Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:
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CC:FIP:B01
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Date:
November 28, 2011

Legend:

Taxpayer	=
OP	=
TRS 1	=
TRS 2	=
LLC	=
Corporation	=
Property	=
City	=
a	=
b	=
c	=
d	=
e	=
f	=

g =

h =

Dear :

This responds to a letter dated June 29, 2011, and supplemental correspondence dated October 28, 2011, requesting a ruling on behalf of Taxpayer. Taxpayer is requesting a ruling that under the circumstances described below, TRS 2 will not be considered to be directly or indirectly operating or managing a lodging facility in violation of section 856(l)(3)(A) of the Internal Revenue Code (the Code) and that TRS 2 will not fail to qualify as a taxable REIT subsidiary (TRS) under section 856(l) of the Code.

Facts:

Taxpayer is a domestic corporation which has elected to be treated as a real estate investment trust (REIT) for Federal income tax purposes under section 856(c) of the Code. Taxpayer is the managing general partner of OP and owns approximately a percent of the outstanding common units of OP. OP, through various separate limited liability companies, partnerships, and REITs, owns and operates numerous real properties throughout the United States.

TRS 1 is a TRS of Taxpayer and is wholly owned by OP. TRS 2 is a limited liability company that has elected to be treated as a corporation for Federal income tax purposes. TRS 2 is wholly owned by TRS 1 and is also a TRS of Taxpayer. TRS 2 currently owns a b percent interest in LLC, a limited liability company which is classified as a partnership for Federal tax purposes. LLC currently owns and operates Property in City.

LLC plans to construct a hotel and (the Facility) in City assuming it can obtain a license to operate such a facility. In anticipation of receiving the license, LLC has entered into a management agreement (Management Agreement) with an affiliate of Corporation to manage and operate the Facility.

Under the Management Agreement, LLC will continue to own the Facility and Corporation will make a contribution of capital to LLC obtaining a c percent membership interest in LLC. TRS 2 will then have a d percent minority membership interest in LLC. Two members unrelated to Taxpayer and TRS 2 will hold the largest interests in LLC, a collective e percent and other members will own the remaining f percent.

LLC will be managed by a board consisting of g members. TRS 2 will appoint h of those g members of the board. Taxpayer represents that TRS 2 will not have the

ability to control the operation or management of the Facility. Pursuant to the Management Agreement, Corporation will manage and operate the Facility for LLC in exchange for a fee.

Taxpayer represents that Corporation is unrelated to Taxpayer and TRS 2 for purposes of section 52(a) and (b) of the Code. Taxpayer also represents that Corporation is an "independent contractor" with respect to Taxpayer, within the meaning of section 856(d)(3). Corporation is actively engaged in the trade or business of operating "lodging facilities" (within the meaning of section 856(d)(9)(D)(ii)) for persons unrelated to the Taxpayer. Corporation operates numerous facilities, each of which has activities conducted at or in connection with the facility.

Corporation will employ the individuals providing services at the portion of the Facility that is a hotel. For business reasons, it is not possible for the individuals providing services at the to be employed by Corporation. As a result, these individuals will be employed by LLC. However, Corporation will have control over the employment of all of the individuals providing services at the (in a manner akin to the employment of individuals providing services at the hotel). Under the Management Agreement, Corporation will have the exclusive responsibility for the selection, hiring, employment, retention, training, control, determination of benefits and compensation, discharge, and other terms of employment of all of the individuals providing services at the . LLC will not have the ability to direct the employment of these individuals, and Corporation will have the sole right to operate and manage the Facility.

Law and Analysis:

Section 856(c)(4)(B)(iii) provides that a corporation shall not be considered a REIT for any taxable year unless at the close of each quarter of the taxable year, except with respect to a TRS, (I) not more than 5 percent of the value of its 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.

Section 856(d)(7)(C) provides that, for purposes of section 856(d)(7)(A), services furnished or rendered, or management or operation provided, through an independent contractor from whom the REIT does not derive or receive any income or through a TRS of the REIT, shall not be treated as furnished, rendered, or provided by the REIT.

Section 856(d)(3) defines an "independent contractor" as any person who does not own, directly or indirectly, more than 35 percent of the REIT's shares and, if such person is a corporation, not more than 35 percent of the total combined voting power of whose stock (or 35 percent of the total shares of all classes of whose stock) is owned

directly or indirectly, by one or more persons owning 35 percent or more of the shares of the REIT.

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.

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 healthcare facility. Section 856(l)(4)(A) gives "lodging facility" the same meaning given to the term in section 856(d)(9)(D)(ii). A "lodging facility" is defined in section 856(d)(9)(D)(ii) as a hotel, motel, or other establishment more than one-half of the dwelling units of which are used on a transient basis. Section 856(d)(9)(D)(iii) provides that a "lodging facility" also 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.

Under the proposed structure, Corporation is an independent contractor who will manage and operate the Facility. Although TRS 2 will own an interest in LLC, TRS 2 will have no authority to direct the operations or management of the Facility. Thus, Corporation will be treated as managing and operating the Facility on behalf of LLC for purposes of section 856(d)(8)(B), and therefore, TRS 2 will not be treated as operating or managing a lodging facility in violation of section 856(l)(3)(A).

Conclusion:

Accordingly, based on the facts and representations made by Taxpayer, we conclude that under the circumstances described above, TRS 2 will not be considered to be directly or indirectly operating or managing a lodging facility in violation of section 856(l)(3)(A), and therefore, TRS 2 will not fail to qualify as a TRS under section 856(l) by reason of LLC's establishment of the Facility.

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.

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, copies of this letter are being sent to your authorized representatives.

Sincerely,

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