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Date:
June 25, 2013

Legend:

Taxpayer =

OP =

LP 1 =

LP 2 =

LLC 1 =

LLC 2 =

Joint Venture =

Manager A =

Manager B =

Manager C =

Manager D =

Manager E =

State A =

State B =

Property A =

Property B =

Property C =

Property D =

Property E =

Property F =

Property G =

Property H =

Property I =

a =

b =

c =

d =

Dear :

This letter responds to a letter dated January 14, 2013, and subsequent correspondence submitted on behalf of Taxpayer. Taxpayer requests a ruling that its parking revenue derived under proposed parking facility management agreements ("Parking Management Agreements") with one or more taxable REIT subsidiaries ("TRSs") will be treated as "rents from real property" for purposes of section 856(d) of the Internal Revenue Code ("Code").

FACTS

Taxpayer is a publicly held, self-administered, and self-managed State A trust that is a calendar year taxpayer, uses the accrual method of accounting, and has elected to be treated as a real estate investment trust ("REIT") under section 856. It

operates its business through OP, in which it is the sole general partner and holds an a percent interest. OP is a State B limited partnership that is taxed as a partnership for federal income tax purposes. OP owns properties through various lower-tier partnerships, limited partnerships, and limited liability companies formed to own and operate rental real estate. Taxpayer, OP, and lower-tier entities wholly owned by OP, collectively, are referred to herein as "Company".

Company owns, leases, and manages a portfolio of b office and industrial properties in both urban and suburban markets. While almost all of Company's properties include parking, Taxpayer's requested ruling concerns nine parking facilities (or lots) associated with office properties, as more fully described, below. Currently, the parking facilities associated with Properties A - G are managed by an "independent contractor" within the meaning of the term provided by section 856(c)(3) ("IK"). Company plans to replace the IKs and manage all nine parking facilities with one or more TRSs that it owns.

A. Parking Facilities

Properties owned by OP

Property A

Property A consists of an office building and a parking garage that is located on the lower floors of the office building. The entire building (office space and garage space) is wholly owned by OP. Currently, Manager A, an IK, manages the parking facility associated with Property A. Manager A is paid a fixed fee, plus a percentage of revenue collected. This parking facility, an enclosed garage, is attended during part of the day, serves the Property A office building, and is situated on the lower floors of the office building. Taxpayer represents that the size of this parking facility is appropriate in size for the office building and is used predominantly by tenants of Property A, their guests, customers, and subtenants. Some reserved parking spaces are provided for tenants. Manager A collects daily parking revenue on behalf of Company, maintains and monitors the reserved spaces in the parking facility, and monitors the parking facility for any needed repairs and maintenance. Manager A provides no other services.

Property B

Property B consists of back-to-back office buildings wholly owned by OP. The buildings share an adjacent outdoor parking lot and an adjacent enclosed garage, both of which are managed by Manager B, an IK. Manager B is reimbursed for expenses and paid a fixed fee. The facilities are attended during the day by Manager B. Taxpayer represents that the parking facilities are appropriate in size for, and adjacent to, the office buildings located at Property B and are used predominantly by tenants of Property B, their guests, customers, and subtenants. Access to either parking facility is

restricted to permit holders (tenants of the buildings) and visitors who pay a parking fee. Some reserved parking spaces are provided to tenants. Manager B collects daily parking revenue on behalf of Company, maintains and monitors the reserved spaces in the parking facility, and monitors the parking facility for any needed repairs and maintenance. Manager B provides no other services.

Property C

Property C consists of an office building and parking garage located in the subterranean levels of the office building. Property C is wholly owned by OP and its parking facility is currently managed by Manager C, an IK. Manager C is reimbursed for expenses and paid a fixed fee. Taxpayer represents that the parking garage is appropriate in size for the office building, and is used predominantly by tenants of Property C, their guests, customers, and subtenants. Manager C maintains the parking facility, monitors reserved parking spaces, and collects parking revenue which is submitted to Company.

Properties owned through Joint Ventures

Property D

OP is treated as owning a c percent interest in an office building at Property D through its c percent interest in LP 1. The parking facility for the building is currently managed by Manager A, an IK, who is paid a fixed fee, plus a percentage of revenue collected. The facility is attended during part of the day. The facility is a subterranean garage located under the Property D office building. Taxpayer represents that the size of the parking garage is appropriate in size for the office building and is used predominantly by tenants of Property D, their guests, customers, and subtenants. Some reserved parking spaces are provided for tenants. Manager A collects daily parking revenue, maintains and monitors the reserved spaces in the garage, maintains the parking equipment, and monitors the parking garage for any needed repairs and maintenance. Manager A provides no other services.

Property E

OP is treated as owning a c percent interest in the office building at Property E through its c percent interest in LP 2. The building's parking facility is currently managed by Manager A, an IK, who is paid a fixed fee, plus a percentage of revenue collected. The facility is attended during part of the day. The facility is a subterranean garage located under the Property E office building. Taxpayer represents that the size of the parking garage is appropriate in size for the office building and is used predominantly by tenants of Property E, their guests, customers, and subtenants. Some reserved parking spaces are provided for tenants. Manager A collects daily parking revenue, maintains and monitors the reserved spaces in the garage, maintains

the parking equipment, and monitors the parking garage for any needed repairs and maintenance. Manager A provides no other services.

Property F

OP is treated as owning a d percent interest in the office building at Property F through its d percent interest in LLC 1. The building's parking facility is currently managed by Manager D, an IK, who is paid a fixed management fee, after reimbursement for expenses. The facility is attended during the day. The parking facility occupies the subterranean levels of the office building. Taxpayer represents that the size of the parking garage is appropriate in size for the office building and is predominately used by tenants of Property F, their guests, customers, and subtenants. Manager D is responsible for maintaining the facility, providing valet parking, and other recurring duties (such as collecting parking fees and monitoring reserved spaces). Manager D provides no other services.

Property G

OP is treated as owning a d percent interest in an office building at Property G through its d percent interest in LLC 1. The building's parking facility is currently managed by Manager E, an IK, who is paid a fixed management fee, after reimbursement for expenses. The facility is attended during the day. The parking facility for this building occupies the subterranean levels of the office building. Taxpayer represents that the garage is appropriate in size for the office building and is used predominantly by tenants of Property G, their guests, customers, and subtenants. Manager E is responsible for maintaining the facility, providing valet parking, and other recurring duties (such as collecting parking fees and monitoring reserved spaces). It provides no other services.

Property H

OP is treated as owning a d percent interest in an office building at Property H through its d percent interest in LLC 1. The parking facility for this building occupies the office building's subterranean levels. Taxpayer represents that the parking garage is appropriate in size for the building and its use is currently restricted to tenants of Property H, their guests, customers, and subtenants. Company may permit use of the garage by the general public on a parking fee basis after the TRS assumes management responsibility for the facility. In this case, the facility will nonetheless continue to be used predominantly by tenants of Property H, their guests, customers, and subtenants.

Property I

OP is treated as owning a d percent interest in an office building at Property I, through its d percent interest in Joint Venture. The parking facility for this building occupies the office building's subterranean levels. Taxpayer represents that the parking garage is appropriate in size for the office building and its use is currently restricted to tenants of Property I, their guests, customers, and subtenants. Company may permit use of the garage on a parking fee basis by the general public after the TRS assumes management responsibility for the facility. In this case, the facility will nonetheless continue to be used predominantly by tenants of Property I, their guests, customers, and subtenants.

B. Proposed Parking Management Agreement with TRSs

Company proposes to cancel or not renew the existing management agreements with the IKs currently managing Properties A - G, above. Instead, Company, either directly or through the joint venture owners, will enter into Parking Management Agreements with one or more TRSs to manage all of the Properties described above.

Services to be provided by one or more TRSs of Company pursuant to the Parking Management Agreements generally will include monitoring the facility (e.g., to enforce reserved parking) either directly or through LLC 2 (a TRS), collection of parking fees for remittance to Company (or to a joint venture owner) after payment of specified TRS expenses, physical maintenance of the facility and related equipment, oversight of repairs or renovations, payment of operating expenses, and maintenance of required insurance. In some situations, parking fees may be collected through an automatic payment machine. Further, in some situations, Company or the joint venture owner may pay certain fiduciary-type expenses of the facility, such as taxes and insurance, instead of the TRS, as permitted by section 1.856-4(b)(5)(ii) of the Income Tax Regulations ("Regulations"). TRS employees at a facility also may provide valet parking or be required to park vehicles in order to maximize use of the garage space, or may provide incidental emergency services, such as jumpstarts or assistance with a flat tire. The TRS may also provide, or arrange to hire, security services at particular garages.

C. Additional Representations

Company makes the following additional representations with respect to the implementation of the Parking Management Agreements with TRSs, the management of the parking facilities and other matters, as described below:

1) Parking Management Agreements will be similar in all material respects to parking contracts that Company currently has with IKs;

2) The management fee payable under a Parking Management Agreement will be at an arms-length rate that represents a fair market value payment to the TRS for the services rendered and obligations assumed by the TRS;

3) Each TRS assuming parking management responsibilities will maintain separate books and records and separate employees required to perform such services;

4) The Parking services provided by the TRSs are customarily provided at office buildings of the same class and in the same geographic market as Properties A – I; and

5) OP owns each of Properties A - I either directly or through joint ventures and each parking facility is located in or adjacent to the office buildings of each Property. Each parking facility is appropriate in size for the number of tenants, their guests, customers, and sub-tenants of its respective office building; and the facilities, in fact, are used and will continue to be used predominantly by their respective office building's tenants, their guests, customers, and sub-tenants.

Company also represents that the Parking Management Agreements with TRSs will have materially similar terms to those currently in place with IKs, and, in relevant parts, will provide as follows:

1) The TRS will manage and operate through its employees the identified parking facility, either for a fixed term or on a month-to-month basis, and the contract may be cancellable with or without cause by and at no cost to either party;

2) The property's owner for Federal income tax purposes (i.e., OP or the joint venture owner, "Owner") will pay the TRS a fee for its management services, which fee in either case shall be determined at arms-length and represent a fair market value rate for the services rendered;

3) The TRS will supervise, monitor and direct the operation of the parking facility as a parking garage for motor vehicles open to the public and render the management services required of it;

4) The TRS will operate and manage the parking facility in a prudent and economical manner, and it shall not use the parking facility nor permit the same to be used for any other purpose than as a top quality parking facility for the parking and storage of motor vehicles;

5) Parking fees will be at the prevailing parking rates or fees therefore in effect at the facility for the various parking customers and shall be paid by each such parking customer directly to the TRS. The Owner shall advise the TRS of the prevailing parking rates or fees to be charged at the facility, the parking rates to be charged each of its tenants and/or other parking customers, the number of parking spaces each such tenant is to receive, the type of parking spaces each such tenant is to receive, and of charges with respect to any of the foregoing;

6) The TRS shall have the responsibility for the day-to-day operation of the parking facility, subject to such policies affecting the facility as may from time to time be determined, and the TRS shall consult periodically with the Owner regarding the parking facility;

7) The TRS shall:

a. Purchase, at the Owner's expense, all supplies and equipment incidental to the operation and management of the parking facility; and

b. Maintain the parking equipment of the Owner at the parking facility in good condition and repair, and keep the same in operating condition. All such parking equipment shall be returned to the Owner in good condition and repair upon termination of the Parking Management Agreement - reasonable wear and tear, loss or damage by fire and/or other casualties excepted. Title to all such parking equipment located at the parking facility or purchased at the Owner's expense during the period of the Agreement shall vest in such Owner;

8) The TRS shall maintain an adequate number of qualified employees necessary for the proper operation and management of the parking facility, all such personnel to be employees of and under the supervision and control of the TRS. The TRS shall be directly responsible for providing all salary, wages, and benefits of all employees of the parking facility, together with all items of payroll and employee taxes and fringe benefits;

9) The TRS will remit to the Owner on a periodic basis the parking income collected by it from the operation of the parking facility after deduction of its management fee, as provided, and after deduction and payment by TRS out of the income so collected of all operating expenses incurred in the operation of the parking facility; and

10) The Parking Management Agreement will also include provisions relating to TRS' responsibility for maintaining (at the Owner's expense) minimum levels of insurance coverage for, e.g., General and Garage Liability Insurance and/or Garagekeeper's Legal Liability Insurance, Worker's Compensation Insurance, and Employer's Liability Insurance.

Taxpayer makes the following additional representation concerning the related tenant restrictions provided in sections 856(d)(2)(B) and 856(d)(8):

There are no current plans to lease a property that is the subject of this request, or any portion thereof, to the TRS. However, in the event a lease is entered into with

the TRS, rental payments from the TRS, in which Taxpayer owns directly or indirectly 10 percent or more of the total value or combined voting power, will not be treated as rents from real property unless at least 90 percent of the leased space of the property is rented to unrelated tenants and the rent paid by the TRS is substantially comparable to the rent paid by the unrelated tenants for comparable space.

LAW AND ANALYSIS

Section 856(c)(2) provides that at least 95 percent of a REIT's gross income must be derived from, among other sources, "rents from real property."

Section 856(c)(3) provides that at least 75 percent of a REIT's gross income must be derived from, among other sources, "rents from real property."

Section 856(d)(1) provides that "rents from real property" include (subject to exclusions provided in section 856(d)(2)): (A) rents from interests in real property; (B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated; and (C) rent attributable to personal property leased under, or in connection with, a lease of real property, but only if the rent attributable to the personal property for the taxable year does not exceed 15 percent of the total rent for the tax year attributable to both the real and personal property leased under, or in connection with, the lease.

Section 1.856-4(b)(1) provides that, for purposes of sections 856(c)(2) and (c)(3), the term "rents from real property" includes charges for services customarily furnished or rendered in connection with the rental of real property, whether or not the charges are separately stated. Services rendered to tenants of a particular building will be considered customary if, in the geographic market in which the building is located, tenants in buildings of a similar class are customarily provided with the service. Parking facilities are listed as an example of services which are customarily furnished to the tenants of a particular class of buildings in many geographic marketing areas. In particular geographic areas where it is customary to furnish electricity or other utilities to tenants in buildings of a particular class, the submetering of those utilities to tenants in the buildings will be considered a customary service. To qualify as a service customarily furnished, the service must be furnished or rendered to the tenants of the REIT or, primarily for the convenience or benefit of the tenant, to the guests, customers, or subtenants of the tenant. The service must be furnished through an independent contractor from whom the trust does not derive or receive any income.

Section 1.856-4(b)(5)(i) provides that no amount received or accrued, directly or indirectly, with respect to any real property qualifies as “rents from real property” if the REIT furnishes or renders services to the tenants of the property or manages or

operates the property, other than through an independent contractor from whom the trust itself does not derive or receive any income.

Section 1.856-4(b)(5)(ii) of the regulations provides that the trustees or directors of a REIT are not required to delegate or contract out their fiduciary duty to manage the trust itself, as distinguished from rendering or furnishing services to the tenants of its property or managing or operating the property. Thus, the trustees or directors may do all those things necessary, in their fiduciary capacities, to manage and conduct the affairs of the trust itself. For example, the trustees and directors may deal with taxes, interest, and insurance relating to the trust's property.

Section 856(d)(2)(C) provides that any impermissible tenant service income is excluded from the definition of "rents from real property". Section 856(d)(7)(A) defines "impermissible tenant service income" to mean, with respect to any real or personal property, any amount received or accrued directly or indirectly by the REIT for services furnished or rendered by the REIT to tenants at the property, or for managing or operating the property.

Section 856(d)(7)(B) provides that if the amount of impermissible tenant service income exceeds one percent of all amounts received or accrued during the tax year directly or indirectly by the REIT with respect to the property, the impermissible tenant service income of the REIT will include all of the amounts received or accrued with respect to the property. Section 856(d)(7)(D) provides that the amounts treated as received by a REIT for any impermissible tenant service shall not be less than 150 percent of the direct cost of the REIT in furnishing or rendering the service.

Section 856(d)(7)(C) provides certain exclusions from impermissible tenant service income. 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, and there shall not be taken into account any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

Section 512(b)(3) provides, in part, that there shall be excluded from the computation of unrelated business taxable income all rents from real property and all rents from personal property leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

Section 1.512(b)-1(c)(5) provides that payments for the use or occupancy of rooms and other space where services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses, or

apartment houses furnishing hotel services, or in tourist camps or tourist homes, motor courts or motels, or for the use or occupancy of space in parking lots, warehouses, or storage garages, do not constitute rent from real property. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The supplying of maid service, for example, constitutes such service; whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways and lobbies, and the collection of trash are not considered as services rendered to the occupant.

Rev. Rul. 2004-24, 2004-1 C.B. 550, identifies circumstances in which a REIT's income from providing parking facilities at its rental real properties qualifies as rents from real property under section 856(d). In Situation 1, the REIT provides unattended parking lots for the use of the tenants of its buildings and their guests, customers, and subtenants. Each parking facility is located in or adjacent to a building occupied by tenants of the REIT and is appropriate in size for the number of tenants and their guests, customers, and subtenants who are expected to use the facility. The parking facilities do not have parking attendants. The REIT maintains, repairs, and lights the parking facilities as well as performs certain fiduciary functions, such as dealing with taxes and insurance, as permitted by section 1.856–4(b)(5)(ii). In Situation 2, the facts are the same as in Situation 1 except that at some of the REIT's parking facilities, parking spaces are reserved for use by particular tenants. The REIT assigns and marks the reserved spaces in connection with leasing space in the buildings to the tenants, and any recurring functions unique to the reserved spaces (such as enforcement) are provided by an independent contractor from whom the REIT does not derive or receive any income. In Situation 3, the facts are the same as in Situations 1 and 2 except that some of the parking facilities are available for use by the general public and have parking attendants. An independent contractor from whom the REIT does not derive or receive any income manages and operates the parking facilities under a management contract with the REIT whereby the independent contractor remits the parking fees from those using the parking facilities to the REIT and receives arm's-length compensation. The independent contractor employs all of the individuals who manage and operate the parking facilities, including the parking attendants and is directly responsible for providing all salary, wages, benefits, administration, and supervision of its employees. In addition to collecting parking fees from those using the parking facilities, the parking attendants may park cars, without charging a separate fee, and may provide minor, incidental, emergency service at a parking facility.

Rev. Rul. 2004-24 quotes from the conference report underlying the 1986 revision of section 856(d) ("the 1986 conference report").[1] The 1986 conference report provides guidance on services performed directly by REITs, and it provides, in part:

[1] 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-220 (1986), 1986-3 (Vol. 4) C.B. 220.

> The conferees intend, for example, that a REIT may provide customary services in connection with the operation of parking facilities for the convenience of tenants of an office or apartment building, or shopping center, provided that the parking facilities are made available on an unreserved basis without charge to the tenants and their guests or customers. On the other hand, the conferees intend that income derived from the rental of parking spaces on a reserved basis to tenants, or income derived from the rental of parking spaces to the general public, would not be considered to be rents from real property unless all services are performed by an independent contractor. Nevertheless, the conferees intend that the income from the rental of parking facilities properly would be considered rents from real property (and not merely income from services) in such circumstances if services are preformed by an independent contractor.

Rev. Rul. 2004-24 holds that amounts received by the REIT for furnishing unattended parking facilities, under the circumstances described in Situations 1 and 2, and for furnishing attended parking facilities, under the circumstances described in Situation 3, qualify as rents from real property under section 856(d).

The Tax Relief Extension Act of 1999 established the TRS and amended section 856(d)(7)(C) to provide that either an independent contractor or a TRS could be used to provide service to tenants without causing amounts received for the services to be treated as impermissible tenant service income.[2]

CONCLUSION

Based on the information submitted and the representations made, we conclude that Taxpayer's parking revenue derived under the proposed Parking Management Agreements with one or more TRSs, under the above circumstances, will be treated as "rents from real property" under section 856(d).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed concerning whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code. Additionally, we express no opinion as to whether the TRSs qualify as TRSs under section 856(l) of the Code.

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.

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[2] Pub. L. 106-170, sections 542 and 543.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Andrea M. Hoffenson
Assistant to the Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures (2)

A copy of this letter
A copy for § 6110 purposes