Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201144022**
Release Date: 11/4/2011

Index Numbers: 856.00-00, 9100.00-00

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B03 – PLR-128120-11

Date:
August 01, 2011

LEGEND:

Company =

Name =

Old Company =

Subsidiary A =

Subsidiary B =

TRS Sub 1 =

TRS Sub 2 =

TRS Sub 3 =

TRS Sub 4 =

Partnership =

Accounting Firm =

Law Firm =

State X =

State Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Year =

Dear :

This responds to a letter dated July 5, 2011, on behalf of Company, Subsidiary A, and Subsidiary B requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 856(l) of the Internal Revenue Code to treat each of Subsidiary A and Subsidiary B as a taxable REIT subsidiary of Company, effective as of Date 8.

FACTS

Company, which was organized on Date 5 as a State X corporation under Name, owns, operates, acquires, and leases community shopping centers. Company did not acquire assets or commence operations until Year. Company is widely held. Company made an election under § 856(c) to be treated as a real estate investment trust (REIT)

beginning with its taxable year ended Date 6 and has operated since in a manner intended to maintain its status as REIT.

Subsidiary A is a State Y corporation that is engaged in real estate development and operation. Subsidiary A and its wholly-owned subsidiaries, TRS Sub 1, TRS Sub 2, TRS Sub 3, and TRS Sub 4 (collectively, "the TRS Subs"), provide development, acquisition, brokerage, leasing, construction, asset, and property management services to Company and to certain real estate funds indirectly controlled by Company. Subsidiary B is a State Y corporation that is the sole general partner of Partnership, a State Y limited partnership that owns, develops, and manages real property.

On Date 7, Company entered into a merger agreement with Old Company, which had elected under § 856(c) to be treated as a REIT beginning with its taxable year ended Date 1. On Date 8, Old Company merged with and into Company in a transaction that Company represents qualified as a reorganization under section 368(a)(1)(A). As a result of the merger, Company acquired all of the assets of Old Company, including all of the outstanding stock of Subsidiary A and Subsidiary B.

Prior to the merger, Old Company and Subsidiary A made an election on Form 8875, "Taxable REIT Subsidiary Election," to treat Subsidiary A as a taxable REIT subsidiary of Old Company as of Date 2. As a result of Subsidiary A's ownership interest in the TRS Subs, the TRS Subs also were treated as taxable REIT subsidiaries of Old Company prior to the merger. In addition, prior to the merger, Old Company and Subsidiary B made an election on Form 8875 to treat Subsidiary B as a taxable REIT subsidiary of Old Company as of Date 3.

Accounting Firm has prepared Company's federal income tax returns, beginning with Company's initial taxable year ended Date 6. Company has regularly consulted with Accounting Firm on REIT tax compliance matters. Accounting Firm has prepared federal income tax returns for Subsidiary A, which files a consolidated federal income tax return as the parent of the consolidated group that includes the TRS Subs, beginning with the taxable year ended Date 4. Accounting Firm has prepared federal income tax returns for Subsidiary B, beginning with the taxable year ended Date 4. Accounting Firm also prepared Old Company's federal income tax returns, beginning with the taxable year ended Date 4 and through Old Company's final tax year ended Date 8.

At the time of the merger, Accounting Firm did not advise Company that new taxable REIT subsidiary elections might be needed with respect to Subsidiary A and Subsidiary B to ensure that each of Subsidiary A and Subsidiary B would be treated as a taxable REIT subsidiary of Company as of Date 8. On Date 9, Law Firm discovered that Company, Subsidiary A, and Subsidiary B did not make new elections following the merger to treat each of Subsidiary A and Subsidiary B as a taxable REIT subsidiary of

Company as of Date 8 and advised Company to seek relief under §§ 301.9100-1 and 301.9100-3 to file late elections .

Company, Subsidiary A, and Subsidiary B also make the following additional representations:

1. The request for relief was filed by Company, Subsidiary A, and Subsidiary B before the failure to make the regulatory elections was discovered by the Service.
2. Granting the relief requested will not result in Company, Subsidiary A, and Subsidiary B having a lower tax liability in the aggregate for all years to which the regulatory elections apply than they would have had if the elections had been timely made (taking into account the time value of money).
3. Company, Subsidiary A, and Subsidiary B 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, Subsidiary A, and Subsidiary B did not choose not to 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, 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 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, Subsidiary A, and Subsidiary B have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat each of Subsidiary A and Subsidiary B as a taxable REIT subsidiary of Company, effective as of Date 8. Company, Subsidiary A, and Subsidiary B 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 qualifies as a REIT or whether Subsidiary A or Subsidiary B 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, Subsidiary A, and Subsidiary B 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 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