

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200442018**

Release Date: 10/15/04

Index Number: 9100.00-00, 856.03-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:2 – PLR-117826-04

Date:

June 28, 2004

In Re:

X =

P =

Y =

Firm =

h =

g =

Year =

1

Year =

2

Year =

3

Year =

4

Year =

5

Date =

d

Dear :

This is in reply to a letter dated March 26, 2004, requesting on behalf of X and Y an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make an election under section 856(l) of the Internal Revenue Code to treat Y as a taxable REIT subsidiary of X.

FACTS

X is a corporation that elected in Year 1 to be treated as a real estate investment trust ("REIT") under section 856 of the Internal Revenue Code.

P is a partnership that was formed in Year 2.

In Year 3, P formed Y, a corporation. At that time X was a general partner in P and owned approximately a g% interest in P.

In Year 4 X increased its ownership interest in P to h%.

X retained Firm to prepare its federal income tax return for Year 4. Firm discovered that X had not made an election with Y to treat Y as a taxable REIT subsidiary ("TRS") under section 856(l) of the Code for Year 3 or Year 4. X and Firm concluded that X's relatively small interest in P in Year 3 compared to its greater interest in P in Year 4, combined with the lack of federal income tax expertise of X's financial and tax advisers retained during Year 3, resulted in the failure to discover the possibility of a TRS election for Year 3. Firm determined that X and Y should file a TRS election, and so advised X and Y.

On X and Y's behalf, Firm discovered the failure to file the election before it was discovered by the Internal Revenue Service. After the discovery, Firm promptly requested an extension of time for X and Y to file a TRS election.

X has submitted the affidavit of its chief executive officer in support of this requested ruling.

LAW AND ANALYSIS

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, 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 Internal Revenue Service (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 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 elections, or more than 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. 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, Utah.

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 section 301.9100-1(b) as an election whose deadline 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) of the regulations sets forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 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 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 upon the facts and representations submitted, we conclude that X and Y have shown good cause for granting a reasonable extension of time to elect under 856(l) to treat Y as a taxable REIT subsidiary of X as of Date d. Accordingly, X and Y 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 whether X otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of X and Y 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.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayers that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, the original of this letter is being sent to you as first-designated representative, and copies are being sent to the taxpayer and the second-designated representative.

Sincerely yours,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)