Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Date:
September 17, 2003

LEGEND

Company A	=
Company B	=
Company C	=
Limited Partnership D	=
State E	=
F	=
G	=
H	=
I	=
J	=
Date 1	=
Date 2	=
Date 3	=

Dear :

This responds to a letter dated June 20, 2003, as amended and supplemented by a letter dated August 22, 2003, submitted on behalf of Company A and Company B, requesting an extension of time under section 301.9100-1 of the Procedure and

Administration Regulations to make an election under section 856(l) of the Internal Revenue Code to treat Company B as a taxable REIT subsidiary of Company A.

FACTS

Company A is a State E corporation. Since its inception, Company A has elected to be taxed as a real estate investment trust (REIT). Company A is F percent owned by Company C. Company C has also elected to be taxed as a REIT since its inception. Substantially all of Company A's and Company C's business activities are conducted through Limited Partnership D. As of Date 1, Company A owned approximately G percent and Company C owned approximately H percent of Limited Partnership D. Limited Partnership D owns I percent of Company B's non-voting preferred stock and approximately J percent of Company B voting common stock. Company B is the entity through which Limited Partnership D (and thus Company A and Company C) generally conducts activities that do not result in qualifying income for a REIT. Company B thus is ineligible to elect to be taxed as a REIT.

Company A and Company C determined that since Company B does not qualify as a REIT, and due to their levels of ownership in Company B, they would need to make a taxable REIT subsidiary election with respect to Company B in order to maintain their respective REIT status. Without such an election, they would violate the requirement in section 856(c)(4)(B)(iii)(III) that a REIT not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any one issuer. Based on that determination, the management of Company C (which was also the management of Company A) instructed Company C's tax manager to file the appropriate forms to perfect the necessary taxable REIT subsidiary election. On Date 2, a taxable REIT subsidiary election was filed on Form 8875 with respect to Company B and Company C.

An officer of both Company A and Company C represents that it was management's understanding that all action had been taken to ensure that Company B would be treated as a taxable REIT subsidiary with respect to Company C and its related entities, including company A. Company A and Company C's Forms 1120-REIT have been filed consistent with the understanding that Company B qualified as a taxable REIT subsidiary with respect to Company C as well as Company A as of Date 1.

On Date 3, Company A discovered that a Form 8875 had not been filed with respect to Company A and Company B, and thus Company A (and in turn Company C) inadvertently failed to meet the requirements of section 856(c)(4)(B)(iii)(III). After Company A discovered the failure to file the Form 8875 (and prior to discovery by the Internal Revenue Service), Company A and Company B submitted a request for an extension of time to file Form 8875 to elect to treat Company B as a taxable REIT subsidiary of Company A.

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 section 856(d). This change allows a REIT to form a taxable REIT subsidiary that can perform activities that otherwise would result in impermissible income. The election under section 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, 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, section 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 section 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

circumstance 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 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 section 856(l) to treat Company B as a taxable REIT subsidiary of Company A as of Date 2. Therefore, Company A and Company B are granted a period of time not to exceed 45 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 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 taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the provisions of the Powers of Attorney currently on file, we are sending a copy of this ruling to your authorized representatives.

Sincerely,

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

Enclosures:
Copy of this letter
Copy for section 6110 purposes