

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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PLR-124631-07

Date: March 12, 2008

LEGEND:

Trust =

Company =

State X =

Properties =

Property A =

Date 1 =

Date 2 =

Date 3 =

Dear

This responds to a letter dated May 17, 2007, submitted on behalf of Trust and Company, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make (1) an election under § 301.7701-3(c)(1)(i) to classify Company as an association taxable as a corporation for federal tax purposes,

and (2) an election under section 856(l) of the Internal Revenue Code to treat Company as a taxable REIT subsidiary ("TRS") of Trust.

FACTS

Trust is a publicly-traded State X corporation that elected to be treated as a real estate investment trust (REIT) beginning with the tax year ending on Date 3. Trust is in the business of acquiring, developing, redeveloping, owning, leasing, and managing the Properties.

Company was formed on Date 1 to acquire Property A. Company acquired Property A on Date 2. Trust and its tax advisor determined that Company should be classified as a corporation and that a TRS election should be made with respect to Company. Because the default classification for Company was a corporation, a Form 8832 was not required, but a Form 8875 needed to be prepared and timely filed. Because of an inadvertent error in communications, Trust employees, however, erroneously filed a Form 8832 with respect to Company, timely electing disregarded entity status effective Date 1, even though Trust's intent was to file a Form 8875 with Company to jointly elect TRS status for Company effective Date 1. During the year-end closing of books, Trust discovered that the correct election had mistakenly not been made. After Trust discovered the failure to file the Form 8875, Trust and Company submitted a private letter ruling request under § 301.9100-1 of the Regulations requesting an extension of time to file a Form 8872 to elect to treat Company as a corporation and an extension of time to file a Form 8875 to elect to treat Company as a taxable REIT subsidiary of Trust.

Furthermore, Trust and Company jointly make the following additional representations:

1. The request for relief was filed by Trust and Company before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Trust and/or Company having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Taxpayer would have had if the election had been timely made (taking into account the time value of money).
3. Trust and Company did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Trust and Company requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Trust and Company did not choose to not file the election.

LAW AND ANALYSIS

Section 301.7701-3(a) of the regulations provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7) or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701-3.

Section 301.7701-3(b)(2)(i) provides that, except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a foreign eligible entity is (A) a partnership if it has two or more members and at least one member does not have limited liability, (B) an association if all members have limited liability; or (C) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

Section 301.7701-3(b)(2)(ii) provides that for purposes of § 301.7701-3(b)(2)(i), a member of a foreign eligible entity has limited liability if the member has no personal liability for the debts of or claims against the entity by reason of being a member.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b), or to change its classification, by filing Form 8832 with the service center designated on Form 8832.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six 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 301.9100-1(b) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the Government.

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 TRS. 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 TRS. 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 six 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).

CONCLUSIONS

Based on the information submitted and representations made, we conclude that Trust and Company have satisfied the requirements of §§ 301.9100-1 and 301.9100-3 of the regulations for granting a reasonable extension of time to (1) elect under § 301.7701-3(c)(1)(i) to classify Company as a corporation for federal tax purposes, and (2) elect under section 856(l) to treat Company as a Taxable REIT Subsidiary of Trust.

Accordingly, Company is granted an extension of time not to exceed 60 calendar days from the date of this letter to file Form 8832 with the appropriate service center and elect to be classified as an association taxable as a corporation for federal tax purposes effective as of Date 1. A copy of this letter should be attached to the Form 8832. Furthermore, Trust and Company are granted a period of time not to exceed 60 calendar days from the date of this letter, to file a Form 8875 to treat Company as a Taxable REIT Subsidiary of Trust effective as of Date 1.

This ruling is limited to the timeliness of the filing of the Form 8832 and 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 Trust otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of either Trust or 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.

This ruling is directed only to the taxpayer 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 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