Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-105077-08
Date:
September 29, 2008

Legend:

X =

Y =

Z =

State =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

Dear :

This letter responds to the letter dated January 30, 2008, and related correspondence, written on behalf of X, requesting that the Commissioner of the

Internal Revenue permit X to elect to change its classification under § 301.7701-3(c)(1)(iv) of the Procedure and Administration Regulations.

FACTS

The information submitted states that X was formed under the laws of State on D1. X elected to be classified as an association for federal tax purposes effective D2. On D3, X was acquired by Y, a real estate investment trust. Upon acquisition, Y and X elected to treat X as a taxable REIT subsidiary ("TRS") under § 856 of the Internal Revenue Code ("Code"). On D4, Y sold a portion of X's outstanding membership interests to Z. On D5, Z sold all of its interests in X to Y so that Y became the sole shareholder of X.

X, Y, and shareholders of Y proposed a transaction intended to qualify as a reorganization under § 368(a)(1)(F). According to the proposal, Y will contribute its interest in X to a newly formed TRS of Y (Contribution Date). It is intended that X elect to be treated as a disregarded entity effective D6.

Since the proposed disregarded entity classification election will come within the 60-month period from D2, X requests that it be permitted to elect to make such a classification change based on the fact that more than 50 percent of the ownership interests in X on D6 will be held by persons that did not own any interest in X as of D2.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(1) provides that, except for certain existing entities described in § 301.7701-3(b)(3), unless a domestic eligible entity elects otherwise, the entity is: (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Section 301.7701-3(c)(1)(iv) provides that, if an eligible entity makes an election under § 301.7701-3(c)(1)(i) to change its classification, the entity cannot change its

classification by election again during the 60 months succeeding the effective date of the election. However, the Commissioner may permit the entity to change its classification by election within the 60 months if more than 50 percent of the ownership interests in the entity as of the effective date of the subsequent election are owned by persons that did not own any interests in the entity on the filing date or on the effective date of the entity's prior election.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X has satisfied the requirements of § 301.7701-3(c)(1)(iv) and, therefore, is permitted to file a Form 8832 to elect to be treated as a disregarded entity effective on D6. A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. In particular, we express no opinion concerning whether the proposed transaction will qualify as a reorganization under § 368(a)(1)(F).

This ruling is directed only to the taxpayer requesting 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 mailed to your authorized representative.

Sincerely,

Dianna K. Miosi

Dianna K. Miosi
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: