Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:FIP:B03 / PLR-118335-03
Date:
September 11, 2003

LEGEND

Company A	=
Company B	=
Operating Partnership	=
Law Firm	=
Accounting Firm	=
State X	=
Foreign Country Y	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=

Date 6 =

Year 1 =

Year 2 =

a =

Dear

This responds to a letter dated March 17, 2003, submitted on behalf of Company A and Company B, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election under § 856(l) of the Internal Revenue Code to treat Company B as a taxable REIT subsidiary of Company A.

FACTS

Company A, a State X corporation, has elected to be taxed as a real estate investment trust (REIT) and has operated in a manner intended to maintain REIT status since its inception on Date 1. Company A is the sole managing general partner of Operating Partnership, and substantially all of Company A's assets are held by, and its operations are conducted through, Operating Partnership. As of Date 2, Company A owned a percent of Operating Partnership through its general partner interest.

On Date 3, Company A formed Company B as a vehicle to invest with a joint venture partner in properties located in Foreign Country Y. Company B is wholly owned by Operating Partnership. Therefore, Company A indirectly owned a percent of Company B as of Date 2.

Law Firm has provided legal services to Company A since Year 1. Accounting Firm has provided auditing and tax consulting services to Company A since Year 1. A partner at a local accounting concern (Accountant) has prepared all business tax returns, elections, and other tax filings for Company A since Year 1. In Date 4, Company A hired a tax director to manage Company A's domestic tax compliance. In Date 5, Company A decided to replace Accountant, and at that time Accounting Firm was engaged to prepare all business tax returns, elections, and other tax filings for Company A.

When Company decided to expand operations to Foreign Country Y, the decision was made to own and operate all business operations in Foreign Country Y through a separate corporate entity that would qualify as a Taxable REIT Subsidiary (TRS). Company A has represented that at the time of Company B's formation, Company A's

general counsel had discussed with Accounting Firm and Law Firm that in the general counsel's opinion, for Company A to maintain its REIT status, it would be necessary for Company A and Company B to make a joint election for Company B to be treated as a TRS as of the date of its incorporation.

Both Accounting Firm and Law Firm believed that as with other tax elections and filings, Accountant would be instructed by Company A to prepare the TRS election and that Accountant would ensure that such election would be filed in a timely manner to ensure that the TRS election would be effective as of the date of Company B's incorporation. Company A has represented that it believed, however, that the TRS election would be prepared when Company B was incorporated. Consequently, Company A did not instruct Accountant to prepare the TRS election. Company A has represented that because Accountant did not participate in the discussions regarding the structure of the business operations in Foreign Country Y, Accountant was unaware that Company B had been formed. Therefore, Accountant did not prepare the TRS election.

While Accounting Firm was performing for Company A its year-end REIT testing and completing the checklist for REIT qualifications for Year 2, it made inquiries to document that Company A and Company B had filed a Form 8875 to elect to treat Company B as a Taxable REIT Subsidiary of Company A. After searching their files, Company A, Law Firm, and Accounting Firm could find no evidence that a Form 8875 had been submitted. Furthermore, Accountant informed Company A that Accountant had not prepared a TRS election on behalf of Company A and Company B because Accountant was unaware of the existence of Company B. Thus, Company A and Company B submitted a private letter ruling request under § 301.9100-1 of the regulations requesting an extension of time to file the Form 8875 to elect to treat Company B as a Taxable REIT Subsidiary of Company A and filed the Form 8875 on Date 6.

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 § 856(d). This change allows a REIT to form a Taxable REIT Subsidiary that can perform activities that otherwise would result in impermissible tenant service income. The election under § 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) 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, § 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, § 856(l) specifically provides that the election, and any revocation thereof, may be made without the consent of the Secretary.

In Announcement 2001-17, 8 I.R.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 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. 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 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 § 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 Internal Revenue 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; and § 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 § 856(l) to treat Company B as a Taxable REIT Subsidiary of Company A. Accordingly, the Form 8875 filed by Company A and Company B on Date 6 will be treated as timely filed to treat Company B as a taxable REIT subsidiary of Company A as of Date 3.

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 with regard to 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 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 yours,

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ALICE M. BENNETT
Chief, Branch 3
Office of Associate
Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes

cc: