Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

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Date:
January 8, 2003

LEGEND

Company A =

Company B =

State X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This responds to a letter dated September 9, 2002, submitted on behalf of Company A and Company B, 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 B as a taxable REIT subsidiary of Company A.

FACTS

Company A, a State X corporation, is an owner and lessor of industrial real property. Since its initial public offering in Date 1, Company A has elected to be taxed as a real estate investment trust (REIT).

Company B was formed on Date 2. Company A indirectly owns a majority interest in Company B through its ownership of interests in two other entities (a partnership and an entity intended to qualify as a Qualified REIT Subsidiary). Company A and Company B have represented that Company A and Company B intended to treat Company B as a Taxable REIT Subsidiary of Company A effective Date 2.

An officer of both Company A and Company B has represented that on Date 3, the officer signed a Taxable REIT Subsidiary election form (Form 8875) reflecting the Date 2 intended effective date and then instructed an experienced legal assistant employed by Company A to file the Form 8875 by mailing it to the IRS Service Center in Ogden, UT. Furthermore, the officer has represented that the officer believed that the legal assistant had properly and timely filed the Form 8875. While the Service did receive, on a timely basis, another form that the legal assistant had claimed she had mailed in the same envelope with the Form 8875, the Service has no record of a Form 8875 being filed for Company A and Company B.

After Company A discovered the Form 8875 mishap in Date 4, Company A and Company B filed a duplicate Form 8875 in Date 5 and submitted a private letter ruling request under § 301.9100-1 of the regulations requesting an extension of time to file the Form 8875 to elect to treat Company B as a Taxable REIT Subsidiary of Company A.

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) 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 Company A and Company B have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Company B as a taxable REIT subsidiary of Company A as of Date 2. Accordingly, the Form 8875 filed by Company A and Company B in Date 5 will be treated as timely filed to treat Company B as a taxable REIT subsidiary of Company A as of Date 2.

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 Company A qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Company A and Company 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 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 representative.

Sincerely yours,

_____
ALICE M. BENNETT
Chief, Branch 3
Office of Associate
Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes