

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201404005**
Release Date: 1/24/2014

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 305.00-00, 305.01-00,
305.04-00

Person To Contact:
, ID No.

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Refer Reply To:
CC:CORP:B3
PLR-116920-13
Date:
October 25, 2013

Taxpayer =

State A =

Exchange =

Date 1 =

Dear :

We respond to your letter dated April 3, 2013, on behalf of Taxpayer that requests rulings under sections 301 and 305 of the Internal Revenue Code (the Code). The information submitted in that letter is summarized below.

Facts

Taxpayer is a State A corporation that is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return on a calendar year basis. Taxpayer has one class of common stock outstanding (Taxpayer Stock), which is publicly traded and listed on the Exchange.

Taxpayer intends to elect under section 856 of the Code to be treated as a real estate investment trust (REIT), effective Date 1 (the First REIT Taxable Year). In connection with the REIT election, prior to the end of the First REIT Taxable Year, Taxpayer intends to distribute to its shareholders with respect to their Taxpayer Stock all of its

earnings and profits that were, or will be, accumulated by Taxpayer for all taxable periods ending prior to the First REIT Taxable Year as required by section 857(a)(2)(B) (the Special Dividend).

Taxpayer intends to provide each shareholder with an election to receive his, her, or its share of the Special Dividend in the form of (i) cash, (ii) Taxpayer Stock, or (iii) a combination of both cash and Taxpayer Stock. If a shareholder fails to make a valid election by the election deadline, that shareholder will be deemed to have made an election to receive only Taxpayer Stock.

Taxpayer intends to place a limit on the aggregate amount of cash to be distributed in payment of the Special Dividend. Cash will comprise at least 20 percent of the Special Dividend (the Cash Limitation). To the extent necessary, Taxpayer will issue cash in lieu of fractional shares of Taxpayer Stock. Any cash paid in lieu of fractional shares will not count towards the Cash Limitation.

If all elections to receive the Special Dividend are for cash or a combination of cash and Taxpayer Stock and would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limitation, then all such elections will receive the requested amount of cash.

If all such elections would result in the payment of cash in an aggregate amount in excess of the Cash Limitation, then:

(a) each shareholder electing to receive the Special Dividend in cash on 20 percent or less of the total number of shares of Taxpayer Stock he holds will receive his elected amount of cash.

(b) each shareholder electing to receive the Special Dividend in cash on more than 20 percent of the total number of shares of Taxpayer Stock he holds will receive (i) cash on the number of elected shares equal to 20 percent of his total number of shares of Taxpayer Stock, plus (ii) cash on the number of elected shares exceeding 20 percent of the total number of shares of Taxpayer Stock he holds in a prorated amount based on a formula, plus (iii) shares of Taxpayer Stock for the remaining amount of the elected shares for cash that were not paid in cash.

Taxpayer intends to distribute its stock and the cash in the Special Dividend during the First REIT Taxable Year and as soon as reasonably practicable following the date of the election deadline.

The calculation of the number of shares to be received by any shareholder will be determined over a period of two weeks ending as soon as practicable before the date of the Special Dividend payment and will be based upon a formula that utilizes market

prices and is designed to equate in value the number of shares to be received with the amount of money that could be received instead.

Taxpayer represents that it currently does not have a dividend reinvestment plan (DRIP) in effect, but Taxpayer intends that, for any Taxpayer shareholder participating in a future DRIP, the DRIP will apply to the Special Dividend only to the extent of the cash the Taxpayer shareholder would have received in the Special Distribution in the absence of the DRIP.

Rulings

Based solely on the information submitted and the representations made, we rule as follows:

- (1) All of the cash and Taxpayer Stock to be distributed in the Special Dividend by Taxpayer to holders of Taxpayer Stock will be treated as a distribution of property with respect to its stock to which sections 301 and 305(b) apply.
- (2) Provided (a) the Taxpayer elects to be taxed as, and qualifies as, a REIT as of the First REIT Taxable Year and (b) the Special Dividend occurs during the First REIT Taxable Year, the amount of the distribution of stock shall be considered to equal the amount of cash that could have been received instead of such stock (section 1.305-1(b)(2) and 1.305-2(b), Example (2), of the Income Tax Regulations).

Caveats

Rulings concerning the Special Dividend are void and we do not express any opinion on the tax consequences of the Special Dividend if the Special Dividend is not completed by the end of the First REIT Taxable Year. Further, except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above holdings. In particular, we are not ruling on (1) whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code; or (2) any tax consequences resulting from the establishment of a DRIP.

Procedural Statements

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 materials submitted in support of the request for rulings, it is subject to verification on examination.

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.

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.

In accordance with the Power of Attorney on file with our office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Filiz A. Serbes
Branch Chief, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: