Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date:
December 02, 2014

LEGEND:

Taxpayer	=
Subsidiary	=
Parent	=
Investment Partnership	=
Partnership A	=
Company B	=
Company C	=
Law Firm	=
Accounting Firm	=
State X	=
State Y	=
Date 1	=
Date 2	=

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Year 1 =

Year 2 =

a =

b =

c =

Dear :

This ruling responds to a letter dated August 5, 2014, and subsequent correspondence, submitted on behalf of Taxpayer and Subsidiary. Taxpayer and Subsidiary request an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 856(l) of the Internal Revenue Code to treat Subsidiary as a taxable REIT subsidiary (TRS) of Taxpayer effective as of Date 1.

FACTS

Taxpayer is a limited liability company organized under the laws of State X. Taxpayer represents that it made an election under § 856(c) of the Code to be treated as a real estate investment trust (REIT). Taxpayer was formed by Parent on Date 2. Subsidiary is a corporation organized under the laws of State X and was formed on Date 1.

Investment Partnership is a limited partnership organized under the laws of State X. Investment Partnership is a privately owned hedge fund sponsor that also manages certain selected private investments. Investment Partnership primarily provides its services to pooled investment vehicles, and invests in private and public equity and fixed income instruments. Investment Partnership formed Parent on Date 2. Parent, a partnership for federal tax purposes, owns common units of Taxpayer. Parent serves as the aggregating investment vehicle for Investment Partnership's and other third party investors' investment in Taxpayer.

As a result of certain purchase and contribution transactions that closed on Date 3, Taxpayer acquired approximately a % of the interests in Partnership A, a limited liability company organized under the laws of State X, which is treated as a partnership for federal income tax purposes. Partnership A holds a diverse portfolio of wireless communication towers located throughout the United States. The remaining approximately b % of the interests in Partnership A are owned by certain managers of Partnership A ("Management") and certain investment funds unrelated to Taxpayer. Although Taxpayer purchased approximately a % of the interests in Partnership A, Investment Partnership (through Parent and Taxpayer) has retained Management in most respects.

Partnership A leases space on its towers to a variety of wireless communications providers. Partnership A holds a majority of its wireless communication towers directly, but holds a smaller portion of its towers indirectly through its ownership of (i) Company C, a limited liability company organized under the laws of State X, and (ii) c % of the interests in Subsidiary (and, through its ownership of a % of Partnership A, Taxpayer indirectly holds a % of the interests in Subsidiary).

Partnership A was formed in Year 1 to own and operate wireless communication towers. From the time of its formation to the time when Taxpayer acquired its a % interest in it, Partnership A generally acquired wireless communication towers through acquisitions treated as asset acquisitions for U.S. federal income tax purposes. Partnership A generally did not acquire interests in entities treated as corporations.

In the fourth quarter of Year 2, Management began negotiations with the owners of Company B ("Sellers") to acquire Company B's portfolio of towers and related assets. Company B is a Subchapter S corporation organized under the laws of State Y. Law Firm was hired to handle the transaction. Although the transaction was originally structured as an acquisition of Company's B's portfolio of assets, the transaction was changed to an acquisition of Company B's stock. Accordingly, on Date 4, Partnership A agreed to purchase c % of the stock of Company B. Although Investment Partnership business personnel on Partnership A's board were made aware of the pending transaction, Investment Partnership's and Taxpayer's tax professionals were not notified of the proposed structure of the acquisition of Company B.

Partnership A formed Subsidiary prior to the closing of the sale of Company B stock to Partnership A. Sellers and Partnership A agreed to assign Partnership A's obligations and rights to Subsidiary. Therefore, Subsidiary purchased the stock of Company B at closing. Investment Partnership's and Taxpayer's tax professionals were not notified that the sale of Company B had been completed, resulting in Taxpayer holding an indirect a % interest in Subsidiary without its knowledge.

Neither Investment Partnership nor Taxpayer has in-house tax professionals. Instead, the General Counsel for Investment Partnership has responsibility for organizing legal analysis associated with certain investments made by Investment Partnership and its co-investors. As a result, Investment Partnership often engages external tax advisors to provide tax-related legal analysis. However, coordination of tax filings and interactions with external tax accountants is generally handled by Investment Partnership's Chief Operating Officer ("COO"), not the General Counsel. Investment Partnership's COO is also the vice president of Taxpayer. Accordingly, Investment Partnership, on behalf of Taxpayer, engages Accounting Firm and other advisors. In an engagement letter between Investment Partnership and Accounting Firm to provide tax compliance and advisory services, Investment Partnership engaged Accounting Firm to prepare the Year 2 federal and state and local income tax returns for Taxpayer.

Prior to its investment in Taxpayer, Investment Partnership had not made any significant portfolio investment involving a REIT, and had not used a REIT to make a controlling investment in any asset or assets. Moreover, at no time during the acquisition process of Company B, were Investment Partnership's or Taxpayer's tax professionals notified of the proposed transaction. In addition, Partnership A uses a different external auditor and tax return preparer than does Taxpayer. Consequently, Investment Partnership and Taxpayer mistakenly did not comprehend the need for making a taxable REIT subsidiary election for Subsidiary within the necessary time period.

On Date 5, Accounting Firm filed a Form 7004 with the Internal Revenue Service requesting a six-month extension of the deadline for Taxpayer to file its federal income tax return for the Year 2 tax year. On Date 6, in connection with the preparation of the Year 2 tax return for Taxpayer, Accounting Firm sent an email to Taxpayer's vice president inquiring about the acquisition of Company B and indicating that this could pose certain issues relating to Taxpayer. In response, Taxpayer's vice president initiated various inquiries with Partnership A to determine all of the facts and circumstances related to this acquisition and presented them to Accounting Firm for review. By early Date 7, Accounting Firm had concluded that the ownership through Partnership A of a % of the stock of Subsidiary caused Taxpayer to fail to satisfy certain REIT requirements. To rectify the situation, Taxpayer was informed that it would need to make a taxable REIT subsidiary election with respect to Subsidiary.

Taxpayer's vice president has acknowledged that Taxpayer failed to provide sufficient oversight of the tax compliance and reporting for Taxpayer and the transactions undertaken at the Partnership A level that affect Taxpayer's tax compliance. After being informed of their inadvertent error, Taxpayer's vice president and Investment Partnership's General Counsel directed Taxpayer and Subsidiary to file on Date 8 a Form 8875 treating Subsidiary as a taxable REIT subsidiary of Taxpayer that had an effective date of Date 9; and then submit a request under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations that the Form 8875 be considered as timely filed for an effective date as of Date 1.

Affidavits on behalf of Taxpayer and Subsidiary have been submitted as required by § 301.9100-3(e) of the Regulations.

Taxpayer and Subsidiary make the following additional representations:

1. The request for relief was filed by Taxpayer and Subsidiary before the failure to make the regulatory election was discovered by the Internal Revenue Service (Service).

2. Granting the relief will not result in Taxpayer or Subsidiary having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Taxpayer or Subsidiary would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer and Subsidiary 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 Taxpayer and Subsidiary requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Taxpayer and Subsidiary did not choose to forgo making the TRS election after being informed in all material aspects of the required election and the related tax consequences.

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, the election and the revocation may be made without the 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." The Announcement provides that this form is to be used for tax 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 tax year. However, the effective date of the election depends upon when the Form 8875 is filed. The instructions further provide that the effective date on the form 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) of the Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), 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 301.9100-3(a) through (c)(1)(i) 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(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith. Section 301.9100-3(c) 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 years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based on the information submitted and 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. Accordingly, the Form 8875 treating Subsidiary as a taxable REIT subsidiary 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 the Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as expressly 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. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a REIT or whether Subsidiary otherwise qualifies as a TRS under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of either Taxpayer or 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 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 federal income tax effect.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

_____

Julanne Allen
Assistant to the Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes