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Date:
February 20, 2014

Legend:

Taxpayer =

Center(s) =

OP =

Business =

Date 1 =

Dear :

This is in reply to a letter dated August 22, 2013 requesting rulings on behalf of Taxpayer.

Facts:

Taxpayer is a domestic corporation that elected to be taxed as a real estate investment trust (REIT) for its tax year ending Date 1. Taxpayer is a fully integrated, self-managed company that conducts substantially all of its business through OP, a limited partnership, in which it is the sole general partner.

Taxpayer, OP and its subsidiaries that are partnerships or disregarded entities for U.S. federal income tax purposes ("Taxpayer Group") own, acquire, manage,

develop, and build Centers or other buildings that include Centers and other properties (e.g. office buildings) (such other properties, together with Centers, the "Properties") and lease the Properties to unrelated tenants.

Tenants generally use the Properties for their personnel and for Business. Taxpayer Group's tenants rely on their information technology ("IT") systems (including telecommunications and data storage systems) to run their business operations. Furthermore, the tenants' IT equipment is not functional unless it is connected to and exchanging data with the network existing outside the Centers. Therefore, the telecommunications infrastructure of any Center owned and operated by Taxpayer Group provides tenants with access to third-party telecommunications and internet service providers (collectively, the "Carriers") by enabling tenants to connect to the Carriers through cross-connections.

As described more fully below, this cross-connection is accomplished most often through a "meet-me-room". The meet-me-room is a common location within the Center where multiple Carriers' communications facilities terminate.

Tenants access Carriers in the meet-me-room by establishing a cross-connection via wires, cables and other transmission equipment that connect ports on the Carriers' switches and routers to the ports within tenant spaces. Tenants may have multiple cross-connections to create diversity in Carriers, increase bandwidth and enhance the reliability of telecommunications services. If a tenant requests a cross-connection, a cable is run from that tenant's port or ports to a "meet-me-room" or demarcation area. Participating Carriers place their equipment in the meet-me-room or demarcation area that will cross-connect with the tenant's equipment. Taxpayer Group's platform will be Carrier neutral; this is, multiple Carriers may gain access to the Centers to provide tenants with telecommunications services and each of these Carriers pays Taxpayer Group for use of this space.

No tenants, including the Carriers, have access to the meet-me-room or demarcation area without Taxpayer Group's prior approval and/or supervision by a Taxpayer Group employee. The Carriers may, however, have electronic equipment in the meet-me-room to accommodate cross-connections to tenant equipment. While each Center provides connectivity for the Carriers to exchange information with each tenant, as well as connectivity between and among tenants, it is the responsibility of each tenant to independently, and at its sole cost and expense, arrange for the receipt of telecommunications services within its space.

Customary Services

In addition to providing space for the telecommunications infrastructure, Taxpayer Group employees provide certain related services to tenants. These services

include the Cross-Connect Services and the Remote Hands Services (each as described below).

The Cross-Connect Services include the following services: (1) internet access bandwidth for tenants that do not wish to engage a Carrier separately in connection with their lease of space at the Center (i.e. Taxpayer purchases bandwidth from a Carrier and provides it to a tenant); (2) interconnection at a Center using wires, cables and other transmission equipment to provide tenants connectivity to Carriers; (3) interconnection at a Center using wires, cables and other transmission equipment to provide tenants direct connectivity with other tenants; (4) interconnection between multiple Centers and between Centers and properties owned by third parties via networks owned by Carriers or Taxpayer Group to provide tenants connectivity to their own servers and other tenants' servers; and (5) installation of the cross-connection described above in clauses (1) – (5) (e.g., plugging in a cable that runs between the equipment of one of Taxpayer Group's tenants and a Carrier, or between two different tenants) (the "Cross-Connect Services").

Tenants also engage Taxpayer Group to execute basic server services, and to ensure basic power is being delivered to the tenants' spaces and equipment (the "Remote Hands Services"). The Remote Hands Services include supervision of tenants' contractors while they work on the tenants' equipment, and other services that do not require logical access (i.e., tenant log-in access and information) to the tenants' equipment, such as re-seating, relabeling or replacing external cables, rebooting servers and changing backup tapes. Any services that require logical access to the tenants' equipment will be provided by third-party providers that qualify as independent contractors or a taxable REIT subsidiary ("TRS") of Taxpayer.

Fees charged to tenants for the Cross-Connect Services are structured to include both a one-time set up charge and a monthly recurring fee, although the rent paid by certain tenants may include a specified amount of the Cross-Connection Services and the maintenance of certain cross-connects at no additional charge. Similarly, Carriers that desire access to the Centers may pay a one-time connection fee for access to the meet-me-room, and/or a recurring monthly charge for occupancy. Any fees for telecommunications services (i.e., telephone and internet connectivity) that are provided by the Carriers directly to tenants are charged by the Carrier to the tenants who use such services without any involvement from Taxpayer Group.

Taxpayer represents that it has undertaken research regarding services furnished by other similarly situated owners in connection with similar buildings located in the same geographic markets, and it has determined that the Cross-Connect Services and the Remote Hands Services are customarily rendered in connection with the rental of space in comparable buildings in the geographic market in which Taxpayer Group's Properties are located.

Master Service Agreements

Although the contracts to provide space and related services to tenants at the Centers are generally in the form of lease or license agreements, at certain Centers the agreements are labeled as “master service agreements, “service agreements” or similar titles (the “Master Service Agreements”). In such cases, the tenants are typically referred to as “customers.” In general, a Master Service Agreement identifies the Center, grants the tenant the right or a license to use specific space, such as space in caged areas, a cabinet, a rack, or specified rooms or floors of a Center for the purpose of installing, operating, maintaining, altering and repairing the tenant’s communications, computing and electronic data storage equipment in such space; and requires Taxpayer Group to provide the Cross-Connect Services and the Remote Hands Services (as described above and below) in order to support the tenant’s use of the space and establishes standards for the provision of such services.

Services, Cost Sharing and Expense Reimburse Arrangements with a TRS of Taxpayer

In most leases, a Taxpayer Group member is required to provide both space in its Properties and certain related services within the space to the tenants. Taxpayer Group has entered into an agreement with a Taxpayer TRS, pursuant to which the TRS agrees to provide certain services to tenants from time to time. Taxpayer Group generally collects all amounts due, including any reimbursements, from the tenant as compensation for both the use of the space and the agreed upon services. The TRS will receive arm’s-length fees, and the reimbursement of certain costs, from one or more members of Taxpayer Group for the provision of these services.

In addition, for administrative convenience and to avail itself of economies of scale with respect to employment costs, certain Taxpayer Group employees will perform services for tenants on behalf of a Taxpayer TRS and remain employees of Taxpayer Group solely for administrative purposes. Taxpayer Group and the TRS will enter into an employee sharing agreement under which these employees will be shared with the TRS, and the TRS will reimburse Taxpayer Group for the TRS’s allocable share of the employee’s costs, including salaries, benefits, and allocable overhead costs. The amount of such reimbursements will be computed periodically and will be determined on the basis of the relative amount of time such employees spend performing services on behalf of either the TRS or Taxpayer Group, or based on another reasonable method. The Taxpayer TRS will deduct or capitalize those costs, as is appropriate. The reimbursements will be solely for costs, both direct and indirect, with no mark-up. Taxpayer represents that the allocation of general and administrative overhead expenses will be equitable and on an arm’s length basis. Also, no member of Taxpayer Group will profit from the reimbursement arrangement, and none of the entities which comprise Taxpayer Group will deduct the costs reimbursed by the TRS. Finally, Taxpayer Group will not be in the business of providing services that are otherwise provided by the TRS to third parties.

Income from Foreign Subsidiaries

Taxpayer Group currently owns and intends to acquire one or more entities that are classified as associations pursuant to section 301.7701-3 of the Procedure and Administration Regulations, and for which elections have been made to be treated as TRSs pursuant to section 856(l)(1)(B). Such foreign subsidiaries are either controlled foreign corporations under section 957(a) ("CFCs") with respect to which Taxpayer Group is a United States shareholder under section 951(b) ("United States Shareholder"), or passive foreign investment companies under section 1297(a) ("PFICs"), with respect to some of which Taxpayer Group has made an election under section 1295(a) to treat as qualified electing funds ("QEFs").

As a result of being a United States Shareholder with respect to CFCs, Taxpayer Group is required by section 951(a)(1)(A)(i) to include in its gross income its pro rata share of the subpart F income, as defined in section 952(a), of any such CFCs. Taxpayer Group expects to report section 951(a)(1)(A) inclusions attributable to one or more CFC's foreign personal holding company income ("FPHCI"), net of allocable expenses, which is passive rental income, interest, dividends and gain from the sale of property that gives rise to income such as dividends, interest and rental income (the "Subpart F Inclusions").

As a result of being a shareholder in PFICs for which Taxpayer Group has made QEF elections, Taxpayer Group is required under section 1293(a) to include in its gross income its pro rata share of the ordinary earnings and net capital gain income of each such QEF. As a result of being a shareholder in PFICs for which Taxpayer Group has not made QEF elections, Taxpayer Group is required to include amounts in its gross income (as ordinary income) pursuant to section 1291(a)(1)(B). Taxpayer Group expects to report inclusions consisting of section 1293(a)(1) ordinary income inclusions attributable to passive income from PFICs for which QEF elections have been made and section 1291(a) ordinary income inclusions attributable to passive income for PFICs for which QEF elections have not been made (the "PFIC Inclusions").

Furthermore, Taxpayer Group may occasionally pledge shares of one of more CFCs or cause one or more CFCs to pledge assets, in each case as collateral to secure certain debt of Taxpayer Group that was incurred to finance the acquisition of certain of its real estate assets. Such CFCs may also guarantee such debt of Taxpayer Group from time to time. As a result, Taxpayer Group will be required by Section 951(a)(1)(B) to include in its gross income amounts determined under section 956 with respect to Taxpayer Group for the relevant taxable year (the "Section 956 Inclusions").

Requested Rulings:

Taxpayer has requested the following rulings:

1.) The Cross-Connect Services and the Remote Hands Services that will be furnished by Taxpayer Group in connection with the leasing of space in Centers will not cause any amounts received from tenants of Centers to be treated as other than “rents from real property”.

2.) The payments received by Taxpayer Group under a Master Service Agreement will not fail to qualify as “rents from real property” solely as a result of the form of agreement pursuant to which such payments are made.

3.) Services provided by a Taxpayer TRS to tenants of Properties and for which the TRS receives an arm’s-length fee from Taxpayer Group will not give rise to impermissible tenant service income or cause any portion of the income of Taxpayer Group to fail to qualify as rents from real property.

4.) Amounts collected by Taxpayer Group under a reimbursement arrangement or employee sharing agreement for shared overhead, personnel, and facilities and with respect to services performed on behalf of a Taxpayer TRS will not constitute gross income to Taxpayer Group under section 856.

5.) Any Subpart F Inclusions of Taxpayer Group will constitute qualifying income for purposes of section 856(c)(2).

6.) Any PFIC Inclusions of Taxpayer Group will constitute qualifying income for purposes of section 856(c)(2).

7.) Any Section 956 Inclusions of Taxpayer Group will constitute qualifying income for purposes of section 856(c)(2).

Law & 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."

Ruling 1

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. 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.

Taxpayer represents that the Cross-Connect and the Remote Hands Services are usual or customary services that are rendered in connection with the operation or maintenance of the Properties and are not rendered primarily for the convenience of tenants. Accordingly, the Cross-Connect and the Remote Hands Services furnished by Taxpayer Group in connection with the leasing of the Centers will not cause any amounts received from tenants of the Centers to be treated as other than “rents from real property” under section 856(d).

Ruling 2

Section 1.856-4(a) provides that the term “rents from real property” means, generally, gross amounts received for the use of, or the right to use, real property.

Payments received under the Master Service Agreements will not fail to qualify as rents from real property solely as a result of the form of agreement. Section 1.856-4(a) states that rents from real property generally means amounts received for the use of, or right to use, real property. Although the labels are different, the Master Service Agreements grant the tenants the same rights they would have under a traditional lease. Therefore, payments made under the Master Service Agreements will be treated as “rents from real property” under section 856(d).

Ruling 3

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.

In Rev. Rul. 2002-38, 2002-2 C.B. 4, a REIT pays its TRS to provide noncustomary services to tenants. The REIT does not separately state charges to tenants for the services. Thus, a portion of the amounts received by the REIT from tenants represents an amount received for services provided by the TRS. The TRS employees perform all of the services and the TRS pays all of the costs of providing the services. The TRS also rents space from the REIT for carrying out its services to tenants. The revenue ruling concludes that the services provided to the REIT's tenants

are considered to be rendered by the TRS, rather than the REIT, for purposes of section 856(d)(7)(C)(i).

Taxpayer represents that its TRS will provide certain services for which Taxpayer Group will reimburse the TRS on an arm's-length basis. Although Taxpayer Group will collect the compensation for both the use of space and the services provided, the services are considered to be rendered by the TRS rather than Taxpayer Group for purposes of section 856(d)(7)(C)(i). Accordingly, the services do not give rise to impermissible tenant service income and do not cause any portion of the rents received by Taxpayer Group to fail to qualify as rents from real property under section 856(d).

Ruling 4

In Rev. Rul. 84-138, 1984-2 C.B. 123, a regulated investment company (RIC) and its wholly-owned subsidiary shared facilities and some personnel. It was agreed that the RIC would pay all the expenses for general and administrative overhead, including personnel costs, and the subsidiary would reimburse the RIC for its pro rata share of the expenses on an arm's length basis. The ruling, in distinguishing Jergens Co. v. Commisioner, 40 B.T.A. 868 (1939), states that the RIC was not engaged in the business of receiving compensation for services of the type that were reimbursed. Instead, reimbursements to the RIC from the subsidiary were merely repayments of advances made on behalf of the subsidiary. Accordingly, the ruling holds that the reimbursements were not included in the RIC's gross income under section 61 and, therefore, were not subject to the gross income requirement of section 851(b)(2).

Based on the information provided and the representations made by Taxpayer Group, we conclude that any amounts received as reimbursements under a cost-sharing arrangement will not be included in the reimbursed party's gross income, including for purposes of section 856(c)(2) and (3).

Rulings 5-7

Section 856(c)(5)(J) provides, in relevant part, that to the extent necessary to carry out the purposes of part II of Subchapter M of the Code, the Secretary is authorized to determine, solely for purposes of such part, whether any item of income or gain which otherwise constitutes gross income not qualifying under section 856(c)(2) or (3) may be considered as gross income which qualifies under section 856(c)(2) or (3).

The legislative history underlying the tax treatment of REITs indicates that a central concern behind the gross income restrictions is that a REIT's gross income should largely be composed of passive income. For example, H.R. Rep. No. 2020, 86th Cong., 2d Sess. 4 (1960) at 6, 1960-2 C.B. 819, at 822-23 states, "[o]ne of the principal purposes of your committee in imposing restrictions on types of income of a qualifying

real estate investment trust is to be sure the bulk of its income is from passive income sources and not from the active conduct of a trade or business."

Subpart F Inclusions

Section 957 defines a CFC as a foreign corporation in which more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or the total value of the stock, is owned by United States Shareholders on any day during the corporation's taxable year. A United States Shareholder is defined in section 951(a) as a United States person who owns 10 percent or more of the total voting power of the foreign corporation. Taxpayer represents that it is a United States shareholder within the meaning of section 951(b) with respect to certain subsidiaries that are CFCs.

Section 951(a)(1)(A)(i) generally provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during a taxable year, every person who is a United States Shareholder of the corporation and who owns stock in the corporation on the last day of the taxable year in which the corporation is a CFC shall include in income the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952 defines subpart F income to include foreign base company income, as determined under section 954. Under section 954(a)(1), foreign base company income includes FPHCI, as determined under section 954(c). Section 954(c)(1)(A) defines FPHCI income to include (among other things) dividends, interest, royalties, rents, and annuities. Section 954(c)(1)(B) also includes gain from the sale or exchange of property which (among other things) gives rise to income described in section 954(c)(1)(A) (after application of paragraph (2)(A)) other than property which gives rise to income not treated as FPHCI by reason of section 954(h) or (i) for the taxable year.

Taxpayer has represented that it is a United States Shareholder within the meaning of section 951(b) with respect to certain of its subsidiaries that are CFCs. As Taxpayer's CFCs earn subpart F income attributable to foreign base company income that is FPHCI and such income is generally passive income, treatment of the section 951(a)(1)(A)(i) inclusion attributable to such passive income as qualifying income for purposes of section 856(b)(2) does not interfere with or impede the policy objectives of Congress in enacting the income test under section 856(c)(2). Accordingly, we rule that under section 856(c)(5)(J)(ii), Subpart F Inclusions attributable to the FPHCI earned by Taxpayer's CFCs are qualifying income for purposes of section 856(c)(2).

PFIC Inclusions

Section 1297(a) of the Code defines a PFIC as a foreign corporation where either (1) 75 percent or more of the gross income of such corporation for the taxable year is passive income, or (2) the average percentage of assets (as determined in accordance

with section 1297(e)) held by such corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent. Section 1297(b) defines the term "passive income" as income of a kind that would be FPHCI under section 954(c), subject to certain exceptions.

Section 1291(a)(1) provides that if a United States person receives an excess distribution (as defined in section 1291(b)) in respect of stock in a PFIC, then – (A) the amount of the excess distribution shall be allocated ratably to each day in the shareholder's holding period for the stock, (B) with respect to such excess distribution, the shareholder's gross income for the current year shall include (as ordinary income) only the amounts allocated under section 1291(a)(1)(A) to – (i) the current year, or (ii) any period in the shareholder's holding period before the 1st day of the 1st taxable year of the company which begins after December 31, 1986, and for which it was a PFIC, and (C) the tax imposed by this chapter for the current year shall be increased by the deferred tax amount (determined under section 1291(c)).

Section 1295(a) provides that a PFIC will be treated as a QEF with respect to a shareholder if (1) an election by the shareholder under section 1295(b) applies to such PFIC for the taxable year; and (2) the PFIC complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company. Section 1293(a) provides that every United States person who owns (or is treated under section 1298(a) as owning) stock of a QEF at any time during the taxable year of such fund shall include in gross income – (A) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such year, and (B) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such year.

Taxpayer has represented that it is a shareholder of certain subsidiaries that are PFICs and that it has made QEF elections with respect to certain of these PFICs. As Taxpayer's PFICs earn income that is FPHCI and such income is generally passive income, treatment of such PFIC Inclusions as qualifying income for purposes of section 856(c)(2) does not interfere with or impede the policy objectives of Congress in enacting the income test under section 856(c)(2). Accordingly, we rule that under section 856(c)(5)(J)(ii), the PFIC Inclusions are qualifying income for purposes of section 856(c)(2).

Section 956 Inclusions

Section 951(a)(1)(B) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during a taxable year, every person who is a United States shareholder of the corporation and who owns stock in the corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the amount determined under section 956 with respect to the shareholder

for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

Section 956(a) provides that in the case of a CFC, the amount determined under section 956 with respect to any United States shareholder for any taxable year is the lesser of -- (1) the excess (if any) of-- (A) such shareholder's pro rata share of the average of the amounts of United States property held (directly or indirectly) by the CFC as of the close of each quarter of such taxable year, over (B) the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder, or (2) such shareholder's pro rata share of the applicable earnings of such CFC. The amount taken into account in the preceding sentence under (1) with respect to any property shall be its adjusted basis as determined for purposes of computing earnings and profits, reduced by any liability to which the property is subject.

Section 1.956-2(c)(1) provides that except as provided in section 1.956-2(c)(4), any obligation (as defined in section 1.956-2(d)(2)) of a United States person (as defined in section 957) with respect to which a CFC is a pledgor or guarantor shall be considered for purposes of section 956(a) to be United States property held by such CFC. Section 1.956-2(c)(2) provides that if the assets of a CFC serve at any time, even though indirectly, as security for the performance of an obligation of a United States person, then, the CFC will be considered a pledgor or guarantor of that obligation.

Taxpayer has represented that assets of one of its CFCs have been pledged as collateral for certain debt of Taxpayer Group that was incurred to finance Taxpayer Group’s acquisition of real estate assets. This pledge has caused Taxpayer Group to recognize a Section 956 Inclusion. The facts and representations in this case indicate that the Section 956 Inclusion occurred as a result of a debt of Taxpayer Group’s that arose in connection with the acquisition of real estate assets. This has a close nexus to Taxpayer Group's business of investing in real property assets. The Section 956 Inclusion recognized in connection with the production of otherwise qualifying income is treated as qualified income for purposes of section 856(c)(2) to the extent that the underlying income so qualifies. Accordingly, we rule that that under section 856(c)(5)(J)(ii), to the extent Taxpayer Group recognizes a Section 956 Inclusion on the pledge of the assets of a CFC to secure a debt of Taxpayer Group that is used to finance the acquisition of real estate assets from which income is derived that qualifies under section 856(c)(2), there is a sufficient nexus to treat the Section 956 Inclusion as qualifying income for purposes of section 856(c)(2).

No opinion is expressed or implied as to the federal tax consequences of this transaction under any provision not specifically addressed herein. Specifically, no opinion is expressed or implied concerning whether Taxpayer has correctly calculated its Subpart F inclusions. Furthermore, no opinion is expressed concerning whether Taxpayer otherwise qualifies as a REIT under subchapter M, part II of Chapter 1 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it 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,

Jonathan D. Silver

Jonathan D. Silver
Assistant Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)