Internal Revenue Service

Number: **200544015**
Release Date: 11/4/2005
Index Number: 9100.00-00

Department of the Treasury
Washington, DC 20224

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B02
PLR-128629-05

Date:
August 01, 2005

Legend:

Trust 1 =

Trust 2 =

Subsidiary A =

Subsidiary B =

Accounting Firm 1 =

Accounting Firm 2 =

Legal Counsel =

Date 1 =

Year 1 =

Date 2 =

Date 3 =

Date 4 =

Month 1 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Dear :

This is in reply to a letter dated May 26, 2005, submitted on behalf of Fund by your authorized representative, requesting a ruling on behalf of Trust 1 and Subsidiary B. Fund requests a ruling granting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations to file an election under section 856(l) of the Internal Revenue Code to treat Subsidiary B as a taxable REIT subsidiary (TRS) of Trust 1.

Facts:

Trust 1 is a widely-held real estate investment trust (REIT) which is not currently listed on a public exchange. Trust 1 was organized on Date 1, and acquired assets and commenced operations in Year 1. Trust 1 operated in a manner intended to satisfy the REIT requirements under section 856 *et seq.* for each of its taxable years beginning with its taxable year ended Date 2. Trust 1 holds hospitality properties for long-term investment.

Under the Ticket to Work and Work Incentives Act, P.L. 106-170, a change to the REIT provisions of section 856(d) permitted a REIT to form taxable REIT subsidiaries and lease qualifying hospitality properties to a TRS without violating the related-party tenant rules of section 856(d)(2)(B), provided that the additional requirements of sections 856(d)(8)(B) and 856(d)(9) are satisfied. The change was effective for tax years beginning after December 31, 2000. Accordingly, all of Trust 1's property was leased to Subsidiary A, with whom Trust 1 jointly made a TRS election on Date 3, effective on Date 4.

In Month 1, Trust 1 entered into a merger agreement with Trust 2, a widely-held REIT also specializing in the hospitality sector. Trust 2 had formed Subsidiary B to act as a TRS lessee with respect to Trust 2's property. Subsidiary B owned 100 percent of the stock and securities of two other TRSs that also acted as lessees of Trust 2's property.

On Date 5, Trust 1 and Trust 2 completed the merger transaction, and Trust 1 acquired the assets of Trust 2 in the merger. As part of the merger, which is represented to qualify as a reorganization under section 368(a), Trust 1 acquired Subsidiary B. Trust 1 continues to own 100 percent of the stock and securities of Subsidiary B, and Subsidiary B continues to own 100 percent of the stock and securities of its subsidiary TRSs. Trust 1 and Subsidiary B did not make a new TRS election following the merger.

On or about Date 6, Accounting Firm 1, in connection with their audit of Trust 1's Date 7 financial statement, recognized that no TRS election had been made with respect to Subsidiary B. Trust 1 then consulted Legal Counsel who concluded that because the merger qualified as a reorganization under section 368(a) the election made by Trust 2 with respect to Subsidiary B would carry over to Trust 1.

On or about Date 8, Accounting Firm 2 noted that no new TRS election had been made with respect to Subsidiary B. Such election, if required, would have had to have been filed by Date 9 to have been effective on Date 5, the date of the merger.

Based upon Rev. Rul. 2004-85, 2004-33 I.R.B 189, which ruled that an election to treat a subsidiary as a qualified subchapter S subsidiary terminates in a reorganization under section 368(a)(1)(A), (C), or (D), Accounting Firm 2 became concerned that perhaps an election was required. Rev. Rul. 2004-85 was issued after Legal Counsel initially undertook its analysis. Accordingly, Accounting Firm 2 recommended that Trust 1 seek relief under sections 301.9100-1 and 301.9100-3 to file a late TRS election with respect to Subsidiary B.

Trust 1 and Subsidiary B make the following representations. The granting of relief under section 301.9100-3 would not result in Trust 1 or Subsidiary B having a lower tax liability in the aggregate for all years to which the election applies than they would have had if the election had been timely made (taking into account the time value of money). Neither Trust 1 nor Subsidiary B was informed in all material respects of the required election and related tax consequences, but chose not to file the election. Neither Trust 1 nor Subsidiary B used hindsight in requesting relief. Finally, Trust 1 and Subsidiary B represent that they are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662.

An affidavit of the Chief Accounting Officer of Trust 1 and Subsidiary B has been submitted in support of the requested ruling.

Law and Analysis

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 (TRS). To be eligible for treatment as a TRS, section 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, the election and the revocation may be made without the consent of the secretary. Section 856(l)(2) provides that the term "taxable REIT subsidiary" includes any corporation with respect to which a TRS of a REIT owns directly or indirectly securities possessing 35 percent of the total voting power or 35 percent of the total value of the outstanding securities of that corporation.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (Service) announced the availability of 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. The instructions further provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of filing the election or more than 12 months after the date of the filing of the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service. Officers of both the REIT and the TRS must jointly sign the form, which is filed with the IRS Service Center in Ogden, Utah.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 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, 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 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 1 and Subsidiary B have satisfied the requirements for granting a reasonable extension of time to elect under 856(l) to treat Subsidiary B as a taxable REIT

subsidiary of Trust 1 as of Date 5. Therefore, Trust 1 and Subsidiary B are granted a period of time not to exceed 30 days from the date of this letter to file Form 8875.

This ruling is limited to the timeliness of the filing of Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Taxpayer otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Trust 1 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.

This ruling is directed only to the taxpayers 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 representatives.

Sincerely,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions and Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes