Internal Revenue Service

Department of the Treasury
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Person To Contact:
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Refer Reply To:
CC:FIP:B03 – PLR-144303-11
Date:
March 6, 2012

RE:

LEGEND:

Company A =

Company B = .

Company C =

Company D =

Limited Partnership =

Accounting Firm =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

a =

b =

Dear :

This responds to a letter dated October 20, 2011, that was submitted on behalf of Company C and Company D requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make elections under § 856(c) of the Internal Revenue Code to be treated as real estate investment trusts (REITs) for the Year 1 tax year.

FACTS

. After conducting an extensive review and analysis of its real property assets and operations, Company A determined , it required a substantial cash infusion. On Date 2, Company A entered in agreements for more than $b in equity capital commitments ("Investment Agreements"). Pursuant to the Investment Agreements, Company A planned the following transactions:

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On Date 3, Company C and Company D's Senior Vice President of Taxes and Senior Director of Taxes gave a presentation to all of the internal tax professionals involved in compliance, as well as Accounting Firm professionals on the scope and breadth of the transactions expected to take place . They believed that they adequately explained the relevant tax compliance responsibilities to a group that

was assigned to work on new entities
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Both Company C and Company D were formed on Date 4, use the accrual method of accounting, and have a taxable year ending on Date 5.

On Date 6, the Senior Vice President of Taxes for Company C and Company D was informed by the leader of the group that was working on new entities that he had no record of Forms 7004 being filed for either Company C or Company D. The Senior Vice President immediately approached Accounting Firm for guidance. In addition to preparing this request for relief, Accounting Firm prepared tax returns for Company C and Company D and filed them on Date 7.

Furthermore, Companies C and D make the following additional representations:

1. The request for relief was filed by Company C and Company D before the failure to make the regulatory election was discovered by the Service.

2. Granting the relief will not result in Company C and Company D having a lower tax liability in the aggregate for all years to which the regulatory election applies than Company C and Company D would have had if the election had been timely made (taking into account the time value of money).

3. Company C and Company D 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 the Company C and Company D 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 C and Company D did not choose to not file the election.

LAW AND ANALYSIS

Section 856(c)(1) of the Code provides that a corporation, trust, or association shall not be considered a REIT for any taxable year unless it files with its return for the taxable year, an election to be a REIT or has made such election for a previous taxable year, and such election has not be terminated or revoked. Pursuant to § 1.856-2(b), the election shall be made by computing taxable income as a REIT in its return for the first taxable year for which it desires the election to apply.

Section 301.9100-1(c) of the Income Tax 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 C and Company D have each satisfied the requirements for granting a reasonable extension of time to elect under § 856(c) of the Code to be treated as a REIT for their Year 1 tax years. Accordingly, the election of REIT status made on the Forms 1120-REIT that were filed on Date 7 for the Year 1 tax year by Company C and Company D will be considered as timely made.

No opinion is expressed with regard to whether the tax liability of Company C and Company D 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.

This ruling is limited to the timeliness of the elections to be treated as a REIT made by Company C and Company D. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Company C or Company D otherwise qualifies as a REIT under subchapter M of the Code.

This ruling is directed only to the taxpayer who requested 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 sent to your authorized representative.

Sincerely,

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

Enclosures:
Copy of this letter
Copy for section 6110 purposes

cc: