

Internal Revenue Service

Department of the Treasury
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Date: November 1, 2007

LEGEND:

Trust =

Company =

Operating Partnership =

Hotel =

State X =

State Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

Dear

This responds to a letter dated December 29, 2006, submitted on behalf of Trust and Company, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election under § 856(l) of the Internal Revenue Code to treat Company as a Taxable REIT Subsidiary of Trust.

FACTS

Trust is a State X limited liability company that elected to be treated for federal tax purposes as real estate investment trust (REIT) beginning with the tax year that ended on Date 1. Its primary business is the acquisition, ownership, and leasing of office and other properties, including the Hotel. Trust conducts substantially all of its operations through Operating Partnership, of which Trust is the limited partner and owner of substantially all of the equity interests. Company is a State Y corporation that was formed on Date 4. Company is owned a percent by Operating Partnership. Trust owns more than b percent of the value, profits, and capital interests in Operating Partnership, a State X limited partnership.

On Date 2, Operating Partnership purchased the Hotel through a disregarded entity. Trust represents that the Hotel is a “qualified lodging facility” within the meaning of §§ 856(d)(8) and 856(d)(9) of the Code. Trust then leased the Hotel to Company beginning on Date 2. As the Lessee of the Hotel, Company represents that to operate and manage the Hotel it has engaged an “eligible independent contractor” within the meaning of § 856(d)(9).

Trust and Company represent that it had always been the intention of Trust and Company to operate in a manner consistent with Trust maintaining REIT status, and consequently make an election to treat Company as a Taxable REIT Subsidiary (TRS) of Trust. Moreover, Trust and Company represent that they intended to make a timely election to treat Company as a TRS of Trust on or before Date 3. However, due to a mix-up in communication between Trust and its outside tax advisor, Trust and Company inadvertently failed to make the necessary election on a timely basis. Upon discovering the error several months later during an internal review of Trust’s tax filings, Trust and Company submitted a request for a private letter ruling seeking an extension of time under § 301.9100-1 of the Regulations to make an election under § 856(l) to treat Company as a TRS of Trust.

Trust and Company make the following additional representations:

1. The request for relief was filed by Trust and Company before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Trust and/or Company having a lower tax liability in the aggregate for all years to which the regulatory election applies than

that Taxpayer would have had if the election had been timely made (taking into account the time value of money).

3. Trust and Company did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Trust and Company 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, Trust and Company did not choose to not file the election.

LAW AND ANALYSIS

Section 856(l) of the Code 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, 8 I.R.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 six 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 Trust and Company have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Company as a Taxable REIT Subsidiary of Trust. Accordingly, Trust and Company are granted a period of time not to exceed 30 calendar days from the date of this letter, to file a Form 8875 to treat Company as a TRS of Trust as of Date 2.

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 Trust otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of either Trust or Company 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 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 M. Bennett
Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes

cc: