Internal Revenue Service

Number: **201118001**
Release Date: 5/6/2011

Index Numbers: 856.00-00, 9100.00-00

Department of the Treasury
Washington, DC 20224

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B03 – PLR-103853-11
Date:
January 31, 2011

LEGEND:

Company X =

Company Y =

Subsidiary = .

Partnership =

Management Company =

Accounting Firm =

State X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Dear :

This responds to a letter dated January 13, 2011, on behalf of Company X, Company Y, and Subsidiary 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 Subsidiary as a Taxable REIT Subsidiary of Company X and Company Y, effective as of Date 1.

FACTS

Company X and Company Y were formed on Date 1 as limited liability companies under the laws of State X. Company X and Company Y each elected to be treated as a real estate investment trust (REIT) under § 856 beginning with the taxable year ending Date 2.

Partnership, which was formed under the laws of State X on Date 1, is owned by Company X and Company Y. Partnership owns all of the issued and outstanding shares of Subsidiary, which was formed under the laws of State X on Date 1.

The business activities of Company X and Company Y are associated with the investment in focused-service hotels located in, or in the vicinity of, dense urban or suburban markets. Focused-service hotels typically operate with lean staffing models intended to eliminate non-essential guest services. Company X and Company Y own the hotel properties but do not directly manage the properties.

Subsidiary was created to lease hotel properties from Company X and Company Y. Subsidiary is responsible for hiring a hotel management company to directly manage the hotel properties. Subsidiary does not perform these management tasks itself, instead relying on eligible independent contractors as required by § 856(l)(3).

The President of Company X, Company Y, Partnership, and Subsidiary (collectively, Entities) is authorized to make federal income tax elections for and on behalf of the Entities. At the time the Entities were formed, it was intended that Subsidiary would file Forms 8875, Taxable REIT Subsidiary Election, to treat Subsidiary as a Taxable REIT Subsidiary of Company X and Company Y as of Date 1.

Accounting Firm was engaged to be the tax return preparer for the Entities. Prior to Year 1, the Entities did not have in-house tax professionals. Rather, the Entities relied on outside advisors, including Accounting Firm, to ensure proper tax filings, including the review of Forms 8875 to be filed with the Service. A single Form 8875

was prepared on or about Date 3 by the Director of Financial Reporting for Management Company. The Form 8875 was reviewed on Date 4 by a Managing Director of Accounting Firm and was filed with the Service on or about the same date with the intent that it would serve to make Subsidiary a Taxable REIT Subsidiary of both Company X and Company Y as of Date 1. Part II of Line 5 of the Form 8875 as filed with the Service, however, sets forth Partnership as the electing REIT. Partnership is the direct owner of the stock of Subsidiary, but Partnership is not a REIT. Company X and Company Y, each of which has elected to be a REIT, indirectly own stock of Subsidiary through Partnership. To make the intended Taxable REIT Subsidiary elections, separate Forms 8875 should have been filed, one listing Company X as the electing REIT, and the other listing Company Y as the electing REIT. The error was discovered on Date 5 by the Director of Tax for Management Company. Immediately upon discovering the error, Accounting Firm filed this request for relief with the Service on behalf of Company X, Company Y, and Subsidiary.

Company X, Company Y, and Subsidiary also make the following additional representations:

1. The request for relief was filed by Company X, Company Y, and Subsidiary before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief requested will not result in Company X, Company Y, and Subsidiary having a lower tax liability in the aggregate for all years to which the regulatory election applies than they would have had if the election had been timely made (taking into account the time value of money).
3. Company X, Company Y, and Subsidiary 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 X, Company Y, and Subsidiary 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 X, Company Y, and Subsidiary have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Subsidiary as a Taxable REIT Subsidiary of Company X and to treat Subsidiary as a Taxable REIT Subsidiary of Company Y, effective as of Date 1. Company X, Company Y, and Subsidiary 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.

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. In particular, no opinion is expressed with regard to whether Company X or Company Y qualifies as a REIT or whether Subsidiary 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 Company X, Company Y, and Subsidiary 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.

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 representative.

Sincerely,

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