Internal Revenue Service

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Person To Contact:
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Telephone Number:

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Date:
December 05, 2007

Legend:

Taxpayer =

Date 1 =

TRS A =

TRS B =

a =

Month 1 =

Month 2 =

Corporation A =

Manager =

b =

Dear :

This is in reply to a letter dated January 3, 2007, and subsequent correspondence, requesting a private letter ruling on behalf of Taxpayer. You have requested a ruling that the ownership of health care facilities described below by Taxpayer's taxable REIT subsidiaries (TRSs), TRS A and TRS B, will not cause the TRSs to fail to qualify as TRSs under section 856(l) of the Internal Revenue Code.

Facts:

Taxpayer is a publicly-traded domestic corporation that elected to be taxed as a real estate investment trust (REIT) beginning Date 1. Taxpayer is engaged in the acquisition, ownership, and management of hospital and senior care properties. Except for certain medical office buildings, Taxpayer's facilities are leased to health care operating companies under triple net leases that require the lessee to pay all property-related expenses.

Taxpayer's TRSs, TRS A and TRS B, acquired direct or indirect interests in senior living facilities in Month 1 and Month 2. The senior living facilities include (a) assisted living and Alzheimer care facilities, both of which provide medical or ancillary services, and (b) either or both assisted living and Alzheimer's facilities in combination with an independent living facility (where no healthcare or medically related services are provided), all in a single building or as a single continuum care center with an undivided property interest (together, the "Facilities"). Taxpayer represents that the Facilities are healthcare facilities as defined in section 856(e)(6)(D)(ii).

Most of the Facilities are owned in joint venture partnerships in which the TRSs are substantial partners. All of the Facilities are managed by a wholly-owned subsidiary of Corporation A, Manager, under b year management agreements. Manager is an operator and manager of several senior living facilities in the United States and is unrelated to the TRSs and Taxpayer. Under the terms of the management agreements, the TRSs cannot be involved in any component of the operations or services of the Facilities. Manager is responsible for collecting revenues from and paying the expenses of the facilities. Manager is responsible for maintaining and insuring the facilities; all procurement for the facilities; the recruiting, hiring, supervision, training, and discharge of employees; setting and collecting all fees; obtaining any required permits or licenses for operating the facilities; and managing and directing day-to-day activities at the facilities. Additionally, Manager acts on behalf of the TRSs in executing resident agreements, leases, and occupancy agreements. Manager is also responsible for all accounting and financial matters relating to each of the facilities.

Law and Analysis:

Section 856(c)(4)(B)(iii) provides that a corporation shall not be considered a REIT for any tax year unless at the end of each quarter of the tax year, except with respect to a TRS, (i) not more than 5 percent of the value of the REIT's total assets is represented by the securities of any one issuer, and (ii) the REIT does not hold securities having a total voting power or value of more than 10 percent of the outstanding securities of any one issuer. Section 856(c)(4)(B)(ii) provides that up to 20 percent of a REIT's total assets may be represented by securities of one or more TRS.

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.

Section 856(l)(2) provides that any corporation in which a TRS owns directly or indirectly more than 35 percent of the total voting power or value of the outstanding securities shall be treated as a TRS.

Section 856(l)(3)(A) provides that a TRS cannot directly or indirectly operate or manage a lodging facility or a health care facility.

For purposes of section 856(l)(3), a “health care facility” is defined in section 856(e)(6)(D)(ii) as a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility (as defined in section 7872(g)(4)), or other licensed facility which extends medical or nursing or ancillary services to patients, and which was operated by a provider of such services that is eligible for participation in the medicare program under Title XVIII of the Social Security Act with respect to the facility.

Section 856 does not provide any limitations on the ownership of either a lodging facility or a health care facility by a TRS. Furthermore, section 856 provides rules concerning the leasing and operation of lodging facilities by a TRS for which there is no corresponding section concerning the ownership or operation of a health care facility by a TRS. See section 856(d)(8) and (9). However, those rules are instructive in addressing the issue of whether a TRS’s involvement in the leasing or ownership of a health care facility rises to the level of directly or indirectly managing or operating the health care facility. Although section 856(l)(3)(A) prohibits a TRS from operating or managing a lodging facility, section 856(d)(8)(B) specifically permits a TRS to lease a lodging facility from its parent REIT. Although a TRS may hold an interest in a lodging facility as a lessee, it’s legal status is not enough to cause it to be treated as directly or indirectly operating or managing the lodging facility as long as it is operated by an “eligible independent contractor”. Similarly, ownership of lodging or health care facilities without other activity on the part of the TRS is distinguishable from the operation or management of those facilities. In the present case, the TRSs’ ownership and activities with respect to the Facilities do not rise to a level that will cause the TRSs to be treated as directly or indirectly operating or managing the Facilities.

Accordingly, based on the information submitted and representations made, we conclude that the ownership of the Facilities will not cause either of the TRSs to fail to qualify as a TRS under section 856(l).

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code. Also, no opinion is rendered concerning the operation or management of the Facilities.

This ruling is directed only to the taxpayer requesting it. Taxpayer should attach a copy of this ruling to each tax return to which it applies. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Sincerely,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)