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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Date:
June 26, 2025

LEGEND:

Taxpayer	=
State 1	=
Date	=
Exchange	=
Assets	=
Third Party	=
State 2	=

Dear :

This ruling responds to a letter dated July 26, 2024, submitted on behalf of Taxpayer. Taxpayer requests rulings related to whether it can make a consent dividend under § 565 of the Internal Revenue Code ("Code") in the year of its liquidation.

FACTS

Taxpayer is a State 1 corporation that is not classified as a personal holding company within the meaning of § 542 for the taxable year concluding with the Liquidation described below. Taxpayer elected to be taxed as a real estate investment trust ("REIT") beginning with its first taxable year ended Date and intends to maintain its REIT status through the date of its Liquidation. Taxpayer has a single class of stock

outstanding that is publicly traded on the Exchange. Taxpayer owns and leases Assets to tenants.

Third Party (or its successor) and a subsidiary of Third Party will form a partnership ("Acquirer LP") which, pursuant to a definitive agreement, will acquire Taxpayer. To effectuate this acquisition, Acquirer LP will form a wholly owned limited liability company ("Merger Sub") that will be disregarded as an entity separate from Acquirer LP for federal income tax purposes. Third Party will contribute enough of its common stock to Merger Sub to effectuate the acquisition of Taxpayer stock from Taxpayer's shareholders.

After Taxpayer's shareholders approve the transaction and after all other closing conditions are satisfied, Merger Sub will merge with and into Taxpayer with Taxpayer surviving (the "Merger"). In the Merger, Taxpayer's shareholders will exchange 100% of Taxpayer stock for the common stock of Third Party that had been held in Merger Sub. The Merger will result in Taxpayer becoming a wholly owned subsidiary of Acquirer LP. For federal income tax purposes, the parties intend to treat the Merger as a taxable acquisition by Acquirer LP of all Taxpayer stock. Taxpayer's former shareholders will recognize all the gain or loss in their shares of Taxpayer stock, and Acquirer LP will have a cost basis in Taxpayer stock equal to fair market value.

Shortly before closing the Merger, Taxpayer will redomicile to State 2. Immediately after the Merger, Taxpayer will adopt a plan of liquidation and convert into a State 2 limited liability company that is disregarded as an entity separate from Acquirer LP. Taxpayer will be treated as liquidating into Acquirer LP (the "Liquidation"). Taxpayer represents that as a result of the Liquidation, it will recognize under § 336 all the gains and losses inherent in its assets, and Acquirer LP will be treated as receiving all the assets of Taxpayer in exchange for its Taxpayer stock. Taxpayer further represents that the total debt assumed in connection with the Liquidation will exceed its aggregate adjusted basis in its assets. The income recognized by Taxpayer in connection with the Liquidation will exceed the net fair market value of the assets distributed to Acquiror LP in the liquidating distribution, and absent a consent dividend, Taxpayer's dividends paid deduction would be less than its taxable income for its final taxable year ending on the date of the Liquidation.

Given that Taxpayer's dividends paid deduction would be insufficient without a consent dividend, Taxpayer intends to timely file a consent dividend election under § 565 with its final tax return. The consent dividend will be in an amount up to the excess of its taxable income in the year of the Liquidation, including any gain recognized under § 336, over the net fair market value of the assets distributed in the Liquidation (together with the amount of any other distributions made that year).

Taxpayer represents that each distribution made by Taxpayer pursuant to the plan of liquidation for the Liquidation, including the consent dividend, will be made in accordance with the rights of the outstanding shares of Taxpayer stock, as set forth in Taxpayer's articles of incorporation, and will not be preferential dividends within the

meaning of § 562(c). Additionally, the amount specified in Taxpayer's consent dividend election will not, when combined with its actual distributions for the year of the Liquidation, exceed Taxpayer's earnings and profits for the taxable year (taking into account the gains and losses recognized in connection with the Liquidation).

Accordingly, Taxpayer has asked for a ruling that Taxpayer will not be precluded from making a consent dividend under § 565 in the year of the Liquidation in an amount up to the excess of its taxable income in the year of the Liquidation, including any gain recognized under § 336, over the net fair market value of the assets distributed in the Liquidation (together with the amount of any other distributions made that year). Additionally, Taxpayer has requested a ruling that Taxpayer should include the amount of the consent dividend in calculating its dividends paid deduction for purposes of § 857(b)(2)(B). Finally, Taxpayer has requested a ruling that Acquirer LP should treat the consent dividend as liquidating proceeds received under § 331 and as a deemed contribution by Acquirer LP of such amount to Taxpayer under § 565(c), thereby increasing Acquiror LP's adjusted basis in its Taxpayer stock.

LAW AND ANALYSIS

Section 331(a) provides that amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

Section 857(a)(1) requires, in relevant part, that a REIT's deduction for dividends paid for a taxable year (as defined in § 561, but determined without regard to capital gains dividends) equals at least 90% of its REIT taxable income ("REITTI") for the taxable year (determined without regard to the deduction for dividends paid (as defined in § 561) and by excluding any net capital gain). Section 857(b)(2)(B) provides that "REITTI" means the taxable income of the REIT adjusted by, among other things, allowing the deduction for dividends paid (as defined in § 561) computed without regard to the amount excluded under § 857(b)(2)(D) (net income from foreclosure property).

Section 561(a) provides that the deduction for dividends paid shall be the sum of the dividends paid during the taxable year, the consent dividends for the taxable year (determined under § 565), and in the case of a personal holding company, the dividend carryover described in § 564. Section 561(b) provides that in determining the deduction for dividends paid, the rules provided in § 562 (relating to determining dividends eligible for the dividends paid deduction) and § 563 (relating to dividends paid after the close of the taxable year) shall be applicable.

Section 562(a) provides that, for purposes of §§ 561–565, a dividend shall, except as otherwise provided in § 562, include only dividends described in § 316 (relating to the definition of dividends for purposes of corporate distributions). Section 316 generally provides that the term "dividend" means any distribution of property made by a corporation to its shareholders out of its earnings and profits of the taxable year.

Section 562(b)(1)(B) provides that, except in the case of a personal holding company described in § 542, in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.

Under § 562(c), except in the case of a publicly offered regulated investment company or publicly offered REIT, the amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless the 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 (without reference to waivers of their rights by shareholders) to such preference.

Section 565(a) provides that if a person owns consent stock in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the corporation's federal income tax return, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in § 565(b), constitute a consent dividend for purposes of § 561.

Section 565(b)(1) provides that a consent dividend shall not include an amount specified in a consent which, if distributed in money, would constitute, or be part of, a distribution which would be disqualified for purposes of the dividends paid deduction under § 562(c). Additionally, § 565(b)(2) provides that a consent dividend shall not include an amount specified in a consent which would not constitute a dividend (as defined in § 316) if the total amounts specified in consents filed by the corporation had been distributed in money to shareholders on the last day of the taxable year of such corporation.

Section 565(c) states that the amount of a consent dividend shall be considered as distributed in money by the corporation to the shareholder on the last day of the taxable year of the corporation and as contributed to the capital of the corporation by the shareholder on such day.

Section 565(f)(1) provides that "consent stock" means the class or classes of stock entitled, after the payment of preferred dividends, to a share in the distribution (other than in complete or partial liquidation) within the taxable year of all the remaining earnings and profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

The legislative history underlying § 565 provides insight into the meaning of § 565(f)(1). The predecessor of current § 565 was enacted as § 28 of the Revenue Act of 1938. Under that section, the consent dividends credit was intended to provide a method for corporations, with the cooperation of their shareholders, to retain their

capital and obtain the tax benefits incident to an actual distribution of earnings while avoiding the imposition of the undistributed profits tax without depriving the government of revenues that would flow from the receipt of dividends to shareholders. See H.R. REP. No. 1860, 75th Cong., 3d Sess., 1939-1 (Part 2) C.B. 728, 745–748. Section 28(a) defined consent stock in a manner that is identical to the current § 565, which includes the parenthetical phrase "other than in complete or partial liquidation." Section 28(b) provided that the consent dividends credit under § 28 was not available to a corporation for any taxable year if, at any time during the year, the corporation had taken any steps in pursuance of a plan of complete or partial liquidation of all or part of the consent stock. When current § 565 was enacted as part of the Code, the language of § 28(a) of the consent dividends credit was retained. However, the limitation provided in § 28(b) of the former statute was not made part of § 565. Therefore, § 565 limits the availability of consent dividends to those classes of stock that would be entitled to nonliquidating dividend distributions, as opposed to stock having preferences pursuant to a plan of liquidation.

CONCLUSION

Based on the information submitted and the representations made, we conclude that Taxpayer will not be precluded from making a consent dividend under § 565 in the year of the Liquidation in an amount up to the excess of its taxable income in the year of the Liquidation, including any gain recognized under § 336, over the net fair market value of the assets distributed in the Liquidation (together with the amount of any other distributions made that year). Additionally, we conclude that Taxpayer should include the amount of the consent dividend in calculating Taxpayer's dividends paid deduction for purposes of § 857(b)(2)(B). We also conclude that Acquirer LP should treat the consent dividend as liquidating proceeds received under § 331 and a deemed contribution by Acquirer LP of such amount to Taxpayer under § 565(c), thereby increasing Acquiror LP's adjusted basis in its Taxpayer stock.

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 qualifies as a REIT under subchapter M of chapter 1 of the Code. Furthermore, no opinion is expressed concerning the tax consequences of the Merger or Taxpayer's redomiciling in State 2. Except as set forth herein, no opinion is expressed regarding the application of § 331 to the parties of the Liquidation. Additionally, no opinion is expressed regarding the application of §§ 334 and 336 to the parties of the Liquidation. Finally, except as set forth herein, no opinion is expressed concerning whether any deemed distribution otherwise qualifies as a consent dividend under § 565.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the

material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer who requested 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 representative.

Sincerely,

Jason D. Kristall
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

cc: