Internal Revenue Service

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Department of the Treasury
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Person To Contact:
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June 21, 2012

LEGEND:

Company	=
Subsidiary	=
Accounting Firm	=
Law Firm	=
State X	=
State Y	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=

Dear :

This letter responds to a letter dated February 14, 2012, and subsequent correspondence, on behalf of Company and Subsidiary requesting an extension of time under § 301.9100-3 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 of Company, effective as of Date 7.

FACTS

Company was organized on Date 1 as a State X corporation. Company invests in real estate and real estate related assets, such as loans secured by real property. Company attempts to structure its investments to permit it to qualify as a real estate investment trust ("REIT") under part II of subchapter M of the Code.

On Date 2, Company filed its first registration statement with the Securities and Exchange Commission ("SEC") on Form S-11, registering its common stock for sale to the public. The registration statement stated Company intended to qualify as a REIT for federal income tax purposes commencing with the taxable year in which it satisfied its minimum offering requirements, and indicated Company would organize taxable REIT subsidiaries to lease any hotels it acquired.

Company represents that for each of its two taxable years immediately preceding its taxable year ending on Date 6, it had no operations, it failed to satisfy its minimum offering requirements, it did not issue any shares of its common stock to the public, and it filed Form 1120, "U.S. Corporation Income Tax Return," as a C corporation.

Subsidiary was organized on Date 4 as a State Y corporation. Subsidiary engages in certain activities that if conducted directly by Company would prevent Company from qualifying as a REIT for federal income tax purposes.

On Date 5, the chief financial officer ("CFO") of Company and Subsidiary prepared, executed on behalf of Company and Subsidiary, and filed with the Internal Revenue Service Form 8875, "Taxable REIT Subsidiary Election," to treat Subsidiary as a taxable REIT subsidiary of Company ("Election"). Election specified Date 3 as an effective date. For its taxable year ending Date 6, however, Company did not satisfy the 100 shareholder requirement under § 856(a)(5). Accordingly, Company filed Form 1120 as a C corporation for that year. CFO assumed that Election was effective, notwithstanding that Company was not a REIT for that year, and that it would not be necessary to file another Form 8875 for the next year.

Company commenced operations during its taxable year ending Date 6 but did not elect to be treated as a REIT for federal income tax purposes for such taxable year. Company has disclosed in its SEC filings that it intends to make a REIT election for federal income tax purposes for its taxable year ending Date 8. Company and Subsidiary are now requesting an extension of time to elect to treat Subsidiary as a taxable REIT subsidiary of Company, effective as of Date 7.

Company and Subsidiary represent neither Company nor Subsidiary are using hindsight in requesting relief and make the following additional representations:

1. The request for relief was filed by Company 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 or Subsidiary 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. Company 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 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 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) 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 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, effective as of Date 7. Accordingly, Company and Subsidiary are granted 60 days from the date of this letter to file a correct Form 8875 to make the intended election.

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 Company 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 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 representatives.

Sincerely,

Charles W. Culmer
Acting Chief, Branch 3
Office of Associate Chief Counsel
Financial Institutions & Products

Enclosures:
Copy of this letter
Copy for section 6110 purposes

cc: