Internal Revenue Service

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Person To Contact:
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Telephone Number:

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Date:
August 16, 2016

Legend:

Taxpayer	=
Partnership	=
Property One	=
Property Two	=
State	=
Tax Year	=

Dear :

This is in response to your letter dated March 4, 2016, requesting a ruling on behalf of Taxpayer. Taxpayer has requested a ruling regarding the definition of "qualified health care property" under section 856(e)(6)(D) of the Internal Revenue Code, as amended (the "Code"), for purposes of the related-party rent exception of section 856(d)(8)(B).

Facts:

Taxpayer is a State corporation that elected to be taxed as a real estate investment trust ("REIT") under sections 856 through 860 of the Code in Tax Year. Taxpayer uses an overall accrual method of accounting and the calendar year for its taxable year. Taxpayer was formed to own its properties through a subsidiary operating partnership, Partnership, in which Taxpayer is the general partner and owns substantially all the partnership interests.

Taxpayer has acquired two mixed-use senior housing communities, Property One and Property Two, collectively, the Properties. Pursuant to the structure permitted by the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, § 3061, 122 Stat. 2654, 2901-02 (2008) ("RIDEA")[1], Taxpayer intends for each community to be owned by Partnership (through a Delaware limited liability company wholly-owned by Partnership and disregarded for U.S. federal tax purposes) and leased to a taxable REIT subsidiary ("TRS") of Taxpayer, which will, in turn, enter into an arm's length management contract with an eligible independent contractor within the meaning of section 856(d). In order to properly lease and contract the Properties under section 856(d)(8)(B), each Property must be a "qualified health care property" within the meaning of section 856(e)(6)(D).

The Properties are "age in place" senior living communities that contain both independent living (IL) and assisted living (AL) units. "Age in place" is an industry term used to describe a resident's natural progression across the spectrum of services that the facility offers, starting with IL and ending with AL as the need arises. Property One consists of three buildings connected by enclosed corridors that are operated as one integrated community. Two of the buildings contain IL units and one contains both IL and AL units. Residents may utilize the amenities at each of the buildings and there is substantial integration of the IL and AL services so that residents can move seamlessly between service offerings as health needs warrant.

Property Two consists of a single building containing both IL and AL units on different floors. Property Two is also operated as one integrated community offering different levels of care. This structure allows residents to have access to increased services as their conditions warrant without the need to move them into a different facility.

Taxpayer represents that the Properties offer services that are not commonly offered by a typical apartment building or complex. Services available to all residents of both Properties generally include daily meals in a community dining room, social and recreational activities, routine pharmacy deliveries, vaccinations, blood pressure checks, fitness classes, and transportation to medical appointments. Both Properties have a daily check-in system with a follow-up for residents who do not check in by the designated time and units in both Properties are equipped with an emergency call system. If a resident is believed to be in need of medical attention, staff at both Properties will contact emergency 911 services and will assist as necessary with the

[1] Sections 3031-3071 of the Housing and Economic Recovery Act incorporated significant portions of proposed legislation introduced as the REIT Investment Diversification and Empowerment Act of 2007, or "RIDEA". See H.R. 1147 and S. 2002, 100th Cong. (1st Sess. 2007). The portions of the Housing and Economic Recovery Act that incorporated H.R. 1147 and S. 2002 are still commonly referred to as RIDEA. See generally Tony M. Edwards & Dara F. Bernstein, REITs Empowered, 24 BNA Tax Mgmt. Real Estate Jn'l No. 11 , Nov. 5, 2008, at 1-3.

emergency. In both Properties, the AL units are licensed by the state in which they are located. Additionally, AL residents receive assistance with activities of daily living (ADLs) including, bathing, dressing, grooming, toileting, and eating. The assistance with ADLs is provided as the resident's condition requires.

In addition to the included services, Property One also offers a wellness center where IL residents can pay an additional fee for access to assistance with ADLs as their needs require. Property Two offers onsite rehabilitation therapy provided by licensed therapists as well as in-home supportive services.

Each Property has several common areas where AL and IL residents can congregate and socialize such as dining areas, hobby rooms, and libraries. The same staff members provide services to all residents in regard to housekeeping, food service, maintenance, and community life.

Law and Analysis:

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

Section 856(c)(3) provides that at least 75 percent of a REIT's gross income must be derived from sources, that likewise include, 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)(B) provides that rents from real property do not include amounts received directly or indirectly from a corporation if the REIT owns 10 percent or more of the total combined voting power or 10 percent or more of the total value of the shares of the corporation.

Section 856(d)(8)(B) provides that amounts paid to a REIT by a TRS shall not be excluded from rents from real property by reason of section 856(d)(2)(B) when a REIT leases a qualified lodging facility or qualified health care property to a TRS, and the facility or property is operated on behalf of the TRS by a person who is an eligible independent contractor.

Section 856(d)(9)(A) provides that the term “eligible independent contractor” with respect to any qualified lodging facility or qualified health care property (as defined in section 856(e)(6)(D)(i)) means any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the TRS to operate such qualified lodging facility or qualified health care property, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities or qualified health care properties, respectively, for any person who is not a related person with respect to the real estate investment trust or the taxable REIT subsidiary.

Section 856(e)(6)(D)(i) defines qualified health care property as any real property which is a health care facility.

A “health care facility” is defined in section 856(e)(6)(D)(ii) as a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility (as defined in section 7872(g)(4)), or other licensed facility which extends medical or nursing or ancillary services to patients and which was operated by a provider of such services that is eligible for participation in the Medicare program under Title XVII of the Social Security Act [subchapter XVIII of chapter 7 of Title 42 (42 U.S.C.A. § 1395 et seq.)] with respect to the facility.

In the present case, each Property is located in one building or on the same campus, and all of the AL units are licensed by the state in which they are located. When a resident eventually requires assistance with ADLs, the resident may transition from an IL unit to an AL unit (depending upon availability). The IL residents are more physically independent, but the Properties offer services to help maintain and improve the health and wellbeing of all of their residents: including daily check-ins, the provision of emergency call systems, congregate meals, wellness programs, transportation, and housekeeping. Both properties offer wellness-related services that support the overall well-being of the IL residents including routine pharmacy deliveries, vaccinations, blood pressure checks, and transportation to medical appointments. Additionally, the Properties provide optional health care services on-site for residents. These healthcare services are not typically available in general apartment buildings and offer services for residents in a manner that provides for congregate care.

Conclusion:

Based on the facts as represented, we rule that the Properties are health care facilities within the meaning of section 856(e)(6)(D)(ii), and therefore, constitute “qualified health care properties” within the meaning of section 856(e)(6)(D). Accordingly, amounts paid to the Taxpayer by the TRS shall not be excluded from rents from real property by reason of section 856(d)(2)(B) so long as the Properties are operated and managed by an eligible independent contractor.

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Taxpayer should attach a copy of this ruling to each tax return to which it applies. Section 6110(k)(3) of the Code provides that this ruling 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,

_____

Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)