Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:
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Refer Reply To:
CC:FIP:B03
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Date:
May 03, 2005

Legend:

Taxpayer =

Subsidiary =

Limited Partnership I =

Limited Partnership II =

LLC =

Corporation =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This is in reply to a letter requesting an extension of time for Taxpayer and Subsidiary under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration regulations to file an election under § 856(l) of the Internal Revenue Code to treat Subsidiary as a taxable REIT subsidiary (“TRS”).

Facts:

Taxpayer is a domestic corporation that elected to be taxed as a real estate investment trust ("REIT") under subchapter M of Chapter 1 of the Code for the taxable year beginning Date 1. Taxpayer is a calendar year taxpayer and uses the accrual method of accounting.

Taxpayer, through its operating partnership and affiliates, operates a diversified portfolio of retail projects, office building projects, mixed-use projects, and other properties

throughout the United States.

Taxpayer indirectly holds an interest in Subsidiary through its partnership interest in Limited Partnership I. Limited Partnership I holds an interest in Limited Partnership II, which holds an interest in LLC, which in turn is the sole shareholder of Subsidiary. LLC acquired its interest in Subsidiary as part of Taxpayer's acquisition of Corporation in Date 2, discussed below.

Subsidiary has been solely engaged in acting as the registered agent of several subsidiaries of Taxpayer to satisfy certain state laws that require such subsidiaries have a corporate registered agent.

In 1999, The Ticket to Work and Work Incentives Improvement Act of 1999, P.L. 106-170, was enacted and contained the REIT Modernization Act ("RMA"), which included a number of modifications to the rules governing REITs. The RMA, which is effective for tax years beginning after December 31, 2000, allows a REIT to own up to 100 percent of the stock of a TRS. An interest in a TRS provides a REIT with the ability to perform activities indirectly that otherwise would result in impermissible income and allows the REIT the ability to hold certain interests in a corporation the voting power or value of which could cause a REIT to violate certain asset qualification requirements. To make an election to treat a corporation held by the REIT as a TRS, the corporation and the REIT use a Form 8875, Taxable REIT Subsidiary Election ("Form 8875").

On Date 3, it was discovered that Subsidiary, which at one point was set to be converted to a limited liability company (taxable as a partnership for federal income tax purposes) in connection with the recent merger between Taxpayer and Corporation, had not been so converted. An e-mail regarding the inability to convert Subsidiary to a limited liability company was overlooked in the confusion surrounding the merger. As a result Taxpayer and Taxpayer's advisor determined that Taxpayer and Subsidiary should have made a TRS election effective as of Date 4 (the date on which the merger between Taxpayer and Corporation closed) or no later than Date 5. Taxpayer represents that if Taxpayer were aware that Subsidiary had not been converted to a limited liability company prior to the merger or before Date 5, Taxpayer would have intended for Subsidiary to qualify as a TRS.

Following the discovery, Taxpayer immediately requested an extension of time under §§ 301.9100-1 and -3 to make an election to treat Subsidiary as a TRS, effective Date 4.

An affidavit from Taxpayer's Vice President for Taxation was submitted in support of the requested ruling.

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 TRS. To be eligible for treatment as a TRS with respect to a REIT, § 856(l) 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. Both the election, and the revocation, of TRS status 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. Pursuant 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. The effective date of the election, however, depends on when the Form 8875 is filed. Specifically, the instructions provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of the filing of the election, or more than 12 months after the date of the filing of 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 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 Taxpayer and Subsidiary have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Subsidiary as a TRS of Taxpayer as of Date 4. Therefore, Taxpayer, together with Subsidiary, is granted a period of time not to exceed 30 days from the date of this letter to submit 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 Taxpayer otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer and Subsidiary 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 requesting it. Section 6110(k)(3) of the Code 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,

_____

Alice M. Bennett
Branch Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes

cc: