Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Legend:

Trust =

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

OP =

a =

Corporation A =

Corporation B =

Months A, B, and C =

Date 4 =

Date 5 =

Dear :

This is in reply to a letter dated September 28, 2006, and subsequent correspondence, in which Taxpayer requests certain rulings on behalf of Taxpayer. Specifically, Taxpayer requests a ruling that it is eligible to elect to have Corporation A treated as its taxable REIT subsidiary (TRS) under section 856(l) of the Internal Revenue Code. If Taxpayer is eligible, Taxpayer requests an extension of time to make a joint TRS election with Corporation A, pursuant to section 301.9100-1(a) of the Procedure and Administration regulations.

Facts:

Trust is a publicly traded corporation that elected to be taxed as a real estate investment trust (REIT) effective for its tax year beginning Date 1. Trust is a fully-integrated, self-managed REIT that owns all of its assets and conducts all of its operations through OP and OP's various subsidiaries, including Taxpayer. Trust is the managing general partner of OP and owns, directly and indirectly, approximately a percent of OP's outstanding partnership interests.

Trust is engaged primarily in the acquisition, ownership, and leasing of a portfolio of hotel properties through its interest in OP and OP's lower-tier subsidiaries, including Taxpayer. Almost all of the properties owned by Trust and its subsidiaries, including Taxpayer, are leased to Corporation A and are operated by unrelated third-party hotel operators.

Taxpayer is a domestic corporation that intends to be treated as a REIT under subchapter M effective for its short tax year beginning Date 2 and ending December 31, 2006. On Date 3, OP purchased all of the common stock of Taxpayer from Corporation B. Taxpayer's business consists of the ownership and leasing of full-service hotels. All of Taxpayer's hotels are leased to Corporation A and are operated by Corporation B or an affiliate of Corporation B.

Corporation A is a wholly-owned subsidiary of OP that has jointly elected with Trust to be treated as a TRS of Trust, pursuant to section 856(l). Corporation A's business operations involve leasing hotels from OP, Taxpayer, and other subsidiaries of OP. All of the hotels leased by Corporation A from either OP, Taxpayer, or subsidiaries of OP are operated by unrelated third party hotel operators.

In Months A, B, and C, Trust and its subsidiaries and Corporation B completed a series of complex acquisition transactions pursuant to which OP, its subsidiaries, and affiliated joint ventures acquired many large hotels. The purchase by OP of all of the stock of

Taxpayer was part of that transaction. In connection with the transaction, the acquired hotels, including five that were owned by Taxpayer, were leased to Corporation A, subsidiaries of Corporation A, or entities in which Corporation A owns an interest, each of which separately elected TRS status.

Trust, OP, Taxpayer, and Corporation A all intended to have Corporation A be treated as a TRS of Taxpayer as of Date 2. However, through an administrative oversight, Corporation A and Taxpayer neglected to file Form 8875, Taxable REIT Subsidiary Election, on a timely basis. It is represented that the administrative oversight was caused by the very heavy workload of the Trust tax department at the time. Consequently, the administrative error resulted in the TRS election on behalf of Taxpayer and Corporation A inadvertently and mistakenly not being filed on a timely basis. It is further represented that the omission was not willful neglect or done to gain any advantage over the Internal Revenue Service. Although the Trust tax department had filed approximately 25 TRS elections for entities acquired in the aforementioned transaction, there was an oversight as to the filing of the TRS election with respect to Taxpayer and Corporation A.

The failure to file Form 8875 with respect to Taxpayer and Corporation A was discovered by the Trust tax department. As soon as the omission was discovered, Taxpayer and Corporation A jointly filed a TRS election on Date 4, with an effective date of Date 5.

Taxpayer and Corporation A make the following representations. The granting of relief under section 301.9100-3 would not result in Taxpayer or Corporation A having a lower tax liability in the aggregate for all years to which the election applies than each would have had if the election had been timely made (taking into account the time value of money). Neither Taxpayer nor Corporation A knowingly chose not to file the election. Neither Taxpayer nor Corporation A used hindsight in requesting relief. Finally, Taxpayer and Corporation A 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. Taxpayer has submitted the affidavit of its Vice-President, who is also the Senior Vice President of Trust, in support of this 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. To be eligible for treatment as a taxable REIT subsidiary, 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(d)(2)(B) provides that, except as set forth in section 856(d)(8), rent received by a REIT from a tenant will not be qualifying income for purposes of the REIT gross income tests under section 856(c)(2) and (c)(3) if the REIT owns, directly or indirectly, 10 percent or more of the stock of the tenant.

Section 856(d)(8) provides that amounts paid as rent to a REIT by a TRS of the REIT will not be excluded from rents from real property if at least 90 percent of the leased space of the property is rented to persons other than a TRS of the REIT and other parties related to the REIT under section 856(d)(2), and if the rents paid to the REIT by its TRS are substantially comparable to rents paid by other tenants of the REIT's property for comparable space.

For purposes of determining whether a REIT is the indirect owner of the stock of a tenant, section 856(d)(5) adopts, with certain modifications, the ownership attribution rules under section 318(a). Under section 318(a)(3)(C), as modified by section 856(d)(5), if 10 percent or more of the capital stock of a corporation is owned, directly or indirectly, by any person, then that corporation will be treated as owning all stock owned by that person.

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 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. 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 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. 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, 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 § 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).

Based on the information submitted and representations made, because OP owns more than 10 percent of the stock of Taxpayer, Taxpayer will be treated as owning all of the stock in Corporation A that is owned by OP. Accordingly, Taxpayer's indirect ownership of Corporation A's stock makes Taxpayer eligible to make a joint election with Corporation A for Corporation A to be treated as a TRS of Taxpayer. Furthermore, we conclude that Taxpayer and Corporation A have each satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Corporation A as a TRS of Taxpayer as of Date 2. Therefore, Taxpayer and Corporation A are granted an extension of time to file Form 8875 making the intended TRS election until the date on which Form 8875 was filed, Date 4.

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. No opinion is expressed with regard to whether either Taxpayer or Trust otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer 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 yours,

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