Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
CC:FIP:1 – PLR-114180-04
Date: April 23, 2004

RE:

Legend:

Corporation A =

Corporation B =

LLC A =

LLC B =

LLC C =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

X percent =

Y percent =

Accounting Firm 1 =

Accounting Firm 2 =

Law Firm =

M =

N =

O =

P =

Q =

Dear :

This letter responds to your submission filed on behalf of Corporation A and Corporation B (The "Taxpayers") requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration regulations to file an election to treat Corporation B as a taxable REIT subsidiary of Corporation A under § 856(l) of the Internal Revenue Code.

Facts:

Corporation A is a State A corporation that has elected to be treated as a real estate investment trust ("REIT") for federal income tax purposes. Corporation A invests in United States health care facilities. Corporation B is a State B corporation that owns assisted living facilities in State B (the "Facilities"). An unrelated healthcare provider leases and operates the Facilities from Corporation B. Taxpayers represent that under this leasing arrangement, Corporation B does not participate in the profits generated from the Facilities' operations, and does not provide any healthcare services to the Facilities' residents. Taxpayers further represent that Corporation B does not operate or manage, directly or indirectly, any lodging or healthcare facility, and does not provide any rights to a brand name under which any lodging or healthcare facility is operated.

Corporation A and LLC A formed LLC B as a joint venture on Date 1, with Corporation A owning an X percent interest, and LLC A owning a Y percent interest, in the capital and profits of LLC B. LLC B is treated as a partnership for federal income tax purposes. On Date 2, LLC B acquired all of the stock of Corporation B through the newly-formed LLC C. Taxpayers represent that Law Firm assisted Taxpayers with the legal issues surrounding the stock acquisition of Corporation B by LLC B.

During Year 1, Corporation A ended its relationship with Accounting Firm 1, and employed Accounting Firm 2 to provide audit and tax services. In the course of preparing Corporation A's and its affiliates' Year 1 federal income tax returns, Accounting Firm 2 determined that Corporation A indirectly owned more than 10 percent of Corporation B's outstanding stock through its interests in LLC B and LLC C. However, Accounting Firm 2 advised Corporation A that its REIT status would not be jeopardized as a result of its indirect ownership of Corporation B because Corporation B could be treated as disregarded for all federal income tax purposes.

Taxpayers represent that on Date 4 Accounting Firm 2 informed Corporation A that as a result of its indirect ownership of more than 10 percent of Corporation B's outstanding stock, an election under § 856(l) to treat Corporation B as a taxable REIT subsidiary should have been filed no later than Date 3 to preserve Corporation A's REIT status. Accordingly, Accounting Firm 2 advised Corporation A to seek an extension of time under §§ 301.9100-1 and 301.9100-3 to file the § 856(l) taxable REIT subsidiary election for Corporation B to be effective as of Date 2. Taxpayers represent that prior to Date 4, no employees of Corporation A were advised by either Law Firm or Accounting Firm 2 that the stock acquisition of Corporation B would necessitate the filing of a § 856(l) taxable REIT subsidiary election.

Corporation A represents that at all times since its inception it has intended to maintain its REIT status as evidenced by its filing of a Form 1120-REIT for the Year 1 tax year. Further, Corporation A represents that it is not aware of any specific facts indicating that its failure to make a taxable REIT subsidiary election for Corporation B had been discovered by the Service prior to this request. Corporation A represents that it is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662. Corporation A states that it has not used, nor had the opportunity to use, hindsight in making this request, and that facts have not changed since the original due date of the taxable REIT subsidiary election that make the election more advantageous. Finally, Corporation A represents that the government's grant of an extension of time to file a taxable REIT subsidiary election for Corporation B will not place Corporation A in a better position generally, and specifically will not result in a lower tax liability for Corporation A, than had the election been timely made (taking into account the time value of money).

In support of the requested ruling, Taxpayers have submitted the affidavits of M, the Chief Financial Officer of Corporation A, N, the treasurer and secretary of Corporation B, O, a tax partner with Accounting Firm 2, P, a real estate partner with Law Firm, and Q, an attorney formerly associated with Law Firm.

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 income. The election under § 856(l) is made on a 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) 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 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 effective date of the election, however, depends on when the Form 8875 is filed. 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 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 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. 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 Taxpayers have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Corporation B as a taxable REIT subsidiary of Corporation A as of Date 2. Therefore, Taxpayers 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 Corporation A qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayers 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 the tax liability for the years involved. If the director's office determines that the 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 representative.

Sincerely,

_____

Elizabeth A. Handler
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes

cc: