Internal Revenue Service

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January 10, 2005

Legend:

Taxpayer =

Operating Partnership =

Fund I =

Fund II =

Corporation A =

Corporation B =

Corporation C =

Partnership 1 =

Partnership 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

a =

b =

c =

d =

e =

Dear

This is in reply to a letter requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration regulations for Taxpayer to file an election under § 856(l) of the Internal Revenue Code to treat Corporation B as a taxable REIT subsidiary ("TRS").

Facts:

Taxpayer is a domestic corporation that elected to be taxed as a real estate investment trust ("REIT") under subchapter M of Chapter 1 of the Code beginning with the taxable year ended Date 1. Taxpayer is a public REIT whose common stock is traded on the New York Stock Exchange. It is a calendar year taxpayer and uses the accrual method of accounting.

Taxpayer specializes primarily in acquiring, developing, leasing, and managing multifamily apartment communities, which it holds for long term investment. Taxpayer conducts substantially all of its operations through an approximate a% general partnership interest in Operating Partnership.

In 1999, The Ticket to Work and Work Incentives Improvement Act of 1999, P.L. 106-170, was enacted and contained the REIT Modernization Act ("RMA"), which included a number of modifications to the rules governing REITS. The RMA, which is effective for tax years beginning after December 31, 2000, allows a REIT to own up to 100 percent of the stock of a TRS. An interest in a TRS provides a REIT with the ability to perform activities indirectly that otherwise would result in impermissible income if performed directly by the REIT. As provided by the RMA, a corporation automatically is treated as a TRS with respect to a REIT if another TRS holds more than 35 percent of the total voting power or value of the outstanding shares of the corporation.

On Date 3, Taxpayer created Fund I. The general partner of Fund I was Partnership 1, whose b% general partner was Corporation A. After a restructuring, Corporation A was owned c% by Operating Partnership and d% by Corporation C. Corporation C was wholly owned by Taxpayer and certain senior executives of Taxpayer.

Taxpayer had previously made an election to treat Corporation C as a TRS of Taxpayer, effective as of Date 2. Pursuant to § 856(l)(2)(A), Corporation A automatically qualified as a TRS of Taxpayer upon Corporation C's acquisition of more than 35 percent of the total voting power of Corporation A's outstanding securities, and therefore, no separate election was made to treat Corporation A as a TRS of Taxpayer.

Corporation B was formed on Date 4 for the purpose of owning a b% general partnership interest in Partnership 2, the general partner of Fund II. Corporation B entered into a subscription agreement with the Operating Partnership, in which Corporation B issued to the Operating Partnership e shares of its common stock, representing d% of the issued and outstanding shares of Corporation B.

As a result of Taxpayer's approximate a% interest in the Operating Partnership, Taxpayer owned a corresponding approximate a% indirect interest in Corporation B, as of Date 5. Accordingly, in the absence of a timely election by Taxpayer and Company B to treat Company B as a TRS of Taxpayer, Taxpayer's indirect interest in Company B caused Taxpayer to fail to satisfy the 10 percent asset test under § 856(c)(4)(B)(iii) for the calendar quarter ended Date 5.

Taxpayer failed to make a timely election under § 856(l) for the following reasons. Taxpayer erroneously believed that because no TRS election with respect to Corporation A had been made in connection with the formation of Fund I, that no TRS election was required to be made with respect to Corporation B. However, in the case of Corporation A, no TRS election was required. Corporation A was owned more than 35% by Corporation C, and Taxpayer and Corporation C had already made a TRS

election. Because Corporation B was not owned 35 percent by a TRS, Taxpayer was required to separately elect to treat Corporation B as a TRS of Taxpayer.

Taxpayer also erroneously believed that it was not required to make a TRS election with respect to Corporation B because, although the Operating Partnership's subscription agreement with respect to its shares of Corporation B was executed on Date 5, Corporation B neither owned assets nor conducted activities from the date of its formation until Date 8.

On Date 7, Taxpayer realized that a TRS election with respect to Corporation B was required to have been filed no later than Date 6 to protect Taxpayer's status as a REIT. Taxpayer immediately took steps to apply for relief.

Taxpayer has submitted the affidavit of its First Vice President, Treasurer, and Controller 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 TRS. To be eligible for treatment as a TRS with respect to a REIT, § 856(l) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect this treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. Both the election, and the revocation, of TRS status may be made without the consent of the Secretary.

Section 856(l) provides that the term "taxable REIT subsidiary" includes any corporation (other than a REIT) with respect to which a TRS of such REIT owns directly or indirectly securities possessing more than 35 percent of the total voting power or total value of the outstanding securities of such corporation.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service ("Service") announced the availability of Form 8875, Taxable REIT Subsidiary Election. Pursuant to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. The effective date of the election, however, depends on when the Form 8875 is filed. Specifically, the instructions provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of the filing of the election, or more than 12 months after the date of the filing of 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) 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 Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Corporation B as a TRS of Taxpayer as of Date 5. Therefore, Taxpayer, together with Corporation B, is granted a period of time not to exceed 30 days from the date of this letter to submit Form 8875.

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 Taxpayer and Corporation B 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 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,

/S/

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

Enclosures:
Copy of this letter
Copy for § 6110 purposes