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Washington, DC 20224

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Date:
August 01, 2011

Legend:

Taxpayer	=
State	=
Partnership	=
A	=
B	=
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Date 1	=
Date 2	=
Date 3	=
Condo-hotel	=

Dear :

This responds to a letter dated May 31, 2011, submitted by your authorized representatives on behalf of Taxpayer. Taxpayer requests a ruling that a taxable REIT subsidiary of Taxpayer that acquires a condo-hotel will not be treated as directly or

indirectly operating or managing a lodging facility within the meaning of section 856(l)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

FACTS

Taxpayer is a publicly traded State corporation that elected to be taxed as a real estate investment trust (a "REIT") for federal income tax purposes with respect to its taxable year ended Date 1. Taxpayer is a self-advised REIT that owns substantially all of its assets and conducts substantially all of its operations through Partnership in which Taxpayer owns approximately A% of the equity interests. As of Date 2, Taxpayer and its affiliates owned approximately B hotel properties, containing approximately C total rooms. Most of the hotels are leased by Partnership to taxable REIT subsidiaries ("TRSs") of Taxpayer, as defined in section 856(l) of the Code, which in turn, have hired hotel management companies to manage the hotels under management contracts.

Taxpayer has purchased, through a TRS, a "condo-hotel." In general, a condo-hotel is a property which is developed and operated as a hotel, except that the individual rooms or suites (the "condo units") are sold to persons (the "unit holders") under condominium ownership. A unit holder owns a fee interest in the condo unit and an undivided interest in the common areas of the condo hotel including, for example, roads, parking areas, grassed areas, main entrances and hallways. Recreational facilities (e.g., generally consisting of a clubhouse, swimming pool and fitness center and the underlying land) are often owned by a third-party developer (the "Developer") of the condo-hotel, and made available to unit holders who desire access to such recreational facilities for a fee under rental or membership agreements (the "recreational facilities agreements"). In some cases, recreational facilities may be owned by a condominium owners association.

Condominium documents and/or local ordinances generally provide that the unit holders may use the condo units during the year only as vacation accommodations. Thus, the condo units may not be occupied as a primary residence. The Developer generally offers a rental program pursuant to which unit holders may engage the Developer under rental management agreements (the "rental agreements") to rent and manage the condo units similar to how hotel rooms are made available to guests in a traditional hotel. The unit holder receives any profit from the rental of its condo unit after costs of the rental are covered, including the payment of management fees to the Developer, which helps offset the cost of the unit holder's ownership of the condo unit. Most unit holders choose to participate in a rental program.

The Developer generally contracts with a hotel management company to operate and manage the condo units owned by unit holders under the terms of the rental agreements and to operate and manage the recreational facilities under the terms of the recreational facilities agreements.

Typically, a TRS of Taxpayer would acquire the following assets in connection with the purchase of a particular condo-hotel from the Developer or other owner of the condo-hotel: (i) unsold condo units, (ii) recreational facilities not otherwise owned by a condominium owners association, and (iii) rental agreements and recreational facilities agreements. It is possible that the TRS may also acquire land adjacent to the condo-hotel that may support the development of additional condo units. After the purchase of the condo-hotel assets from the Developer, the TRS would continue to engage the existing hotel manager (or engage a new hotel manager) to operate and manage the condo units owned by the TRS, as well as to operate and manage the condo units under the rental agreements and operate and manage the recreational facilities under the recreational facilities agreements. Taxpayer represents that the hotel manager would qualify as an eligible independent contractor within the meaning of section 856(d)(9)(A) (an "EIK").

The TRS will sell the unsold condo units as market conditions allow, and would enter into rental agreements and recreational facilities agreements with the purchasers of the unsold condo units who desire to enter into such agreements. The TRS may also offer to lease condo units from unit holders for arm's length consideration. In such case, the condo units, like the condo units still owned by the TRS, would be operated and managed by an EIK. The EIK would receive customary and adequate compensation from the TRS for operating and managing the condo units and recreational facilities under the agreements. The fee received by the EIK would be comparable (based on a per-unit basis) to what the EIK would have received if the TRS owned the entire condo-hotel.

On Date 3, Taxpayer and one of its TRSs closed on the purchase of Condo-hotel. The TRS acquired the unsold condo units, and Partnership acquired Condo-hotel's recreational facilities, the existing rental agreements and recreational facilities agreements with unit holders and land adjacent to Condo-hotel. Partnership has leased the pool area bar to the TRS in connection with liquor licensing compliance. Partnership and the TRS have engaged an EIK to operate and manage Condo-hotel under a management agreement that is comparable to other management agreements that TRSs of Taxpayer have with the EIK. Taxpayer is currently recognizing nonqualifying income under the gross income tests of section 856(c)(2) and (3) as a result of Partnership holding the rental agreements and recreational facilities agreements. Pending the receipt of a favorable ruling, the TRS would acquire the Condo-hotel recreational facilities, and the existing rental agreements and recreational facilities agreements with unit holders currently held by Partnership.

LAW AND ANALYSIS

Section 856(c)(4)(B)(iii) of the Code 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 25 percent of a REIT's total assets may be represented by securities of one or more TRSs.

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, 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 corporation consent to its revocation. In addition, the election and the revocation may be made without the consent of the Secretary.

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 “lodging facility” is defined in section 856(d)(9)(D)(ii) as a (I) hotel, (II) motel, or (III) other establishment more than one-half of the dwelling units in which are used on a transient basis. Section 856(d)(9)(D)(iii) provides that the term “lodging facility” includes customary amenities and facilities operated as part of, or associated with, the lodging facility so long as such amenities and facilities are customary for other properties of a comparable size and class owned by other owners unrelated to such REIT.

Section 1.856-3(g) of the Income Tax Regulations (the “Regulations”) provides that, for purposes of the Regulations under part II, subchapter M, chapter 1 of the Code, 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 will be deemed to be entitled to the income of the partnership attributable to such share. For purposes of section 856, the interest of a partner in the partnership's assets is determined by reference to its 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 remains the same in the hands of the partners for all purposes of section 856.

Under the proposed structure, Taxpayer represents that an EIK will continue to manage and operate Condo-hotel.

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 lodging facility by a TRS. For example, section 856(l)(3)(A) states that the term “taxable REIT subsidiary” does not include any corporation which directly or indirectly operates or manages a lodging facility. Section 856(l)(3)(A) provides that the term “lodging facility” has the

meaning given to such term in section 856(d)(9)(D)(ii). Section 856(d)(9)(D)(ii) defines "lodging facility" as (I) a hotel, (II) a motel, or (III) other establishment more than one-half of the dwelling units in which are used on a transient basis. However, those rules are instructive in addressing the issue of whether a TRS's involvement in the leasing or ownership of a lodging facility rises to the level of directly or indirectly managing or operating the lodging 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, its 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 TRS's ownership and activities with respect to the condo-hotels do not rise to a level that will cause the TRS to be treated as directly or indirectly operating or managing the condo-hotels.

Accordingly, based on the facts and representations submitted by Taxpayer, we conclude that under the circumstances described above, the ownership of the Condo-hotel, by a TRS of Taxpayer will not cause the TRS 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 condo-hotels.

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) provides that this ruling may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Diana Imholtz
Diana Imholtz
Chief, Branch 1
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes