**Internal Revenue Service**

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Date:
July 13, 2007

**LEGEND:**

Company A =

Company B =

Company C =

Company D =

State X =

Accounting Firm =

Tax Advisor =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This responds to a letter dated March 14, 2007, and subsequent submissions submitted on behalf of Company A and Company C 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 and to treat Company D as a taxable REIT subsidiary of Company C.

## FACTS

Company A, formed on Date 1, and Company C, formed on Date 2, are State X corporations. Both of them have elected to be taxed as real estate investment trusts (REITs). Company B, formed on Date 3, is a State X corporation and a wholly-owned subsidiary of Company A. Company D, formed on Date 4, is a State X corporation and a wholly-owned subsidiary of Company C. At the time of Company B's and Company D's formation, Accounting Firm advised Company A and Company B, as well as Company C and Company D, to file Form 8875 in order to elect to treat Company B as a taxable REIT subsidiary of Company A and to treat Company D as a taxable REIT subsidiary of Company C under § 856(l) of the Code. Company A, Company B, Company C, and Company D agreed with the Accounting Firm's advice.

Tax Advisor provided legal advice on various State X corporate law issues to Company A, Company B, Company C, and Company D and prepared all of the documents in connection with their formation. Company A, Company B, Company C, and Company D believed that Tax Advisor would also prepare and file Form 8875 with the Internal Revenue Service, while Tax Advisor believed that Company A, Company B, Company C, and Company D would prepare and file Form 8875. The failure to file Form 8875 was discovered on Date 5. Immediately upon discovering the failure, the Secretary of Company A, Company B, Company C, and Company D contacted Accounting Firm to discuss options for remedying the failure to timely file Form 8875.

Consequently, Company A, Company B, Company C, and Company D submitted a request for a private letter ruling under § 301.9100-1 of the regulations requesting a reasonable extension of time to file the Form 8875 to elect to treat Company B as a Taxable REIT Subsidiary of Company A and to treat Company D as a Taxable REIT Subsidiary of Company C.

Company A, Company B, Company C, and Company D make the following additional representations:

1. The request for relief was filed by Company A, Company B, Company C, and Company D before the failure to make regulatory elections was discovered by the Service.
2. Granting the relief requested will not result in Company A, Company B, Company C, or Company D having a lower tax liability in the aggregate for all years to

which the regulatory election applies then that they would have had if the election had been timely made (taking into account the time value of money).

3. Company A, Company B, Company C, and Company D 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 they 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, Company A, Company B, Company C, and Company D did not choose to not file the election.

## 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) 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 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, Company B, Company C, and Company D 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 and to treat Company D as a taxable REIT subsidiary of Company C. Accordingly, Company A, Company B, Company C, and Company D will be granted a period of time not to exceed 30 calendar days from the date of issuance of this letter to file the Form 8875 to treat Company B as a taxable REIT subsidiary of Company A and to treat Company D as a taxable REIT subsidiary of Company C.

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

No opinion is expressed with regard to whether the tax liability of Company A Company B, Company C, and Company D 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.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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