

Internal Revenue Service

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Date:
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Legend:

Company =

Sub =

State =

Date 1 =

LLC =

Holdings =

a =

b =

Dear :

This is in reply to a letter dated April 1, 2011, requesting on behalf of Company and Sub an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to file an election for Sub to be treated as a taxable real estate investment trust ("REIT") subsidiary under section 856(l) of the Internal Revenue Code.

FACTS

Company is a State trust that will elect to be treated for federal income tax purposes as a REIT for its 20th taxable year. Company's primary business is owning and leasing real properties.

On Date, Company acquired, indirectly, an a% interest in LLC, which owns b% of the interest in each of Holdings and Sub. Holdings owns assisted living facilities. Holdings has entered into a master lease agreement with Sub with respect to the facilities. Sub has subleased the facilities to third-party tenants and has engaged an eligible independent contractor to manage the facilities.

Sub's operations generates gross income that would not be qualifying income under section 856(c)(2) or 856(c)(3) of the Code. If Company is to qualify as a REIT, Sub must qualify as a taxable REIT subsidiary under section 856(l).

In connection with filing its first federal income tax return as a REIT, Company reviewed its tax filings, and Company learned that a timely taxable REIT subsidiary election was not filed.

Company relied on tax professionals for tax advice. When Company learned of the failure to file the election, it took prompt action to file the election, which it and Sub have done.

The following representations are made in connection with the request for an extension of time to file a Form 8875 on behalf of Company and Sub:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service.
2. Granting the relief requested will not result in Company or Sub having a lower tax liability in the aggregate for all years to which the election applies than the taxpayers would have had if the election had been timely made (taking into account the time value of money).
3. Company and Sub do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time the taxpayers requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Company failed to file the election inadvertently. Company has not used hindsight to seek an extension of time to make the election. Company always had the intent to maintain its REIT status. If Company had been advised by its tax professionals of the need to file the election in order to maintain its REIT status, it would have timely filed the election.

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 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, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (Service) announced the availability of 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 instructions further provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of filing the elections, 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. 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, Utah.

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 section 301.9100-1(b) as an election whose deadline 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) of the regulations sets forth rules that the Internal Revenue Service generally will use to determine whether, under the 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(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; and 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 upon the facts and representations submitted, we conclude that Company and Sub have shown good cause for granting a reasonable extension of time to elect to have Sub be treated as a taxable REIT subsidiary under section 856(l) of the Code. We further conclude that the date on which the election was actually filed is effective for federal income tax purposes.

This ruling is limited to the timeliness of the filing of Company and Sub's income tax returns for purposes of the election under section 856(l) of the Code. 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 otherwise qualifies as a REIT under subchapter M of the Code.

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

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer 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 representative.

Sincerely yours,

Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Financial Institutions and Products)