Internal Revenue Service

Number: **200536005**
Release Date: 9/9/2005
Index Number: 9100.00-00

Department of the Treasury
Washington, DC 20224

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:2
PLR-108128-05

Date:
May 26, 2005

Legend:

Trust =

OP =

Company A =

a =

Company B =

LLC =

Subsidiary =

Date 1 =

Company =

Country A =

Date 2 =

Date 3 =

Month 1 =

Month 2 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Entity 1 =

Entity 2 =

Entity 3 =

Entity 4 =

Entity 5 =

Entity 6 =

Entity 7 =

Entity 8 =

Entity 9 =

Entity 10 =

Country B =

Accounting Firm =

Attorney =

Dear :

This is in reply to a letter dated February 7, 2005, requesting rulings on behalf of Trust, Company B, Subsidiary, and LLC. You have requested a ruling granting an extension of time pursuant to section 301.9100-1 of the Procedure and Administration Regulations for Trust (for itself and as successor to Company A) and Company B to each jointly elect with Subsidiary to treat Subsidiary as a taxable REIT subsidiary (TRS) of Trust and Company B, respectively, effective Date 1. You also request an extension of time to file a joint election between Trust (for itself and as successor to Company A) and LLC, for LLC to be treated as a TRS of Trust, effective Date 2.

Facts:

Trust is a self-administered and self-managed real estate investment trust (REIT) engaged primarily in the ownership, operation, management, leasing, acquisition, expansion, and development of real estate properties. Trust is the successor to Company A, a REIT which it acquired by merger on Date 3. Trust, through OP, an operating partnership, and other partnerships, TRSs, in which OP has an interest (the Partnerships), holds interests in income producing properties, including regional malls, community shopping centers, and other retail, office, and mixed-use properties. Company B is a self-administered and self-managed REIT in which Trust has an interest through OP.

On Date 4, Forms 8875 were filed with the Ogden Service Center of the Internal Revenue Service on behalf of Trust, Company A and Company B and Subsidiary for each REIT to treat Subsidiary as a TRS effective Date 1. In Month 1, Trust discovered that Company, a Country A private company that is wholly-owned by Subsidiary, was inadvertently excluded from the schedules attached to the Forms 8875. Company A has never engaged in any business and has no value other than the fact that it holds a charter as a Country A entity. The omission was not discovered until Month 2. A corrected Form 8875 has been filed as an Automatic Taxable REIT Subsidiary Election.

On Date 5, Forms 8875 were filed on behalf of Trust, Company A, and Company B to treat LLC as a TRS of each electing REIT effective Date 6. Because the effective

date was more than two months and fifteen days prior to the filing date of the election, the effective date of the election was deemed to be Date 7. The schedules to these elections omitted Entities 1-10 (the Entities). LLC owns an interest of greater than 35 percent of the vote or value in each of the Entities.

Taxpayer represents that the omission of the Entities from the Forms 8875 was due to a miscommunication with LLC's representatives in Country B at the time the elections were filed concerning the classification of certain subsidiaries of Taxpayer for federal income tax purposes. The Entities represent substantially less than one percent of Taxpayer's assets and they generated virtually no taxable income. In Month 1, Taxpayer and Company B realized that the Entities should have been included on the schedules for LLC's TRS election. Corrected Forms 8875 were immediately filed as Automatic TRS elections for those entities.

Taxpayer represents that its tax department includes a number of experienced accountants who are experienced in REIT taxation. In addition, the tax department consulted with its outside auditor, Accounting Firm, regarding general procedures for filing TRS elections. The officers of Taxpayer believe that they exercised due diligence in determining the LLC subsidiaries that should have been included on the schedules to the TRS election.

Taxpayer has submitted an affidavit of its Vice President of Taxation confirming the facts underlying this ruling request. Despite the inadvertent exclusion of these entities from the required attachment to Form 8875, the tax department of Taxpayer and Company B believed that each corporation of which Subsidiary and LLC own 35 percent or more of the voting power or value was automatically treated as a TRS of the electing REIT under section 856(l) of the Internal Revenue Code. However, an affidavit submitted by Attorney, who represents the requesting Entities on federal tax issues, indicates that he advised the requesting Entities to seek this ruling upon learning of the corporations excluded from the Form 8875 attachments, given the uncertainty over whether the elections would be deemed valid.

Additionally, the entities requesting this ruling represent as follows:

(a) At all times from the filing of the elections, all entities for which the election was made, including the Entities, were treated as a TRS by the electing REITs.

(b) The granting of relief under section 301.9100-3 would not result in any of the requesting entities or any related entity in which they directly or indirectly own an interest having a lower tax liability in the aggregate for all years to which the elections apply than each would have had if the elections had been validly made (taking into account the time value of money). In fact, there is no taxable year in which any of those entities would have a lower tax liability if the elections had been timely made.

(c) None of the requesting entities used hindsight in requesting relief.

(d) None of the returns of any of the requesting entities is under audit by the Internal Revenue Service for any taxable year.

(e) None of the requesting entities is seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662.

Law, Analysis and Conclusion:

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. Section 856(l)(2) provides that the term "taxable REIT subsidiary" includes any corporation with respect to which a TRS of a REIT owns directly or indirectly securities possessing 35 percent of the total voting power or 35 percent of the total value of the outstanding securities of that corporation.

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 election, 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) 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).

Based on the information submitted and representations made, we conclude that Taxpayer (for itself and as successor to Company A), Company B and Subsidiary have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Subsidiary as a TRS of Taxpayer and Company B as of Date 1. Accordingly, Taxpayer, Company B, and Subsidiary are granted a period of time through the date on which the corrected Forms 8875 were filed to properly make the TRS elections.

Furthermore, Taxpayer and LLC have satisfied the requirements for granting a reasonable extension of time to jointly file Form 8875 and its appropriate schedule to indicate that each Entity, as a subsidiary of LLC, will be treated as a TRS of Taxpayer pursuant to section 856(l)(2). Accordingly, Taxpayer and LLC are granted a period of time through the date on which the corrected Form 8875 with the appropriate schedule was filed to properly make the TRS election.

This ruling is limited to the timeliness of the filing of Forms 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 Taxpayer or Company B otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of either Taxpayer, Company B, Subsidiary or LLC 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 taxpayers 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,

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

cc: