

Internal Revenue Service

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Date:

November 23, 2011

Legend:

Company =

Sub =

Manager =

State 1 =

State 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Dear :

This is in reply to a letter dated September 26, 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 subsidiary ("TRS") of Company under section 856(l) of the Internal Revenue Code.

FACTS

Company is a State 1 corporation. It is a commercial real estate specialty finance company that invests in a combination of commercial real estate assets and other commercial finance assets. Company timely elected under section 856 of the Code to be treated as a REIT for its taxable year ending Date 1.

Company's wholly owned subsidiary Sub is a State 2 corporation. It was incorporated on Date 2. It was formed to hold and manage collateralized loan obligation contracts that are not real estate assets.

From the time of Sub's formation Company and Sub intended to file Form 8875, Taxable REIT Subsidiary Election, to make a TRS election that would be effective beginning with Date 2, when Sub was formed.

Manager's internal tax department was responsible for filing Form 8875. Because of that department's limited size and the extent of its reporting responsibilities, which include Securities Exchange Commission filings, tax return filings, and extensions for filings that were due on Date 3 (one month after Date 2), Form 8875 was inadvertently not filed.

On Date 4, while Manager was handling other tax matters for Company, the tax department discovered that Form 8875 had not been filed. Less than a month later, on Date 5, Form 8875 was filed for Company and Sub. Because the instructions for Form 8875 provide that the effective date of a TRS election cannot be more than 75 days prior to the date of filing Form 8875, the effective date on the form is Date 6. Date 6 is more than two months after Date 2, which is the effective date that Company and Sub intended.

After filing Form 8875, Manager's tax department learned of the relief available under section 301.9100-1 of the regulations. On Date 7 such relief was requested.

Company has submitted the affidavit of the person initially responsible for preparing the Form 8875 in support of the requested extension.

The following representations are made in connection with the request for the relief of an extension of time:

1. The request for relief was made 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. Being fully informed of the required regulatory election and related tax consequences, Company and Sub did not choose to not file 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 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. 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 treated as a TRS under section 856(l) of the Code. We further conclude that Date 2, which is the date on which Company and Sub intended the election to be effective, is the effective date of the election.

This ruling is limited to the timeliness of the filing of Company and Sub's Form 8875 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,

Jonathan D. Silver
Jonathan D. Silver
Assistant Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions and Products)