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Person To Contact:
, ID No.
Telephone Number:

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PLR-149551-06
Date:
March 06, 2007

Taxpayer =

State =
Adviser =
a =
Date 1 =
Date 2 =

Dear :

This is in reply to your letter requesting a ruling on behalf of Taxpayer. You have requested a ruling that any income received by Taxpayer under an expense reimbursement agreement with its investment adviser will be qualifying income for purposes of the gross income tests under sections 856(c)(2) and (c)(3) of the Internal Revenue Code.

Facts:

Taxpayer was organized as a State corporation and registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq, as amended, as a closed-end, non-diversified management investment company. Taxpayer has elected to be taxed as a real estate investment trust (REIT) effective for its tax year ended Date 2.

Taxpayer is a "fund-of-funds" which is designed to allow investors to participate in various real estate private equity funds through a single investment vehicle. The real estate private equity funds are organized as partnerships that invest in commercial or residential properties that generate real estate rents. Taxpayer represents that, currently, a% of its assets qualify as real estate assets or government securities.

Furthermore, to the extent Taxpayer raises more capital or liquidates mortgage assets, the amounts will be invested in qualified real estate assets.

On Date 1, Taxpayer entered into an investment advisory agreement (the Agreement) with Adviser. Under the Agreement, Adviser will assist Taxpayer in identifying, evaluating, structuring, acquiring, monitoring, and disposing of Taxpayer's investment assets. The Agreement provides that Taxpayer will bear all expenses.

To provide Taxpayer's shareholders with a reasonable expense ratio, Adviser and Taxpayer agreed to an expense reimbursement arrangement (the Reimbursement Arrangement). Under the Reimbursement Arrangement, Adviser will reimburse Taxpayer for a portion of Taxpayer's total ongoing expenses in any particular year of operation, excluding Adviser's management fees.

Law, Analysis and Conclusion:

Section 856(c)(2) provides that at least 95 percent of a REIT's gross income (excluding gross income from prohibited transactions) must be derived from dividends, interest, rents from real property, gain from the sale or other disposition of stock, securities, and real property (other than property in which the corporation is a dealer), abatements and refunds of taxes on real property, income and gain derived from foreclosure property, commitment fees, and gain from certain sales or other dispositions of real estate assets.

Section 856(c)(3) provides that at least 75 percent of a REIT's gross income (excluding gross income from prohibited transactions) must be derived from rents from real property, interest on obligations secured by real property, gain from the sale or other disposition of real property (other than property in which the corporation is a dealer), dividends from REIT stock and gain from the sale of REIT stock, abatements and refunds of taxes on real property, income and gain derived from foreclosure property, commitment fees, gain from certain sales or other dispositions of real estate assets, and qualified temporary investment income.

The legislative history underlying the tax treatment of REITs indicates that the central concern behind the gross income restrictions is that a REIT's gross income should largely be composed of passive income. For example, H.R. Rep. No. 2020, 86th Cong. 2d Sess. 4 (1960) at 6, 1960-2 C.B. 819, at 822-823, states, "[o]ne of the principal purposes of your committee in imposing restrictions on types of income of a qualifying real estate investment trust is to be sure the bulk of its income is from passive income sources and not from the active conduct of a trade or business." The legislative history also indicates that Congress intended to equate the tax treatment of REITs with the treatment accorded regulated investment companies (RICs).

Rev. Rul. 92-56, 1992-2 C.B. 153, holds that if, in the normal course of its business, a RIC receives a reimbursement from its investment advisor and the reimbursement is included in the RIC's gross income, the reimbursement is qualifying income under section 851(b)(2). Because the reimbursement was made in the normal course of the RIC's business and not in an effort to artificially inflate the RIC's gross income, the reimbursement was derived with respect to the RIC's business of investing in stock, securities or currencies. Section 851(b)(2)(A) now provides that qualifying income for a RIC includes income derived with respect to its business of investing in stock, securities or currencies ("the other income clause").

In the present case, the amounts received under the Reimbursement Arrangement would likely be qualifying income under "the other income clause" if Taxpayer were a RIC. While there is no rule similar to "the other income clause" that is applicable to REITs, Congress has indicated an intent to equate the tax treatment of RICs and REITs. Furthermore, the legislative history underlying the REIT income tests under section 856(c) indicates a concern only that a REIT's income be derived from passive sources and not from participation in an active trade or business. There is no indication that Congress intended to discourage or limit a REIT from participating in an arrangement similar to the Reimbursement Arrangement. The Reimbursement Arrangement is simply meant to provide a reasonable expense ratio for Taxpayer's shareholders. It does not suggest participation in an active trade or business of investing.

Accordingly, based on the information submitted and representations made, we conclude amounts received by Taxpayer under the Reimbursement Arrangement, which are attributable to expenses relating to the production of qualifying income under sections 856(c)(2) and 856(c)(3), will be qualifying income for purposes sections 856(c)(2) and 856(c)(3).

Other Information:

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of the transaction discussed in this letter. For example, no opinion is expressed concerning whether Taxpayer qualifies as a REIT under section 856 or the tax status of any other entity described herein.

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.

Sincerely,

/S/

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