Internal Revenue Service

Number: **200726004**
Release Date: 6/29/2007
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:B01
PLR-100142-07

Date:
April 02, 2007

Legend:

Taxpayer =

Corporation A =

Corporation B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

VP - Tax =

Type M property =

State A =

State B =

Dear :

This is in reply to a letter dated December 27, 2006, and subsequent correspondence, requesting a ruling on behalf of Taxpayer and Corporation A. Specifically, you have requested that Taxpayer and Corporation A 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 A may jointly elect for Corporation A to be treated as a taxable REIT subsidiary (TRS) of Taxpayer effective Date 5.

Facts:

Taxpayer is a widely-held REIT listed on the New York Stock Exchange. Taxpayer operates in a manner intended to satisfy the REIT requirements under section 856 *et. seq.* of the Internal Revenue Code for each of its taxable years. Taxpayer is a self-administered and self-managed REIT in the business of acquiring, developing, redeveloping, owning, leasing, and managing Type M property. Corporation B, a State A corporation, is operated in a manner intended to satisfy the REIT requirements under section 856 *et. seq.* Corporation B is in the business of acquiring, developing, redeveloping, owning, leasing, and managing Type M property. Corporation A, a State B corporation, has been a taxable REIT subsidiary of Corporation B since Date 1. Corporation A is in the business of developing real estate properties and providing real estate development services.

During Date 2, Taxpayer, a shareholder of Corporation B, decided to become the sole shareholder of Corporation B and operate Corporation B as a qualified REIT subsidiary. To that end, the Board of Directors of Corporation B on Date 3, directed Corporation B to redeem all of its shares outstanding except for those held by Taxpayer. This redemption occurred on Date 5. As a result of the redemption, Corporation B became a qualified REIT subsidiary of Taxpayer and therefore was disregarded for federal income tax purposes. Corporation A thereby became a wholly-owned subsidiary of Taxpayer.

On Date 6 Taxpayer and Corporation A filed a Form 8875 with the Internal Revenue Service (Service) electing to make Corporation A a wholly owned taxable REIT subsidiary of Taxpayer. Although the election was otherwise properly completed and timely filed, Line 11 of the Form 8875 erroneously provides that the “Date the election is to take effect” was Date 4 instead of the date of redemption, Date 5.

During Date 7, Taxpayer’s Vice President – Tax (VP – Tax), in the course of quarterly asset testing, discovered the discrepancy. In their letter of December 27, 2006, Taxpayer and Corporation A requested relief under section 301.9100-1.

Taxpayer has submitted a detailed affidavit from the VP – Tax describing the events that led to the failure to make a valid election and to the discovery of the failure. The affidavit also details how the VP - Tax obtained personal knowledge of the events.

The federal income tax returns of Taxpayer, Corporation A (including its subsidiaries), and Corporation B are currently under audit for certain tax years ending prior to the tax year involved in this ruling. However, the Service has not discovered the failure to make a valid regulatory election. Granting the relief requested will not result in Taxpayer, Corporation A, or Corporation B having a lower tax liability in the aggregate, respectively, for all years to which the regulatory election applies than such parties would have had if the election had been timely made (taking into account the time value of money). Taxpayer, Corporation A, and Corporation B do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 and which requires or permits a regulatory election for which relief is requested hereby. Being fully informed of the required regulatory election and related tax consequences, Taxpayer and Corporation A did not choose to not file the election.

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 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.

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 A have 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 effective as of Date 5. Accordingly, Taxpayer and Corporation A are granted 30 days from the date of this letter to file a Form 8875, jointly electing for Corporation A to be treated as a TRS of Taxpayer effective Date 5.

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.

No opinion is expressed with regard to whether the tax liability of the Taxpayer, Corporation A, or Corporation B is not lower in the aggregate, respectively, 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,

/s/

_____

Elizabeth A. Handler
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes