

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200532007**

Release Date: 8/12/2005

Index Numbers: 857.00-00, 9100.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B03 – PLR-104799-05

Date:

March 29, 2005

LEGEND:

Trust =

Company =

State X =

State Y =

Property =

Accounting Firm =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear _____ :

This responds to a letter dated January 3, 2005, submitted on behalf of Trust 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 as a Taxable REIT Subsidiary of Trust.

FACTS

Trust, a State X corporation, elected to be taxed as a real estate investment trust (REIT) on its initial federal income tax return, and has operated in a manner intended to maintain REIT status since its inception on Date 1. Trust was formed to hold certain real property interests in Property.

In the early part of Year 1, Trust consulted with its outside attorneys and Accounting Firm regarding a complicated restructuring and refinancing transaction with respect to its interests in Property. As part of that transaction, Company was formed on Date 2 as a State Y corporation. Company is wholly owned by Trust.

Planning and implementing the restructuring spanned several months of collective effort by Trust and its advisors. During this time period, numerous entities were formed and many corporate entity organizational charts were produced depicting the continually-evolving organizational structure. When monitoring tax compliance issues for Trust and related entities, and relying on the most recent organizational flow chart it possessed, Accounting Firm erroneously determined that no elections or filings were required for the quarter that ended Date 3.

In early Date 4, as part of year-end planning, officers of Trust, Trust's outside attorneys, and Accounting Firm reviewed Trust's business operations, assets, and activities. During this review Trust learned that Accounting Firm had inadvertently failed to timely file a Form 8875 to make an election to treat Company as a Taxable REIT Subsidiary of Trust. To treat Company as a Taxable REIT Subsidiary of Trust as of Date 3, the Form 8875 would have to have been filed with the Service on or before Date 5.

Trust and Company represent that Trust and Company always intended to make a timely election to treat Company as a Taxable REIT Subsidiary of Trust, effective as of Date 3. Consequently, Trust and Company have submitted a request for a private letter ruling under § 301.9100-1 of the regulations requesting a reasonable extension of time to file the Form 8875 to elect to treat Company as a Taxable REIT Subsidiary of Trust. Meanwhile, Trust and Company have represented that they filed the Form 8875 to elect to treat Company as a Taxable REIT Subsidiary of Trust on Date 6.

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 tenant service income. The election under § 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, § 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 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) of the regulations 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 Trust and Company have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Company as a Taxable REIT Subsidiary of Trust. Accordingly, the Form 8875 that was filed by Trust and Company on Date 6 will be treated as if it had been timely filed to treat Company as a Taxable REIT Subsidiary of Trust as of Date 3.

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. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Trust qualifies as a REIT under subchapter M of the Code.

Moreover, no opinion is expressed with regard to whether the tax liability of Trust and Company 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.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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,

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

Enclosures:

Copy of this letter
Copy for section 6110 purposes

cc: