Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
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Refer Reply To:
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Date:
February 28, 2019

Legend:

Taxpayer	=
Parent REIT	=
Operating Partnership	=
State A	=
State B	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
$a	=
$b	=
x	=
y	=
z	=
Exchange	=

Dear :

This is in reply to a letter dated August 23, 2018, requesting a ruling on behalf of Taxpayer. Taxpayer requests a ruling under section 562 of the Internal Revenue Code that it did not issue a preferential dividend on Date 2.

FACTS

Taxpayer is a State A corporation that made an election to be taxed as a real estate investment trust ("REIT") under sections 856 through 859 effective for its taxable year ended Date 1.

Parent REIT is a State B REIT that is an Exchange listed company. Parent REIT made an election to be taxed as a REIT under sections 856 through 859 effective for its first taxable year ended Date 3. Taxpayer represents that Parent REIT is a publicly offered REIT within the meaning of section 562(c)(2).

Parent REIT owns substantially all of its assets and conducts all of its operations through Operating Partnership, a partnership for federal income tax purposes in which Parent REIT owns approximately y percent.

Taxpayer is an indirect subsidiary of Operating Partnership. Parent REIT has a controlling interest in Taxpayer, and Taxpayer represents that it is consolidated with Parent REIT under generally accepted accounting principles for purposes of the annual and periodic reports that Parent REIT is required to file with the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934. As such, Taxpayer, its immediate parent, and Operating Partnership, are included in the consolidated financial statements that Parent REIT files with the SEC. For purposes of the consolidated financial statements, Taxpayer is disregarded as a separate entity. The assets owned by Taxpayer are listed as assets of Parent REIT, and the income, loss, and other activities of Taxpayer are included with those of Parent REIT and the other consolidated entities.

On Date 2, Taxpayer made a pro rata distribution on its common stock in the amount of $a ("the Distribution"). At that time, Taxpayer's new management team believed the common stock was the only outstanding stock of Taxpayer. However, on Date 4, the new management team learned that at the time of the Distribution, Taxpayer also had x outstanding shares of Series A Preferred Stock. The Series A Preferred Stock accrued dividends at z percent per annum and all accrued but unpaid dividends on the Series A Preferred Stock were to be paid first, or simultaneously, with any other dividends declared or distributed by Taxpayer. On Date 5, Taxpayer declared and paid a $b dividend to the owner of the Series A Preferred Stock.

LAW & ANALYSIS

Section 857(b)(2)(B) provides that in determining real estate investment trust taxable income, the deduction for dividends paid (as defined in section 561) shall be allowed.

Section 561(a) provides that the deduction for dividends paid shall be the sum of the dividends paid during the taxable year, and the section 565 consent dividends for the taxable year.

Section 562(a) provides that the term “dividend” shall include only dividends described in section 316.

Section 562(c)(1) provides that, except in the case of a publicly offered REIT, the amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class, except to the extent that the former is entitled to such preference.

Section 562(c)(2) defines a publicly offered REIT as a REIT that is required to file annual and periodic reports with the SEC under the Securities and Exchange Act of 1934.

Section 1.562-2(a) of the Income Tax Regulations further provides that a preference exists if any rights to preference inherent in any class of stock are violated. The disallowance of the dividends paid deduction, where any preference in fact exists, extends to the entire amount of the distribution and not merely to a part of such distribution.

Under the Securities and Exchange Act of 1934, Taxpayer’s accounting information is required to be consolidated with Parent REIT’s periodic and annual reports that are submitted to the SEC. Thus, Taxpayer’s assets, income, loss, and other activities are reported to the SEC as part of Parent REIT’s consolidated reports. The consolidation of the reports does not alter the information reported to the SEC in the annual and periodic reporting required under the Securities and Exchange Act of 1934. Therefore, annual and periodic reporting to the SEC is required of Taxpayer, and Taxpayer meets the definitional requirements to be a publicly offered REIT pursuant to section 562(c)(2).

CONCLUSION

Based on the facts and representations submitted, we rule that Taxpayer is a publicly offered REIT as defined in section 562(c)(2), and, therefore, the Distribution is not a preferential dividend under section 562(c)(1).

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. Specifically, no opinion is expressed or implied on whether Taxpayer otherwise qualifies as a REIT under subchapter M of the Code. Additionally, no opinion is expressed or implied as to whether Taxpayer's distributions otherwise qualify as dividends.

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 Hoffenson

Andrea M. Hoffenson
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)