trust (“REIT”). Taxpayer is an affiliate of Investment Firm, a real estate investment firm specializing in the acquisition, development, and management of hospitality real estate assets. Investment Firm manages and directs the operations of its affiliates, including their tax matters. Investment Firm does not have an in-house tax department and relies on external legal and tax advisors for tax planning and compliance services including Law Firm and Accounting Firm.

Master TRS was formed on Date 2 as a State limited liability company and elected to be treated as an association taxable as a corporation for federal income tax

purposes effective Date 3. Master TRS and Taxpayer timely made a joint election to treat Master TRS as a TRS of Taxpayer effective Date 3.

In Month 1, Subsidiary 2, a limited liability company wholly owned by Taxpayer that is disregarded from Taxpayer for federal income tax purposes, sought to acquire a hotel property (the “Hotel”) from Seller. The closing date of the Hotel acquisition was scheduled to occur on Date 1. Prior to the Hotel acquisition, an affiliate of Seller leased property (the “Employee Housing”) from unrelated third parties, which it then subleased to employees of Hotel Manager, an unrelated third party that has historically managed the Hotel. Hotel Manager would deduct its employees’ rent from their paychecks and remit the rent to Seller’s affiliate. Seller’s affiliate would pay rent to the unrelated third-party landlord of the Employee Housing.

Prior to Date 4, Investment Firm anticipated that Seller would assign its leasehold interest and sublease agreements with Hotel Manager’s employees to Tenant, an entity disregarded from Master TRS for federal income tax purposes. Accounting Firm advised that Taxpayer should form a new TRS to serve as assignee of the leasehold interest and sublease agreements and Law Firm agreed with the recommendation.

Subsidiary 1 was formed on Date 5 as a State limited liability company. Pursuant to Subsidiary 1’s limited liability company operating agreement dated Date 6, Subsidiary 1 was formed to be a TRS of Taxpayer. Subsidiary 1 has always been directly and wholly owned by Taxpayer. On Date 1, Subsidiary 1 acquired Seller’s leasehold interest in the Employee Housing.

Due to the volume of activity occurring before and after the Hotel acquisition, the compliance team at Accounting Firm failed to include in the post-acquisition compliance checklist the preparation and filing of Form 8832, *Entity Classification Election*, and Form 8875, *Taxable REIT Subsidiary Election*, for Subsidiary 1. Prior to the Hotel acquisition, Taxpayer determined that the Hotel was a qualifying real estate asset within the meaning of section 856(c)(5)(B) and the Hotel acquisition would not cause Taxpayer to fail the REIT asset test under section 856(c)(4)(A). Because the Hotel acquisition closed shortly before the end of Quarter A of Year and Taxpayer concluded the Hotel acquisition would not cause Taxpayer to fail the REIT asset test, Taxpayer did not include the Hotel in the REIT testing for Quarter A of Year. As a result, the failure to file Form 8832 and Form 8875 was not discovered until after the filing deadline.

In late Month 2, during the REIT testing for Quarter B of Year, Accounting Firm discovered the failure to file Form 8832 and Form 8875 for Subsidiary 1. On Date 7, Subsidiary 1 filed Form 8832, electing to be treated as an association taxable as a corporation for federal income tax purposes effective Date 1, pursuant to Rev. Proc. 2009-41.

## REPRESENTATIONS

Taxpayer and Subsidiary 1 make the following additional representations in connection with this request for an extension of time:

1. Taxpayer and Subsidiary 1 have filed this request for relief before the failure to timely make the regulatory election on Form 8875 was discovered by the Service.
2. Granting the relief requested will not result in Taxpayer or Subsidiary 1 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 1 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 1 did not choose to not file the election.
5. Taxpayer and Subsidiary 1 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 1.
6. The period of limitations on assessment under section 6501(a) has not expired for Taxpayer or Subsidiary 1 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 section 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). 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 1 have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Subsidiary 1 as a TRS of Taxpayer, effective Date 1. Accordingly, Taxpayer and Subsidiary 1 have 90 calendar days from the date of this letter to make the intended election to treat Subsidiary 1 as a TRS of Taxpayer, effective 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 1 otherwise qualifies as a TRS of Taxpayer under subchapter M of chapter 1 of the Code. No opinion is expressed on Taxpayer's application of section 856(c)(4), particularly with respect to Quarter A of Year. Additionally, no opinion is expressed as to any tax liability of Subsidiary 1.

The ruling contained in this letter is based upon information submitted and representations made by Taxpayer and Subsidiary 1 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,

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

cc: