

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No.

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RE:

Refer Reply To:

CC:FIP:1 – PLR-111862-04

Date: April 21, 2004

Legend:

Trust A =

Trust B =

Corporation A =

Corporation B =

LP =

LLC A =

LLC B =

Property =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

X percent =

Y percent =

Law Firm =

M =

N =

Dear :

This letter responds to your submission filed on behalf of Trust A (in its capacity as the successor-in-interest to Trust B) and Corporation B 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 Trust B under § 856(l) of the Internal Revenue Code for the period from Date 1 through Date 2.

Facts:

Trust A is a State real estate investment trust that has elected to be treated as a real estate investment trust ("REIT") for federal income tax purposes. Corporation A holds the majority of interests in Trust A.

On Date 2, Trust B merged with and into Trust A with Trust A surviving ("the Merger"). Prior to the Merger, Trust B was a State real estate investment trust that elected to be treated as a REIT for federal income tax purposes. Trust B was the general partner and X percent interest holder in LP, through which Trust B conducted its operations. In connection with the Merger, Trust A acquired Trust B's interest in LP, becoming LP's new general partner. Trust A represents that it currently holds a Y percent interest in LP.

Corporation B is a State corporation owned indirectly by LP through LLC B. Through LLC A, LP owns Property. LLC B was formed solely to facilitate financing for Property as the lender on a note to LLC A. On Date 1, LLC B acquired all of the shares of Corporation B and all of the interests in LLC A. Law Firm assisted Trust B with the legal aspects of these acquisitions. Trust A represents that Law Firm did not advise Trust B to make a § 856(l) taxable REIT subsidiary election. Furthermore, on Date 2 Law Firm issued a tax opinion in conjunction with the Merger stating that each of Trust B's corporate subsidiaries qualified as either a § 856(i)(2) qualified REIT subsidiary or a § 856(l) taxable REIT subsidiary.

Trust A represents that after the Merger it discovered that Trust B had never made an election for Corporation B to be treated as a taxable REIT subsidiary. Thereafter on Date 4, Trust A and Corporation B jointly filed a Form 8875 to treat Corporation B as a taxable REIT subsidiary with regard to Trust A effective as of Date 3.

Trust A represents that it is not aware of any specific facts indicating that Trust B's failure to make an election for Corporation B had been discovered by the Internal Revenue Service prior to this request. Trust A represents that it is not seeking to alter a return position for Trust B for which an accuracy related penalty has been or could be imposed under § 6662. Trust A also represents that Trust B 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 election that make the election more advantageous. Finally, Trust A represents that the government's grant of an extension of time to file the election for Corporation B will not place Trust B in a better position generally, and specifically will not result in a lower tax liability for Trust B, than had the election been timely made.

In support of the requested ruling, Trust A has submitted the affidavits of M, a tax partner with Law Firm, and N, an associate 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 Trust A, as successor-in-interest to Trust B, and Corporation B 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 Trust B for the period from Date 1 through Date 2. Therefore, Trust A, as successor-in-interest to Trust B, and Corporation B 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 the qualification of Trust A or Trust B as REITs under subchapter M of the Code.

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

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