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Date:
April 22, 2014

Legend:

Taxpayer	=
Type A	=
Type B	=
Type C	=
Type D	=
Type E	=
Type F	=
Type G	=
Subsidiary	=
Exchange	=
State A	=
Date 1	=
Date 2	=
Date 3	=

a =

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c =

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Country A =

Country B =

Dear :

This letter is in reply to a letter dated November 16, 2012, and supplemental correspondence, in which Taxpayer requests rulings in connection with its intent to elect to be taxed as a real estate investment trust ("REIT") under Section 856 of the Internal Revenue Code for the taxable year ending Date 1.

Taxpayer has requested the following rulings:

(1) The income derived by Taxpayer from customers under its contracts for the use of advertising space on Qualified Outdoor Advertising Displays (as defined below) qualifies as "rents from real property" under Section 856(d) for purposes of Section 856(c).

(2) Any income derived by Taxpayer from the Services (as defined below) is not treated as impermissible tenant service income under Section 856(d) and the income derived by Taxpayer from such services does not cause the amounts received under its contracts to be excluded from treatment as "rents from real property" under Section 856(d).

(3) Certain intangible assets of Taxpayer, recorded under generally accepted accounting principles ("GAAP"), qualify as "real estate assets" and "interests in real property" under Section 856(c).

(4) Certain items of income that are required to be included in Taxpayer's income under Sections 951(a)(1), 1291(a), and 1293(a) constitute qualifying income under Section 856(c)(2).

Facts:

Taxpayer is the common parent of a group of affiliated corporations that files a consolidated return for U.S. federal income tax purposes. Taxpayer operates through its wholly owned subsidiary, Subsidiary. On Date 2, Taxpayer was incorporated in State A and became the parent of the current holding company structure. Taxpayer and its predecessors have been publicly traded on Exchange since Date 3.

Taxpayer builds and maintains various types of outdoor advertising displays and makes available space on such displays to advertisers. In addition, Taxpayer, through a taxable REIT Subsidiary ("TRS"), designs and produces advertising materials. Taxpayer has represented that it intends to make the election under Section 1033(g)(3) of the Code and the Treasury regulations thereunder for its taxable year ending Date 1 to treat the Type A, Type B, Type C, Type D, and Type E outdoor advertising displays (each a "Display") as real property for purposes of chapter 1 of the Code. Displays for which Taxpayer has made a valid election under Section 1033(g)(3) are referred to as "Qualified Outdoor Advertising Displays."

Taxpayer also rents advertising space on Type F and Type G outdoor advertising displays. Taxpayer represents that it will either rent space on Type F and Type G displays through a TRS or treat the revenues from Type F and Type G displays as non-qualifying income for both the 75% and 95% REIT income tests.

Contracts with Advertisers

Taxpayer enters into rental contracts granting advertisers the right to place their advertising copy on certain Outdoor Advertising Displays. Type B and Type C Displays allow for multiple rental agreements for each Display to be in place at one time.

The term of a rental contract for Type A, Type B, Type C, and Type E Displays typically ranges from a months to b months. Rental contracts on Type D Displays range from a years to c years. When Taxpayer has space on Type A, Type B, Type C, and Type E Displays that is not otherwise leased to long-term advertisers, Taxpayer occasionally enters into contracts for as short as d weeks to accommodate specialty advertisers desiring short-term advertising. Taxpayer represents that the portion of its revenue from Type A, Type B, and Type C Displays attributable to these short-term contracts has been less than 2 percent of its total revenues from Type A, Type B, and Type C Displays. Taxpayer also represents that the portion of its revenue from Type E Displays attributable to these short-term contracts has been less than 1 percent of its total revenues from Type E Displays.

In connection with the rental of space on the Qualified Outdoor Advertising Displays, Taxpayer will provide the following services (the "Services"): leasing activities, the provision of lighting and electricity to Displays, and routine maintenance of the Displays. Taxpayer represents that it will not provide any other services to advertisers in connection with the rental of space on its Qualified Outdoor Advertising Displays.

Taxpayer represents that the installation, removal, and replacement of advertising copy will either be performed by a TRS compensated at arm's length or an independent contractor from whom Taxpayer does not derive any income. Taxpayer also represents that advertising design, artwork and production services with respect to its Displays will either be performed by a TRS compensated at arm's length or an independent contractor from whom Taxpayer does not derive any income.

Goodwill and Other Intangibles

In addition to building and acquiring individual Displays, Taxpayer has acquired many of the Displays it now owns through purchases of entities owning such structures or through purchases of substantially all of the assets of such entities. Taxpayer produces financial statements in accordance with generally accepted accounting principles ("GAAP").

Pursuant to GAAP, upon acquiring any interest in a Display or entity that owns Displays, Taxpayer establishes replacement cost (less depreciation) for the physical structures being acquired and carries the structure on its financial statements at this value. Other tangible assets are valued under a similar methodology. Ownership interests in land and perpetual easements over land are generally valued based on the projected profitability of that location. Any remaining purchase price paid for the acquisition must be allocated for GAAP purposes to intangible assets. Taxpayer allocates a portion of the purchase price to identifiable intangibles, including portfolio location and unexpired contracts. Any remaining purchase price paid for a Display (after amounts have been allocated to the physical structure and identifiable intangible assets) are allocated to goodwill.

A portfolio location intangible asset represents the collective value to any above or below market leasehold interests held by Taxpayer, as well as the value of licenses, permits, or easements associated with the Qualified Outdoor Advertising Displays. The fair value of each portfolio location asset is estimated by calculating the present value of the earnings attributable to the portfolio over the expected remaining lives of the underlying rights and structures.

The unexpired contracts intangible asset represents Taxpayer's rights to payment under existing contracts to lease space on the Displays, to the extent in excess of the replacement costs and lost profits associated with entering into new contracts if the existing contracts were to be terminated. The value of the unexpired contracts intangible asset is based on the value of a lease that is already in place, including the value of avoiding costs associated with finding new tenants, the costs associated with holding an unleased property for a period of time, the costs of leasing commissions and the value of any above or below market leases.

After allocating purchase prices to the Displays and to specifically identified intangibles, the remainder is allocated to goodwill.

Taxpayer will transfer any identified intangible or goodwill associated with Taxpayer's non-qualifying income or assets to a TRS; these intangibles and goodwill are not the subject of this ruling. In the case of the remaining goodwill that is associated with Taxpayer's Qualified Outdoor Advertising Displays, Taxpayer has represented that this remaining goodwill has no value apart from the Displays that were purchased by Taxpayer. Taxpayer further represents that the portfolio location and unexpired contract intangibles associated with Taxpayer's Qualified Outdoor Advertising Displays are inextricably and compulsorily tied to the Qualified Outdoor Advertising Displays.

Foreign Operations

Taxpayer operates in foreign countries through one or more foreign subsidiaries. Taxpayer's foreign subsidiaries may be partially or wholly owned by Taxpayer. Taxpayer represents that it will jointly elect TRS status with foreign subsidiaries that are treated as corporations for U.S. federal income tax purposes (each, a "Foreign TRS") and that the value of all of Taxpayer's TRSs, both foreign and domestic, will together satisfy the 25 percent limitation of Section 856(c)(4)(B)(ii). These Foreign TRSs are either controlled foreign corporations under Section 957(a) ("CFCs") with respect to which Taxpayer 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 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 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 may also be required by Section 951(a)(1)(B) to include in its gross income inclusions that arise in connection with the pledge of a CFC's assets against debt of Taxpayer incurred to finance the acquisition of real estate assets.

As a result of being a shareholder in PFICs for which Taxpayer makes QEF elections, Taxpayer 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 has not made QEF elections, Taxpayer is required to include amounts in its gross income (as ordinary income) pursuant to Section 1291(a)(1)(B).

Taxpayer is required to include in its gross income the Subpart F Inclusions (as defined below), Section 956 Inclusions (as defined below), and PFIC Inclusions (as defined below) for purposes of its gross income tests under Section 856(c)(2) and (3). Taxpayer expects to report on its tax returns:

- Section 951(a)(1)(A) inclusion attributable to one or more CFC's foreign personal holding company income, 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").
- Section 956 ordinary income inclusions resulting from a pledge of assets to secure a debt of Taxpayer incurred primarily to finance the acquisition of, or to refinance, real estate assets from which is derived income that qualifies under Section 856(c)(2) (the "Section 956 Inclusions").
- Section 1293(a)(1) ordinary income inclusions attributable to passive income from numerous PFICs for which QEF elections have been made (the "QEF Inclusions") and Section1291(a) ordinary income inclusions attributable to passive income for PFICs for which QEF elections have not been made (together with QEF Inclusions, the "PFIC Inclusions").

Taxpayer represents that all Subpart F Inclusions, Section 956 Inclusions, and PFIC Inclusions will have a close nexus to Taxpayer's business of investing in real property assets. Taxpayer also represents that all of the activities conducted by a Foreign TRS will be of the type that also could have been conducted by a TRS organized in the United States.

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 856(d)(2)(C) excludes from the definition of "rents from real property" any impermissible tenant service income as defined in Section 856(d)(7). Section 856(d)(7)(A) provides, in relevant part, that the term impermissible tenant service income means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the REIT for managing or operating such property.

Section 856(d)(7)(B) provides that *de minimis* amounts of impermissible tenant service income, i.e., amounts less than one percent of all amounts received or accrued by the REIT with respect to a particular property during the taxable year, will not cause otherwise qualifying amounts to not be treated as rents from real property.

Section 1.856-4(a)(1) provides that the term "rents from real property" means, generally, the gross amounts received for the use of, or the right to use, real property of the real estate investment trust.

Issue 1: Rents from Real Property

Provided that Taxpayer is eligible for, and properly elects under Section 1033(g)(3) to treat the Type A, Type B, Type C, Type D, and Type E Displays as real property for purposes of chapter 1 of the Code, amounts received by Taxpayer under its contracts with advertisers as compensation for the right to use space on such Qualified Outdoor Advertising Displays to display advertising copy will constitute amounts received for the use of real property and, therefore, rents from real property. Taxpayer does enter into a limited number of short-term contracts; however, such short-term contracts comprise a small percentage of Taxpayer's overall revenue. Moreover, Taxpayer's short-term contracts are for the use of advertising space and are not contracts for the provision of services. With respect to Taxpayer's Type B and Type C Displays, advertisers share the Displays with other advertisers and any particular advertiser's advertising copy is displayed for only certain intervals of time in a rotation with other advertisers; however, these modifications do not change the character of the income as rents from real property because the modifications have no bearing on the passive nature of the income from renting space on Displays, and advertisers pay for the right to use the Displays for specified intervals of time.

Accordingly, provided that Taxpayer is eligible for, and properly elects under Section 1033(g)(3) to treat the Type A, Type B, Type C, Type D, and Type E Displays as real property for purposes of chapter 1 of the Code, we rule that the income derived by Taxpayer from customers under its contracts for the use of advertising space on the Qualified Outdoor Advertising Displays qualifies as "rents from real property" under Section 856(d) for purposes of Section 856(c).

Issue 2: Services performed by Taxpayer

Section 856(d)(7)(C) excludes from the definition of impermissible tenant service income amounts received for services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income or through a TRS of such trust. Subparagraph (C) also excludes any amount that would be excluded from unrelated business taxable income ("UBTI") under Section 512(b)(3) if received by an organization described in

Section 511(a)(2).

Section 512(b)(3) provides, in relevant part, that rents from real property are excluded from the computation of UBTI. Section 1.512(b)-1(c)(5) provides that payments 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.

Section 1.856-4(b)(1) provides that services provided to tenants of a particular building will be considered customary if, in the geographic market in which the building is located, tenants in buildings which are of a similar class are customarily provided with the service. Such services include the furnishing of water, heat, light, air conditioning and telephone answering services.

Section 1.856-4(b)(5)(ii) provides that trustees or directors of the 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 of 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 including establishing rental terms, choosing tenants, entering into and renewing leases, and dealing with taxes, interest, and insurance relating to the REIT's property. The trustees or directors may also make capital expenditures with respect to the REIT's property and may make decisions as to repairs of the property the cost of which may be borne by the REIT. *See also*, Rev. Rul. 67-353, 1967-2 C.B. 252.

Some of the amounts Taxpayer receives under contracts with advertisers may be attributable to the Services. Taxpayer has represented that it does not intend to provide any other services to advertisers. Further, Taxpayer represents that any other services will be provided either by an independent contractor from whom Taxpayer does not derive any income or by a TRS.

Accordingly, we rule that any income derived from the Services performed by Taxpayer with regard to its Qualified Outdoor Advertising Displays is not treated as impermissible tenant service income under Section 856(d)(7), and the income derived by Taxpayer from the Services does not cause the amounts received under its contracts to be other than “rents from real property” under Section 856(d).

Issue 3: Goodwill and other Intangibles

Section 1.856-2(d)(3) provides that in determining the investment status of a REIT, the term "total assets" means the gross assets of the REIT determined in accordance with GAAP. Because Taxpayer derived certain intangible assets in accordance with GAAP that are attributable to its acquisitions of Qualified Outdoor Advertising Displays, these intangibles must be analyzed to determine whether they qualify as "real property" for purposes of section 856. In order to qualify as real property for this purpose, Taxpayer's GAAP intangibles must be inseparable from and inextricably and compulsorily tied to Taxpayer's real property assets. Assuming that Taxpayer is eligible for, and properly elects to, treat its Displays as real property under section 1033(g)(3), the Displays will be treated as real property for all purposes of Chapter 1 of the Code.

Taxpayer's intangible assets include portfolio location, unexpired contracts, and goodwill. A portfolio location intangible asset is inextricably tied and connected to Taxpayer's Displays because it represents the right, authorized through leases and permits, to maintain Qualified Outdoor Advertising Displays at applicable locations. The unexpired contracts intangible asset is inextricably tied and connected to Taxpayer's Qualified Outdoor Advertising Displays because it represents Taxpayer's rights to payment under existing lease contracts with respect to such structures. Taxpayer represents that its GAAP goodwill represents the anticipated future lease income from the Qualified Outdoor Advertising Displays. Taxpayer represents that its portfolio location, unexpired contracts, and goodwill intangibles have no value apart from the Qualified Outdoor Advertising Displays that were purchased by Taxpayer.

In the present case, provided that Taxpayer is eligible for, and properly elects to, treat its Displays as real property under section 1033(g)(3), and based on the Taxpayer's representation that portfolio location, unexpired contracts, and GAAP goodwill are inextricably and compulsorily tied to Taxpayer's Qualified Outdoor Advertising Displays, we rule that Taxpayer's intangibles of portfolio location, unexpired contracts, and GAAP goodwill (as limited to the excess of the fair market value of the Qualified Outdoor Advertising Displays acquired over their GAAP replacement cost (less depreciation) as of the time of the acquisition) each qualify as real property, which is a "real estate asset" for purposes of section 856(c)(5)(B).

Issue 4: Subpart F, Section 956, and PFIC Inclusions

Section 856(c)(2) of the Code requires that at least 95 percent of a REIT's gross income (excluding gross income from prohibited transactions) be derived from dividends, interest, rents from real property, gain from the sale or other disposition of stock, securities, and real property (including interests in real property and interests in mortgages on real property) which is not property described in Section 1221(a)(1), and certain other sources.

Section 856(c)(5)(J)(ii) 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 the 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 822-823 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 of the Code 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(b) as a United States person who owns 10 percent or more of the total voting power of the foreign corporation. Taxpayer represents that it will be 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 foreign personal holding company income (“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(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 Subpart F Inclusions attributable to the FPHCI earned by Taxpayer's CFCs are qualifying income for purposes of Section 856(c)(2), as provided in Section 856(c)(5)(J)(ii).

Section 956 Inclusions

Section 951(a)(1)(B) 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 under subparagraph (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 may be pledged as collateral for certain debt of Taxpayer that was incurred to finance Taxpayer's acquisition of real estate assets. This pledge may cause Taxpayer to recognize a Section 956 Inclusion. Taxpayer represents that any Section 956 Inclusions will occur

as a result of a debt of Taxpayer's that arose in connection with the acquisition of real estate assets that have a close nexus to Taxpayer'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 to the extent Taxpayer recognizes a Section 956 Inclusion on the pledge of the assets of a CFC to secure a debt of the Taxpayer 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), as provided in Section 856(c)(5)(J)(ii).

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 may be a shareholder of certain subsidiaries that are PFICs and that it will make QEF elections with respect to certain of these PFICs. As Taxpayer's PFIC's 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 Taxpayer's PFIC Inclusions are qualifying income for purposes of Section 856(c)(2), as provided in Section 856(c)(5)(J)(ii).

Accordingly, we rule that, pursuant to Section 856(c)(5)(J)(ii) of the Code, Taxpayer's Subpart F Inclusions, Section 956 Inclusions, and PFIC Inclusions constitute qualifying income under Section 856(c)(2).

Conclusions:

As discussed above, and provided that Taxpayer is eligible for, and properly elects to, treat its Qualified Outdoor Advertising Displays as real property under Section 1033(g)(3), we hereby rule as follows:

1. The income derived by Taxpayer from customers under its contracts for the use of advertising space on the Qualified Outdoor Advertising Displays qualifies as “rents from real property” under Section 856(d) for purposes of Section 856(c).

2. Any income derived from the Services attributable to Qualified Outdoor Advertising Displays is not treated as impermissible tenant service income under Section 856(d) and the income derived by Taxpayer from the Services does not cause the amounts received under its contracts to be excluded from treatment as “rents from real property” under Section 856(d).

3. Based on Taxpayer’s representation that its portfolio location, unexpired contracts, and GAAP goodwill intangibles are inextricably and compulsorily tied to Taxpayer’s Qualified Outdoor Advertising Displays and have no value separate and apart from such Displays, we rule that Taxpayer’s portfolio location, unexpired contracts, and GAAP goodwill intangibles (as limited to the excess of the fair market value of the Qualified Outdoor Advertising Displays acquired over their GAAP replacement cost (less depreciation) as of the time of the acquisition), each qualify as real property, which is a “real estate asset” for purposes of Section 856(c)(5)(B).

4. Taxpayer's Subpart F Inclusions, Section 956 Inclusions, and PFIC Inclusions constitute qualifying income under Section 856(c)(2).

This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. 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 with regard to whether Taxpayer otherwise qualifies as a REIT under subchapter M of the Code, and no opinion is expressed with regard to whether Taxpayer is eligible to make an election under Section 1033(g)(3) with respect to any of the Outdoor Advertising Displays.

Further, no opinion is expressed regarding whether the value that Taxpayer allocated to GAAP identifiable intangibles was properly determined or whether Taxpayer's GAAP goodwill reflects solely, and is limited to, the excess of the fair market value of the Qualified Outdoor Advertising Displays acquired over their GAAP replacement cost (less depreciation) as of the time of their acquisition, or rather whether some of the value that Taxpayer has ascribed to its GAAP identifiable intangibles or GAAP goodwill is properly attributable to workforce in place, customer lists, trademarks, or other intangibles that would not, in the opinion of the Service, qualify as real property for purposes of section 856.

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.

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,

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