

Internal Revenue Service

Department of the Treasury
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Legend:

Taxpayer =

OP =

State A =

State B =

a =

Dear _____ :

This is in reply to a letter dated December 8, 2010, requesting a ruling on behalf of Taxpayer under section 856 of the Internal Revenue Code (the Code). The ruling concerns the consequences of a loan made by Taxpayer to OP.

Facts:

Taxpayer is a State A public corporation that has elected to be treated as a real estate investment trust (REIT) for federal income tax purposes. Taxpayer owns substantially all of its assets and conducts substantially all of its business through OP, a State B limited partnership. Taxpayer owns approximately a percent of the equity interests of OP.

Taxpayer plans to raise capital through a public offering of debentures. The proceeds of the debenture offering will be loaned by Taxpayer to OP (the Loan) with terms substantially similar to the debentures. The Loan will not be secured by an interest in real property.

Law & Analysis:

Section 856(c)(2) provides that a REIT must derive at least 95 percent of its gross income from certain enumerated sources, including dividend, interest, and rents from real property.

Section 856(c)(3) provides that a REIT must derive at least 75 percent of its gross income from certain enumerated real estate sources, including rents from real property and qualified temporary investment income.

Section 856(c)(4)(A) requires that at the close of each quarter of a REIT's taxable year, at least 75 percent of the value of its total assets is represented by real estate assets, cash and cash items (including receivables), and Government securities.

Section 856(c)(4)(B) requires that at the close of each quarter of a REIT's taxable year, (i) not more than 25 percent of the value of its total assets is represented by securities (other than those includible under section 856(c)(4)(A)), (ii) not more than 25 percent of the value of its total assets is represented by securities of one or more taxable REIT subsidiaries, (iii) except with respect to a taxable REIT subsidiary and securities includible under section 856(c)(4)(A), (I) not more than 5 percent of the value of a REIT's total assets is represented by securities of any one issuer, (II) the trust does not hold securities possessing more than 10 percent of the total voting power of the outstanding securities of any one issuer, and (III) the trust does not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any one issuer.

Under § 1.856-3(g) of the Income Tax Regulations, a REIT that is a partner in a partnership is deemed to own its proportionate share of each of the assets of the partnership and to be entitled to the income of the partnership attributable to that share. For purposes of section 856, the interest of a partner in the partnership's assets is determined in accordance with the partner's capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross income of the partnership retain the same character in the hands of the partners for all purposes of section 856.

Taxpayer is required to account for its proportionate share of OP's income and assets pursuant to § 1.856-3(g). Therefore, the assets or income with which OP would repay the loan to Taxpayer will be accounted for by Taxpayer in accordance with § 1.856-3(g). If payments on the debt from OP to Taxpayer are treated as income by

Taxpayer, double counting of income will result. Accordingly, to the extent payments on the loan from Taxpayer to OP are reflected in Taxpayer's income and assets derived from its capital interest in OP, those payments should not be treated by Taxpayer as separate items of income or assets, but rather should be disregarded for purposes of section 856(c).

Conclusion:

The amount of the Loan, including interest income thereon, that is proportionate to the capital interest of Taxpayer in OP will be disregarded in applying the asset tests of section 856(c)(4) and the income tests of sections 856(c)(2) and (3).

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. Additionally, the ruling does not apply to the portion of the Loan reflecting the proportionate capital interest of OP's other partners.

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.

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,

Diana Imholtz
Diana Imholtz
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)