Internal Revenue Service

Number: **201144007**
Release Date: 11/4/2011

Index Number: 856.00-00, 9100.00-00

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-106017-11

Date:
August 05, 2011

LEGEND:

Trust =

Subsidiary =

Partnership =

Management Company =

State X =

State Y =

City X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

a =

b =

Dear :

This responds to a letter dated January 11, 2011, on behalf of Trust 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 (Code) to treat Subsidiary as a Taxable REIT Subsidiary (TRS) of Trust, effective as of Date 2.

FACTS

Trust was formed on Date 1 as a State X corporation. Trust represents it will elect to be treated as a real estate investment trust (REIT) under subchapter M, part II, of the Code beginning with its first taxable year ending December 31, Year 1.

The business activities of Trust are holding, pursuant to § 856(a) of the Code, partnership interests that own and operate real estate assets. Trust is a co-investment vehicle with a partnerships that are unrelated, pursuant to § 267, to Trust. Trust's co-investment percentage is b%.

Partnership was formed on Date 2 as a State Y limited liability company. Partnership operates a rental office complex in City X, State Y. Trust holds a b % member interest in Partnership.

Subsidiary was formed on Date 2 as a State Y limited liability company. Partnership is Subsidiary's sole member and filed Form 8832, Entity Classification Election, to treat Subsidiary as a domestic eligible entity to be classified as an association taxable as a corporation. Subsidiary's business purpose is to qualify and operate as a TRS in order to provide services that otherwise would result in Trust recognizing impermissible tenant service income pursuant to § 856(d)(7).

In connection with the acquisition of the rental office complex, Trust and its co-investment partners formed Partnership to acquire and operate the rental office complex. During the acquisition due diligence phase, it was determined that Partnership would own and operate a cafeteria. The income from the operation of a cafeteria is generally considered impermissible tenant service income pursuant to § 856(d)(7).

Subsidiary was formed to be treated as a TRS and operate the cafeteria. Both Trust and Subsidiary intended to elect to treat Subsidiary as a TRS under § 856(l) for Subsidiary’s initial taxable year beginning Date 2. In order to qualify as a TRS as of Date 2, Trust and Subsidiary should have filed Form 8875 by Date 3.

The Chief Financial Officer ("CFO") for Management Company was responsible for the administration of Trust including the operations of Subsidiary as a TRS. The CFO left his position on Date 4.

On or about Date 5 and in connection with the preparation for filing the initial Form 1120-REIT, US Income Tax Return for Real Estate Investment Trusts, for the taxable year ending December 31, Year 1, Trust discovered that Form 8875 had not been filed with respect to Trust and Subsidiary.

Trust and Subsidiary also make the following additional representations:

1. The request for relief was filed by Trust and Subsidiary before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Trust and/or Subsidiary 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 Subsidiary did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 at the time Trust and Subsidiary 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 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 TRS 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 TRS 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 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, 2001-1 C.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 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 and Subsidiary have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Subsidiary as a TRS of Trust effective as of Date 2. Trust 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 Form 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 Trust qualifies as a REIT or whether Subsidiary otherwise qualifies as a TRS under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Trust 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
Branch Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes

cc: