Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Date:
March 11, 2011

LEGEND:

Group =

Company A =

Company B =

Company C =

Company D =

Subsidiary =

Partnership =

Entity =

Accounting Firm =

State X =

State Y =

Country =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Year 1 =

Year 2 =

x =

Dear :

This responds to a letter dated February 16, 2011, on behalf of Company A, Company B, Company C, Company D, and Subsidiary 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 Subsidiary as a Taxable REIT Subsidiary of Company B, Company C, and Company D, effective as of Date 1 and to treat Subsidiary as a Taxable REIT Subsidiary of Company A, effective as of Date 2.

FACTS

Group, a publicly held Country company, indirectly owns a substantial interest in Company A, Company B, Company C, and Company D. Company A and Company B are State X corporations. Company C and Company D are State Y limited liability companies. In the years that Company A, Company B, Company C, and Company D

were formed, they each elected to be treated for federal income tax purposes as a real estate investment trust (REIT) under § 856.

Company A, Company B, Company C, and Company D each own, directly or indirectly, membership interests in Partnership, a State Y limited liability company that is treated as a partnership for federal income tax purposes. Partnership owns all of the membership interest in Entity, a State Y limited liability company that has elected to be disregarded from its owner for federal income tax purposes. Entity owns x percent of Subsidiary. Subsidiary owns several taxable United States corporations. Subsidiary is engaged in the development of community and neighborhood shopping centers and in the management of community and neighborhood shopping centers for third parties.

Partnership acquired its interest in Subsidiary through Entity on Date 1. On that date, Company B, Company C, and Company D each held indirect interests in Partnership. Company A acquired an interest in Partnership on Date 2.

On Date 1, Group did not have in-house tax personnel in the United States. Instead, Group had retained the services of Accounting Firm to act as an advisor on United States tax matters. Accounting Firm was tasked with advising Company B, Company C, and Company D regarding compliance with reporting and filing obligations with respect to newly acquired corporate subsidiaries, including the filing of timely Taxable REIT Subsidiary elections for Subsidiary. Accounting Firm inadvertently did not timely prepare Forms 8875, Taxable REIT Subsidiary Elections, for execution by Company B, Company C, Company D, and Subsidiary. At that time, the management of Group was focused on the dramatic adverse impact of the economic downturn and the need to refinance certain debt and did not realize the Forms 8875 had not been timely prepared.

Around Date 3, Group hired an in-house tax director for its United States operations. Around that time, the failure to file the Forms 8875 was discovered. Based on the advice of Accounting Firm, the Forms 8875 to treat Subsidiary as a Taxable REIT Subsidiary of Company B, Company C, and Company D were filed with the Service on Date 5, effective as of Date 4.

At the time Company A became a member of Partnership, Group continued to be focused on Group's distressed financial condition. Group did not become aware of Company A's membership interest in Partnership until Date 6. A Form 8875 to treat Subsidiary as a Taxable REIT Subsidiary of Company A was filed with the Service on Date 8, effective as of Date 7.

Company A, Company B, Company C, Company D, and Subsidiary now seek relief to make elections to treat Subsidiary as a Taxable REIT Subsidiary of Company B,

Company C, and Company D, effective as of Date 1 and to treat Subsidiary as a Taxable REIT Subsidiary of Company A, effective as of Date 2.

Company B, Company C, and Company D have, since Year 2, filed federal income tax returns consistent with their elections to be treated as a REIT under § 856. Company A has, since Year 1, filed federal income tax returns consistent with its election to be treated as a REIT under § 856. Subsidiary has, since Year 2, filed federal income tax returns consistent with the election to treat Subsidiary as a Taxable REIT Subsidiary of Company A, Company B, Company C, and Company D.

Company A, Company B, Company C, Company D, and Subsidiary also make the following additional representations:

1. The request for relief was filed by Company A, Company B, Company C, Company D, and Subsidiary before the failure to make the regulatory elections was discovered by the Service.
2. Granting the relief requested will not result in Company A, Company B, Company C, Company D, or Subsidiary having a lower tax liability in the aggregate for all years to which the regulatory elections apply than they would have had if the elections had been timely made (taking into account the time value of money).
3. Company A, Company B, Company C, Company D, and Subsidiary 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 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 A, Company B, Company C, Company D, and Subsidiary did not choose to not file the elections.

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) 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, 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 A, Company B, Company C, Company D, 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 B, Company C, and Company D,

effective as of Date 1 and to treat Subsidiary as a Taxable REIT Subsidiary of Company A, effective as of Date 2. Company A, Company B, Company C, Company D, and Subsidiary have 60 days from the date of this letter to make the intended elections.

This ruling is limited to the timeliness of the filing of the Forms 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 A, Company B, Company C, or Company D 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 A, Company B, Company C, Company D, 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 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: