Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:
10/15/2002

LEGEND

Company A =

Company B =

Partnership P =

State X =

State Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Address 1 =

Dear :

This ruling responds to a letter dated May 22, 2002, 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 was incorporated pursuant to the laws of State X on Date 1. Company A uses the accrual method of accounting as its overall method of accounting. Partnership P was formed pursuant to the laws of State Y on Date 1. Company A is the sole managing general partner of Partnership P. Substantially all of Company A's assets are held by and its operations are conducted through Partnership P. Partnership P uses the accrual method of accounting as its overall method of accounting.

Company B was formed to serve as the managing member of an entity with an investment in property located at Address 1. Company B was incorporated pursuant to the laws of State Y on Date 2. Company B is wholly owned by Partnership P and is therefore indirectly owned by Company A. Company B uses the accrual method of accounting as its overall method of accounting.

Company A operates as a self-managed real estate investment trust ("REIT"). In Date 3, Company A and its advisors reviewed Company B's business operations, assets, and activities and concluded that in order to preserve Company A's REIT status, Company B should operate as a taxable REIT subsidiary.

The Ticket to Work and Work Incentives Improvement Act of 1999, P.L. 106-170, included a change to the REIT provisions of § 856(d) which allows a REIT to form a taxable REIT subsidiary that can perform activities that otherwise would result in impermissible tenant service income. The change was effective for tax years beginning after December 31, 2000. The election under § 856(l) is made on Form 8875, "Taxable REIT Subsidiary Election," and the effective date of the election cannot be more than two months and 15 days prior to the date of filing the election. Officers of both the REIT and the taxable REIT subsidiary must jointly sign the form. Therefore, to treat Company B as a taxable REIT subsidiary as of Date 4, a Form 8875 would have had to have been filed with the Internal Revenue Service Center in Ogden, UT, on or before Date 5.

Company A's tax advisors prepared a Form 8875 and faxed it to Company A's Chief Financial Officer ("CFO") on Date 6. Although CFO was warned about the filing date, he inadvertently failed to sign the form before he went to a conference on Date 7. After CFO returned to the office on Date 8, he signed the form and mailed it to the Internal Revenue Service on Date 9.

As a result of this error, the Form 8875 was not timely filed with the Service. Consequently, Company A and Company B submitted a private letter ruling request under § 301.9100 to request an extension of time to file the Form 8875 to elect to treat Company B as a taxable REIT subsidiary of Company A.

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, § 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 IRS 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 two months and 15 days prior to the date of filing the election, or twelve months after the date of filing the election. In addition, if no date is specified on the form, the election is effective on the date the form is filed with the IRS. Form 8875 is filed with the IRS Service Center in Ogden, UT.

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 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 and representations submitted, 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 as of Date 4. Therefore, the Form 8875 filed by Company A and Company B on Date 9 will be treated as timely filed to treat Company B as a taxable REIT subsidiary 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.

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

Enclosures:
Copy of this letter
Section 6110 Copy