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:FIP:B03
PLR-113798-10

Date:
July 29, 2010

LEGEND

Trust	=
Subsidiary 1	=
Subsidiary 2	=
Parent	=
LP1	=
LP2	=
Company	=
Advisor	=
Law Firm	=
Accounting Firm	=
State X	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
a	=
b	=
c	=

Dear :

This responds to a letter dated March 24, 2010, on behalf of Trust, Subsidiary 1, and Subsidiary 2 requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make elections under § 856(l) of the Internal Revenue Code to treat each of Subsidiary 1 and Subsidiary 2 as a taxable REIT subsidiary of Trust effective as of Date 5.

FACTS

Parent originally was formed as Company, a State X limited liability company, on Date 1, and subsequently was converted into a State X limited partnership on Date 2. LP1 and LP2 are State X limited partnerships, each formed on Date 3. Trust, a State X corporation, was formed on Date 4. It has elected to be treated for federal income tax purposes as a real estate investment trust (REIT). Subsidiary 1 and Subsidiary 2 are State X corporations, each formed on Date 5.

Trust and Parent are owned primarily by institutional investors. Trust owns approximately a percent of the limited partnership interests of each of LP1 and LP2. Parent owns the remaining percentage, approximately b percent, of the limited partnership interests of each of LP1 and LP2. LP1 owns c percent of all the issued and outstanding shares of Subsidiary 1. LP2 owns c percent of all the issued and outstanding shares of Subsidiary 2.

Advisor acts as operational advisor to Trust, Subsidiary 1, and Subsidiary 2. Trust, Subsidiary 1, and Subsidiary 2 represent they relied on Law Firm and Accounting Firm to ensure proper entity formation and related filings for Subsidiary 1 and Subsidiary 2. Law Firm was engaged to render legal advice regarding the REIT structure and taxation and prepare all the documents in connection with the formation of Subsidiary 1 and Subsidiary 2. Accounting Firm was engaged to provide audit and tax services, including the preparation of tax returns for Subsidiary 1 and Subsidiary 2.

Trust, Subsidiary 1, and Subsidiary 2 represent that they intended elections be made under § 856(l) of the Internal Revenue Code to treat each of Subsidiary 1 and Subsidiary 2 as a taxable REIT subsidiary of Trust effective as Date 5, but the elections were not made due to confusion as to whether Advisor, Law Firm, or Accounting Firm would make the elections on their behalf.

Trust, Subsidiary 1, and Subsidiary 2 represent that they and Advisor intended the elections be made but did not know the specific procedure for making the elections. Trust, Subsidiary 1, and Subsidiary 2 represent that they and Advisor assumed that either Accounting Firm would make the elections in connection with filing the annual tax returns of each of Subsidiary 1 and Subsidiary 2, or Law Firm would advise Trust, Subsidiary 1, and Subsidiary 2 as to the specific steps required to make the elections.

Trust, Subsidiary 1, and Subsidiary 2 represent that Law Firm believed Trust, Subsidiary 1, and Subsidiary 2, or Accounting Firm would make the elections, and that Accounting Firm believed Law Firm would make the elections.

For elections under § 856(l) of the Internal Revenue Code to treat each of Subsidiary 1 and Subsidiary 2 as a taxable REIT subsidiary of Trust to be effective as of Date 5, the date by which the Forms 8875 (Taxable REIT Subsidiary Election) were due to be filed was Date 6, but the elections were never filed.

Each of Subsidiary 1's and Subsidiary 2's initial tax return for the taxable year ended Date 7 was due on or before Date 9. On Date 8, Accounting Firm sent Law Firm a message requesting copies of the Taxable REIT Subsidiary Elections for Subsidiary 1 and Subsidiary 2, which message prompted the discovery that there was no record of making these elections.

Upon this discovery, Trust, Subsidiary 1, and Subsidiary 2 submitted this request for an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make elections under § 856(l) of the Internal Revenue Code to treat each of Subsidiary 1 and Subsidiary 2 as a taxable REIT subsidiary of Trust effective as of Date 5.

In support of their representations, above, Trust, Subsidiary 1, and Subsidiary 2 submitted with their request affidavits signed under penalties of perjury from appropriate representatives of Trust, Subsidiary 1, Subsidiary 2, Law Firm, and Accounting Firm.

Trust, Subsidiary 1, and Subsidiary 2 make the following additional representations:

1. The request for relief was filed by Trust, Subsidiary 1, and Subsidiary 2 before the failure to make regulatory elections was discovered by the Service.
2. Granting the relief requested will not result in Trust, Subsidiary 1, and Subsidiary 2 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. Trust, Subsidiary 1, and Subsidiary 2 did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code at the time Trust, Subsidiary 1, and Subsidiary 2 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, Subsidiary 1, and Subsidiary 2 did not choose to not file the elections.

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 Trust, Subsidiary 1, and Subsidiary 2 have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat each of Subsidiary 1 and Subsidiary 2 as a taxable REIT subsidiary of Trust effective as of Date 5. Trust, Subsidiary 1, and Subsidiary 2 have 60 days from the date of this letter to make the intended elections.

This ruling is limited to the timeliness of the filing of the 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 Trust qualifies as a REIT or whether Subsidiary 1 or Subsidiary 2 otherwise qualifies as a taxable REIT subsidiary under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Trust, Subsidiary 1, and Subsidiary 2 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 Trust, Subsidiary 1, and Subsidiary 2 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,

/s/

Alice M. Bennett
Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes