Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B02
PLR-125131-05
Date:
August 12, 2005

Legend:

Trust =

LLC1 =

LLC2 =

LLC3 =

Date 1 =

Date 2 =

x =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Month 1 =

Date 7 =

Date 8 =

Dear :

This is in reply to a letter dated May 5, 2005, and a subsequent submission, requesting a ruling on behalf of Trust and LLC1. You have requested a ruling that Trust and LLC1 be granted an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration regulations to file an election for LLC1 to be treated as a taxable REIT subsidiary (TRS) of Trust under section 856(l) of the Internal Revenue Code.

Facts:

Trust was formed on Date 1 to acquire, hold and lease office buildings. Trust was classified as a partnership for federal income tax purposes from Date 1 through its taxable year ended Date 2. Trust owns Class A office buildings through several subsidiary entities.

Trust owns all of the membership interests in LLC2. LLC1, which is wholly-owned by LLC2, was formed on Date 1. LLC1 owns x percent of the ownership interests in LLC3 and the remaining interests in LLC3 are owned by LLC2.

On Date 3, LLC1 filed Form 8832, Entity Classification Election, to elect to be classified as an association taxable as a corporation effective as of Date 1. As a result of LLC1 electing corporation status, LLC1 and LLC2 are treated as members in a partnership with respect to their ownership of LLC3. The primary reason for having LLC3 treated as a partnership, rather than a disregarded entity, was to avoid uncertainties in the application of certain state and local tax provisions that may apply to entities that own interests in entities that are disregarded for tax purposes. Accordingly, for the taxable year ended Date 2, Trust filed Form 1065, U.S. Return of Partnership Income, and LLC1 filed Form 1120, U.S. Corporation Income Tax Return.

For its taxable year ending Date 4, Trust determined that it would elect to be taxed as a real estate investment trust (REIT). On Date 5, Trust and LLC1 each filed applications to request an extension of time to file their federal income tax returns for Year 1 until Date 6. Trust needed to file Form 1120-REIT to make its REIT election for Year 1.

During Month 1, Trust received an initial draft of its Form 1120-REIT from the accounting firm that had been engaged to prepare the return. In reviewing the draft return, the in-house tax person with primary responsibility for Trust's tax reporting and

compliance realized that Trust and LLC1 had inadvertently failed to make a joint election for LLC1 to be treated as at TRS of Trust effective as of Date 7. Trust has submitted an affidavit executed by its in-house tax person indicating that Trust filed Form 1120-REIT to be taxed as a REIT for Year 1 on Date 8. Having filed its 1120-REIT for Year 1, Trust is now able to make the requested joint TRS election and seek the relief requested.

Trust represents that it failed to timely make a TRS election with LLC1 because it did not realize that it owned an interest in an entity taxable as a corporation. This was primarily because LLC1 was the only entity owned by Trust that elected to change its default classification and be treated as an association taxable as a corporation. Also, LLC1's sole activity and asset was its minor x percent interest in LLC3.

Trust and LLC1 make the following representations in support of this ruling request. The granting of relief under section 301.9100-3 will not result in Trust or LLC1 having a lower tax liability in the aggregate for all years to which the TRS election applies than they would have had if the election had been timely made (taking into account the time value of money). Neither Trust nor LLC1 was fully informed in all material respects of the required TRS election and related tax consequences, but chose not to file the election. Neither Trust nor LLC1 used hindsight in requesting relief. Finally, Trust and LLC1 represent that they are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662.

Trust has submitted affidavits of its Vice-President and the individual responsible for tax reporting and compliance in support of this ruling request.

Law and Analysis:

Section 856(l) 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) 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 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 Trust and LLC1 have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat LLC1 as a taxable REIT subsidiary of Trust as of Date 2. Therefore, Trust and LLC1 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 Trust otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Trust and LLC1 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 taxpayers 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 representatives.

Sincerely yours,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes