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Legend:

Taxpayer =

Partnership =

Outdoor Advertising Displays =

A =

B =

C =

Dear

This letter is in reply to a letter dated September 11, 2014, in which Taxpayer requests rulings with respect to the qualification of income from the rental of space on outdoor advertising displays and related matters for purposes of the rules applicable to a real estate investment trust ("REIT") under section 856 of the Internal Revenue Code.

Specifically, Taxpayer has requested the following rulings:

(1) The income derived by Taxpayer from tenants under its Rental Agreements (as defined below) for the use of advertising space on Qualified Outdoor Advertising Displays (as defined below) will qualify as "rents from real property" under section 856(d).

(2) Neither the Services (as defined below) nor the Other Services (as defined below) furnished in connection with the Rental Agreements will give rise to

impermissible tenant service income, and neither will cause any portion of the rents received by Taxpayer from its tenants under the Rental Agreements to be treated as other than "rents from real property" under section 856(d).

(3) Amounts received by Taxpayer or a taxable REIT subsidiary ("TRS") of Taxpayer as reimbursement under a Cost-Sharing Arrangement (as defined below) will not be included in the reimbursed party's gross income, including for purposes of sections 856(c)(2) and (3).

Facts:

Taxpayer is a domestic corporation which has elected under section 856(c) to be treated as a REIT for U.S. federal income tax purposes. Taxpayer is the managing general partner of Partnership and owns approximately A percent of the outstanding common units of Partnership. The Partnership, through separate limited liability companies, partnerships, and REITS, owns and operates numerous real properties throughout the United States. Hereinafter, all references to Taxpayer include Partnership and such other companies, partnerships, and REITs owned indirectly by Taxpayer through Partnership.

Taxpayer owns Outdoor Advertising Displays and proposes to construct additional Outdoor Advertising Displays on certain of its real properties. Taxpayer has made or intends to make an election under section 1033(g)(3) and the regulations thereunder to treat its existing Outdoor Advertising Displays and any additional Outdoor Advertising Displays it constructs as real property for purposes of chapter 1 of the Code. Taxpayer represents that such Outdoor Advertising Displays are eligible for such an election. Outdoor Advertising Displays for which Taxpayer has in effect a valid election under section 1033(g)(3) are referred to as "Qualified Outdoor Advertising Displays."

Taxpayer will rent each Qualified Outdoor Advertising Display to unrelated third parties for fair market value under agreements called leases, contracts, licenses, or advertising agreements ("Rental Agreements"). The Rental Agreements will grant tenants the right to place their advertising copy on a specified Qualified Outdoor Advertising Display for a specified period of time in exchange for a fixed payment. Taxpayer represents that (1) no portion of the amounts paid under a Rental Agreement will depend in whole or in part on the income or profits derived by any person, and (2) the average fair market value of any personal property leased to a tenant in connection with the rental of a Qualified Outdoor Advertising Display will not exceed 15 percent of the aggregate fair market value of both the real property (taking into account the section 1033(g)(3) election) and the personal property attributable to the Qualified Outdoor Advertising Display.

Taxpayer's Rental Agreements generally range from B weeks to C years. While Taxpayer intends to rent its Qualified Outdoor Advertising Displays for a minimum of B

weeks and preferably for periods of years, when Taxpayer has vacant space on Qualified Outdoor Advertising Displays, Taxpayer may enter into short-term Rental Agreements of less than B weeks. Taxpayer represents that the portion of its revenue attributable to such short-term Rental Agreements will not be material.

Certain Qualified Outdoor Advertising Displays allow for multiple Rental Agreements to be in place at one time. Tenants share such Qualified Outdoor Advertising Displays with other tenants because a particular customer's advertising copy is displayed for only certain intervals of time in a rotation with other tenants.

In connection with each Rental Agreement, Taxpayer will provide only the following services: leasing activities, the provision of utilities, security, and routine maintenance (the "Services"). Taxpayer represents that the Services are customarily furnished by lessors of space on Qualified Outdoor Advertising Displays in the respective markets in which Taxpayer will lease space on Qualified Outdoor Advertising Displays and are not rendered primarily for the convenience of the tenants. Taxpayer also represents that it will not provide any other services to tenants in connection with the rental of space on its Qualified Outdoor Advertising Displays. If a Rental Agreement requires the performance of services other than the Services, any such other service will be performed by either an independent contractor from whom Taxpayer derives no income or a TRS of Taxpayer. Any such other services performed by either an independent contractor form who Taxpayer derives no income or a TRS of Taxpayer are referred to as "Other Services."

Taxpayer represents that advertising design, artwork, and production services with respect to its Qualified Outdoor Advertising Displays, as well as the installation, removal, and replacement of advertising copy on its Qualified Outdoor Advertising Displays will either be performed by an independent contractor from whom Taxpayer does not derive any income or a TRS compensated on an arm's-length basis. When Taxpayer collects amounts due from a tenant for both the use of the space and the Other Services performed by a TRS, Taxpayer will compensate its TRS on an arm's-length basis.

Taxpayer may enter in an employee-sharing agreement, a space-sharing agreement, and/or an equipment-sharing agreement (collectively, "Cost-Sharing Arrangements") with a TRS of Taxpayer. Reimbursements for shared personnel, equipment, and space will be at cost and will be deducted or capitalized, as applicable, by the party bearing such cost under the Cost-Sharing Arrangement. The reimbursed party under a Cost-Sharing Arrangement will not deduct or capitalize reimbursed costs of shared personnel, equipment, or space. Neither Taxpayer nor any TRS will be in the business of receiving compensation for services or the use of property of the type that will be reimbursed pursuant to a Cost-Sharing Arrangement.

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 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 (i) services furnished or rendered by the REIT to the tenants of such property, or (ii) managing or operating such property. Section 856(d)(7)(B) provides that, if the amount determined under section 856(d)(7)(A) with respect to a property exceeds one percent of all amounts received or accrued by the REIT with respect to the property during the taxable year, all such amounts constitute impermissible tenant service income.

Section 1.856-4(a)(1) of the Income Tax Regulations 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 REIT.

Issue 1: Rents from Real Property

Section 1033(g)(3)(A) provides that a taxpayer may elect, at such time and in such manner as the Secretary may prescribe, to treat property that constitutes an outdoor advertising display as real property for purposes of chapter 1 of the Code. Section 1033(g)(3)(A) further provides that the election may not be made with respect to any property with respect to which an election under section 179(a) is in effect.

Section 1033(g)(3)(C) provides that, for purposes of section 1033(g), an "outdoor advertising display" means a rigidly assembled sign, display, or device permanently affixed to the ground or permanently attached to a building or other inherently

permanent structure constituting, or used for the display of, a commercial or other advertisement to the public.

The amounts that Taxpayer receives under the Rental Agreements are for the use of the Outdoor Advertising Displays. Taxpayer enters into a limited number of short-term Rental Agreements, but they represent a small percentage of Taxpayer's overall revenue and are contracts for the use of advertising space and not contracts for the provision of services. Some of Taxpayer's Qualified Outdoor Advertising Displays share their advertising space with other advertisers so that any particular advertiser's advertising copy is displayed for only certain intervals of time in a rotation with those of other advertisers. This feature, however, does not change the character of the income as rents from real property, because the sharing of the rented space has no bearing on the passive nature of the income from renting the space on the Qualified Outdoor Advertising Displays; advertisers pay for the right to use the Qualified Outdoor Advertising Displays for specified intervals of time.

Accordingly, because Taxpayer will have in effect a valid election under section 1033(g)(3) to treat the Qualified Outdoor Advertising Displays as real property for purposes of chapter 1 of the Code, income derived by Taxpayer from tenants under its Rental Agreements will qualify 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) provides that, for purposes of section 856(d)(7)(A) (regarding impermissible service income): (i) services furnished or rendered, or management or operation provided, through an independent contractor from whom the REIT itself does not derive or receive any income or through a TRS of the REIT is not treated as furnished, rendered, or provided by the REIT; and (ii) 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) is not taken into account.

Section 512(b)(3) provides, in relevant part, that rents from real property generally 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, 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 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. Services that are customary in many areas 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 REIT 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 REIT 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.

In Revenue Ruling 2002-38, 2002-2 C.B. 4, a REIT paid its TRS to provide non-customary services to tenants. The REIT did 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. TRS employees performed all of the services and TRS paid all of the costs of providing the services. The revenue ruling concludes that the services provided to the REIT's tenants were considered to be rendered by the TRS, rather than the REIT, for purposes of section 856(c)(7)(i). Accordingly, the services did not give rise to impermissible tenant service income and did not cause any portion of the rents received by the REIT to fail to qualify as "rents from real property" under section 856(d).

Taxpayer has represented that the Services that will be provided to Taxpayer's tenants pursuant to Rental Agreements are usual or customary services that are rendered in connection with the operation or maintenance of the Qualified Outdoor Advertising Displays and are not rendered primarily for the convenience of tenants. The Other Services will be provided by an independent contractor from whom Taxpayer does not derive or receive any income or through a TRS compensated by Taxpayer at an arm's-length rate for the provision of such services. Although Taxpayer may collect amounts for the use of space, the Services, and the Other Services, the Other Services are considered to be rendered by the TRS rather than Taxpayer for purposes of section 856(d)(7)(C)(i). Accordingly, under Revenue Ruling 2002-38, neither the Services nor the Other Services furnished in connection with Rental Agreements give rise to impermissible tenant service income, and neither will cause any portion of the rents

received by Taxpayer from tenants to be treated as other than "rents from real property" under section 856(d).

Issue 3: Reimbursements under Cost-Sharing Arrangement

In Revenue Ruling 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. Commissioner, 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).

In the present case, the Cost-Sharing Arrangements to be executed between Taxpayer and its TRS are analogous to the agreement addressed in Revenue Ruling 84-138. The Taxpayer and its TRS intend to enter into Cost-Sharing Arrangements under which reimbursements will be made for shared personnel, equipment and space, at cost. Neither Taxpayer nor the TRS will engage in the business of receiving compensation for services or use of property of the type that will be reimbursed under these arrangements. Accordingly, any amounts received by Taxpayer or a TRS 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) (to the extent Taxpayer is the reimbursed party). Also, neither the Taxpayer nor a TRS will be entitled to capitalize or deduct any reimbursed expenses.

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 tenants under its Rental Agreements for the use of advertising space on the Qualified Outdoor Advertising Displays will qualify as "rents from real property" under section 856(d) for purposes of section 856(c).

2. Neither the Services nor the Other Services furnished in connection with the Rental Agreements will give rise to impermissible tenant service income, and neither will cause any portion of the rents received by Taxpayer from its tenants under the Rental Agreements to be treated as other than "rents from real property" under section 856(d).

3. Amounts received by Taxpayer or its TRS as reimbursement under a Cost-Sharing Arrangement will not be included in the reimbursed party's gross income, including for purposes of sections 856(c)(2) and (3).

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.

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,

Steven Harrison
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)