Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Refer Reply To:
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Date:
April 01, 2004

LEGEND:

Company A =

Partnership =

Company B =

Company C =

Bank =

State X =

State Y =

State Z =

a =

Law Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to a letter dated June 13, 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 (TRS) of Company A.

FACTS

Company A, a State X corporation, has elected to be taxed as a real estate investment trust (REIT). Company A owns a percent of Partnership, a State Y limited liability company. Partnership owns all of outstanding shares of Company B, a State Z corporation. Accordingly, for purposes of the REIT qualification test, Company A is considered to hold a percent of the outstanding shares of Company B.

Company B was formed on Date 1 for the sole purpose of acting as the manager of Company C, a limited liability company that is wholly owned by Partnership. The formation of Company B was required pursuant to the terms of a loan agreement with Bank as a condition to obtaining debt financing for Company C. Company B was formed by a counsel to Partnership that does not provide advice to Company A relating to REIT issues. Company A relies on Law Firm to make all determinations with respect to whether a TRS election is necessary for any corporate subsidiary and the filing deadline for any such election. Law Firm was not involved in the formation of Company B.

On Date 2, Company A's Vice President became aware of the existence of Company B and notified Company A's accountants. The accountants immediately contacted Law Firm to determine whether a TRS election had been filed for Company B. Law Firm notified the Vice President that no TRS election had been filed with respect to Company B. On Date 3, 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. Company B has had no income since its inception.

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 TRS 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 TRS 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 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 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 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 instruction 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 interest 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 TRS of Company A. Accordingly, the Form 8875 filed by Company A and Company B on Date 3 will be treated as timely filed to treat Company B as a TRS of Company A as of Date 4.

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,

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

Enclosures:
Copy of this letter
Copy of section 6110 purposes

cc: