Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B03 – PLR-104393-08
Date: May 22, 2008

RE:

LEGEND:

Trust	=
Company	=
Director	=
Accounting firm	=
State X	=
Date 1	=
Date 2	=
Date 3	=

Date 4   =

Date 5   =

Date 6   =

Date 7   =

Date 8   =

Year 1   =

a   =

Dear

This responds to a letter dated January 29, 2008, submitted on behalf of Trust and Company, 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 as a TRS of Trust.

FACTS

Trust is a State X limited liability company that was formed on Date 1, but did not acquire assets until Year 1. Trust is managed by Director. Company is owned a percent by Trust. Trust and Company have represented that on or before Date 2, they properly executed and timely filed a Form 8875 to elect to treat Company as a Taxable REIT Subsidiary (TRS) of Trust, effective Date 3. However, Trust did not elect to be treated for federal tax purposes as a real estate investment trust (REIT) beginning with the tax year that ended on Date 4. Trust will now elect to be treated as a REIT for the tax year that ended on Date 5.

Trust and Company have represented that for Trust to qualify as a REIT, Company must become a TRS of Trust effective Date 6. Moreover, Trust and Company represent that they failed to understand that the election made on the Form 8875 filed on or before Date 2 was void because Trust never made the election to be treated as a REIT for the tax year that ended on Date 4.

Trust had engaged Accounting Firm as its tax advisor and believed all necessary elections had been timely filed. Trust represents that its management has at all times intended to elect REIT status. Trust further represents that if Trust had been aware of

the need to re-file the Form 8875 to preserve Trust's REIT status, Trust would have made the election in a timely manner.

Accounting Firm discovered the error on or about Date 7, and on Date 8 Trust and Company executed and filed a Form 8875 to elect to treat Company as a TRS of Trust, effective Date 6. Subsequently, Trust and Company submitted a request for a private letter ruling seeking under § 301.9100-1 of the Regulations that the Form 8875 that was filed by Trust and Company on Date 8 will be treated as if it had been timely filed to treat Company as a TRS of Trust as of Date 6.

Trust and Company make the following additional representations:

1.   The request for relief was filed by Trust and Company before the failure to make the regulatory election was discovered by the Service.

2.   Granting the relief will not result in Trust and/or Company having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Taxpayer would have had if the election had been timely made (taking into account the time value of money).

3.   Trust and Company 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 Trust and Company 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, Trust and Company did not choose to not file the election.

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 TRS. To be eligible for treatment as a TRS, § 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 TRS. 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 six 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 Trust and Company have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Company as a TRS of Trust. Accordingly, the Form 8875 that was filed by Trust and Company on Date 8 will be treated as if it had been timely filed to treat Company as a TRS of Trust as of Date 6.

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 Trust otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of either Trust or Company 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 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

cc: