Internal Revenue Service

Number: **200720019**
Release Date: 5/18/2007
Index Number: 9100.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B02
PLR-158576-06
Date:
January 29, 2007

Legend:

Taxpayer =

Corporation A =

Corporation B =

Corporation C =

Date 1 =

Properties =

Corporation D =

Date 2 =

Date 3 =

Dear :

This is in reply to a letter dated December 22, 2006, requesting a ruling on behalf of Taxpayer and Corporation C. Specifically, you have requested that Taxpayer and Corporation C be granted an extension of time under section 301.9100-1 of the

Procedure and Administration Regulations to file Form 8875, Taxable REIT Subsidiary Election, so that Taxpayer and Corporation C may jointly elect for Corporation C to be treated as a taxable REIT subsidiary (TRS) of Taxpayer effective Date 2.

Facts:

Taxpayer, formerly known as Corporation A, is a domestic corporation that made an election to be treated as a real estate investment trust (REIT) under subchapter M of the Internal Revenue Code effective for its taxable year ended Date 1. Taxpayer is a self-advised REIT engaged in the triple-net leasing of Properties. As a result of its merger with Corporation B on Date 2, Taxpayer also conducts a financing business through Corporation C, or subsidiaries of Corporation C.

Taxpayer recently agreed to a proposed merger with Corporation D. Under the terms of the proposed merger with Corporation D, Taxpayer is required to conclusively establish that an election is in effect to treat Corporation C as a TRS effective Date 2.

It is represented that Corporation B and Corporation C timely filed a valid joint election for Corporation C to be treated as a TRS of Corporation B effective Date 3. Because of its concern that the TRS election would be treated as terminated by the reorganization on Date 2, Taxpayer represents that it filed a joint TRS election with Corporation C that was effective as of Date 2. Taxpayer further represents that it has consistently treated Corporation C as a TRS since Date 2, and that Corporation C filed Form 1120 for its tax year on such basis.

During the due diligence conducted in connection with its merger with Corporation D, Taxpayer was requested to provide Corporation D a copy of its TRS election with Corporation C. Taxpayer has been unable to locate a copy of the Form 8875 to provide to Corporation D. Taxpayer sought the assistance of the Internal Revenue Service (Service) to verify that the TRS election had been made. The Service indicated that computer records show that a valid TRS election had been made effective Date 2 for Corporation C, but the records did not indicate the identity of the parent. The records also indicate that the election's filing occurred before the merger of Taxpayer and Corporation B on a date that was exactly one year before the date on which Taxpayer believes that it made the election. Therefore, Taxpayer has been prevented from conclusively establishing that an effective Form 8875 was timely filed for Corporation C to be treated as a TRS of Taxpayer.

Taxpayer and Corporation C make the following representations. The granting of relief under section 301.9100-3 would not result in Taxpayer or Corporation C 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 C knowingly chose not to file the election. Neither Taxpayer nor Corporation C used hindsight in requesting relief. Finally,

Taxpayer and Corporation C 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 affidavits of its two of its Vice-Presidents attesting to and supporting the facts and representations underlying this ruling request.

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.

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, we conclude that Taxpayer and Corporation C have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Corporation C as a TRS of Taxpayer effective as of Date 2. Accordingly, Taxpayer and Corporation C are granted 30 days from the date of this letter in which to file Form 8875 to make the intended TRS 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. 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 either Taxpayer or Corporation C 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 & Products)