Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
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CC:FIP:1
PLR-125112-05
Date:
June 27, 2005

Legend:

Taxpayer =

Subsidiary A =

Subsidiary B =

Subsidiary C =

Subsidiary D =

LLC 1 =

LLC 2 =

a =

b =

c =

City A =

City B =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Month =

Firm =

Dear :

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

Facts:

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

Taxpayer owns a a percent interest in LLC 1. LLC 1 owns a b percent capital interest and a c percent profits interest in LLC 2, a limited liability company classified as a partnership for income tax purposes.

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. Because the RMA permitted a REIT to form a TRS and lease qualifying hospitality properties to the TRS without violating the related party tenant rules under § 856(d)(2)(B) (subject to the requirements under §§ 856(d)(8) and (d)(9)), Taxpayer formed TRS's for this purpose and intended to properly file TRS elections with respect to these entities.

During Year 1, Taxpayer, through LLC 2, intended to acquire interests in hotel properties located in City A and City B. To facilitate these acquisitions, LLC 2 formed

four new subsidiaries: Subsidiary A, Subsidiary B, Subsidiary C, and Subsidiary D. Subsidiaries A and B were organized as limited liability companies on Date 4. Subsidiary C was organized as a limited liability company on Date 3, and Subsidiary D was organized as a limited liability company on Date 2.

The acquisition of the City A Property by Subsidiary C closed on Date 5, and the acquisition of the City B Property by Subsidiary D closed on Date 6. The City A Property was leased to Subsidiary A pursuant to a lease dated Date 5 and the City B Property was leased to Subsidiary B pursuant to a lease dated Date 6.

On Date 5, Subsidiary A filed Form 8832 to elect to be classified as an association taxable as a corporation, effective Date 4. On Date 8, Subsidiary B filed Form 8832 to elect to be classified as an association taxable as a corporation, effective Date 4. Forms 8832 were not filed for Subsidiaries C and D because Taxpayer did not intend for these subsidiaries to be taxed as corporations.

Taxpayer intended for Subsidiaries A and B to file Forms 8875 and elect to be treated as TRS's of Taxpayer effective Date 4. On Date 7, Firm filed two Forms 8875, each with an effective date of Date 4. However, due to a clerical error made by Firm, the entities listed on these forms were Subsidiaries C and D, and not Subsidiaries A and B. Because elections were not filed for Subsidiaries C and D to be taxed as corporations, a TRS election with respect to these subsidiaries would be invalid.

In Month, Taxpayer discovered that Forms 8875 had mistakenly been filed for Subsidiaries C and D and not for Subsidiaries A and B. Taxpayer immediately took steps to apply for relief.

Taxpayer has submitted the affidavits of an attorney at Firm, and of its senior vice president and general counsel in support of its 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, § 856(l) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect this treatment. The election is irrevocable once made, unless the REIT and the subsidiary consent to its revocation. The election and the revocation of TRS status may be made without the consent of the Secretary.

Section 856(l) provides that the term "taxable REIT subsidiary" includes any corporation (other than a REIT) with respect to which a TRS of such REIT owns directly or indirectly securities possessing more than 35 percent of the total voting power or total value of the outstanding securities of such corporation. Entities other than corporations are not eligible to be treated as a TRS under section 856(l).

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service ("Service") announced the availability of Form 8875, Taxable REIT Subsidiary Election. 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 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 has satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Subsidiaries A and B as TRS's of Taxpayer as of Date 4. Therefore, Taxpayer and Subsidiaries A and B, is granted a period of time not to exceed 30 days from the date of this letter to submit Forms 8875.

This ruling is limited to the timeliness of the filing of the Forms 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 each of the Subsidiaries 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 representatives.

Sincerely,

/S/

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

Enclosures:
Copy of this letter
Copy for § 6110 purposes