Internal Revenue Service

Number: **200422021**
Release Date: 5/28/04
Index Number: 856.07-00, 9100.00-00

Department of the Treasury
Washington, DC 20224

Person To Contact:
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Refer Reply To:
CC:FIP:1, PLR-105815-04
Date:
February 9, 2004

LEGEND

Company A =

Company B =

Operating Partnership =

State =

Law Firm =

Year =

Date 1 =

Date 2 =

Date 3 =

X =

Dear

This responds to your letter submitted on behalf of Company A and Company B, requesting an extension of time under section 301.9100-1 of the Procedure and

Administration Regulations to make an election under section 856(l) of the Internal Revenue Code to treat Company B as a taxable REIT subsidiary of Company A.

FACTS

Company A, a State corporation, has elected to be taxed as a real estate investment trust (REIT). Through Operating Partnership, Company A owns various properties either in their entirety or through joint ventures. In Date 1, Company A formed Company B as a vehicle to invest with an unrelated joint venture partner in property located in State. Company B, also a State corporation, is owned indirectly by Company A through Operating Partnership. Operating Partnership owns a x percent interest in Company B, and the remaining interest is owned by an unrelated third party.

Company A intended for Company B to qualify as a taxable REIT subsidiary and for a taxable REIT election to be filed effective Date 2. An officer and general counsel for Company A represents that when Company B was formed he had stated that Company B would need to comply with the applicable requirements for being a taxable REIT subsidiary. The officer and general counsel further represents that he intended for Company B to be a taxable REIT subsidiary. Law Firm has provided legal services to Company A since Year. While planning the formation of Company B, Law Firm advised that Company A and Company B would need to make a taxable REIT subsidiary election. However, no one at Law Firm assumed responsibility for insuring that the election had been signed and filed.

In Date 3, Company A discovered that a Form 8875 had not been filed with respect to Company A and Company B. After Company A discovered the failure to file the Form 8875 (and prior to discovery by the Internal Revenue Service), Company A and Company B submitted a request for an extension of time to file a Form 8875 to elect to treat Company B as a taxable REIT subsidiary of Company A.

LAW AND ANALYSIS

The Ticket to Work and Work Incentives Improvement Act of 1999, P.L. 106-170, included a change for tax years beginning after December 31, 2000, to the REIT provisions of section 856(d). This change allows a REIT to form a taxable REIT subsidiary that can perform activities that otherwise would result in impermissible income. The election under section 856(l) is made on Form 8875, “Taxable REIT Subsidiary Election.” Officers of both the REIT and the taxable REIT subsidiary must jointly sign the form, which is filed with the IRS Service Center in Ogden, UT.

Section 856(l) provides that a REIT and a corporation (other than a REIT) may jointly elect to treat the corporation as a taxable REIT subsidiary. To be eligible for treatment as a taxable REIT subsidiary, section 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, 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 a new Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a taxable REIT subsidiary. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. The effective date of the election, however, depends on 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 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 (defined in section 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.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Service generally will use to determine whether, under the particular facts and circumstance 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(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 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 Company A and Company B have satisfied the requirements for granting a reasonable

extension of time to elect under section 856(l) to treat Company B as a taxable REIT subsidiary of Company A as of Date 2. Therefore, Company A and Company B are granted a period of time not to exceed 30 days from the date of this letter to submit the Form 8875.

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. No opinion is expressed with regard to whether Company A qualifies as a REIT under subchapter M of the Code.

No opinion is expressed regarding whether the tax liability of Company A and Company B 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 the tax liability for the years involved. If the director's office determines that the tax liability is lower, that office will determine the federal income tax effect.

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.

Sincerely,

_____

Elizabeth A. Handler
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes

cc: