Internal Revenue Service

Number: **202550015**
Release Date: 12/12/2025

Index Number: 856.01-00, 856.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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PLR-122637-21

Date:
September 12, 2025

Legend

Taxpayer =

State A =

State B =

Term =

a =

b =

Dear :

This letter responds to a letter dated November 2, 2021, and subsequent submissions, requesting rulings on behalf of Taxpayer. Taxpayer requests rulings under section 856 of the Internal Revenue Code (the "Code").

FACTS

Taxpayer is a State A corporation that intends to elect to be taxed as a real estate investment trust ("REIT") under sections 856 through 859 of the Code. Taxpayer's primary business is the Storage Business, described below. Taxpayer

intends to make a joint election with two subsidiaries to treat each as a taxable REIT subsidiary (“TRS”) of Taxpayer, the Services TRS and the Cotenant TRS.

A. Storage Business

Taxpayer's primary business entails providing space in warehouses to unrelated persons (the "Tenants") for the storage of household goods (the "Storage Business"). Taxpayer provided the pertinent terms of storage agreements (the "Storage Agreements") under which household goods are stored in exchange for a fixed monthly fee (the "Storage Fee"). The Tenants do not have direct access to their stored items and do not have a designated Slot (defined below) within a warehouse during the term of the Storage Agreement. Taxpayer, however, reserves space in a warehouse upon entering into a Storage Agreement with a Tenant. Taxpayer represents that it does not oversell storage capacity. Pursuant to the terms provided, each Storage Agreement is for an initial term of a and grants the Tenant a right to store its property in a specified warehouse or other warehouse designated by the Taxpayer in the same geographic area during the term of the Storage Agreement. Unless canceled by either party, Storage Agreements automatically renew after the initial term and the Storage Fee continues to be charged monthly until the Storage Agreement is canceled. The average term of a Storage Agreement is Term. The Storage Fee is calculated as a specified dollar amount per Slot (defined below) and remains fixed throughout the term of the particular Storage Agreement. The specified dollar amount may be adjusted when a Storage Agreement term is renewed to reflect fair market value rent at the time of renewal. For example, the Storage Fee may be increased due to positive increases in the consumer price index or a similar inflation-based index. Taxpayer represents that the Storage Fee will not depend, in whole or in part, on the income or profits of any person within the meaning of section 856(d)(2)(A) and will not be received from a related party within the meaning of section 856(d)(2)(B).

To facilitate the efficient storage of goods, Taxpayer requires each Tenant to load its goods into a mobile storage unit (a "Container") provided by Taxpayer. A Container is then stored in a warehouse pursuant to the terms of a Storage Agreement. To maximize the number of Containers that may be stored in a warehouse, Containers are stacked on top of each other in Taxpayer’s warehouses. The total number of individual spaces available to store a Container ("Slots") in a particular warehouse depends upon the size and configuration of the warehouse. The Services TRS will move all Containers into and out of all Slots at each warehouse (the “Handling Service”). Taxpayer will pay the Services TRS an arm’s length amount for the Handling Service. Taxpayer represents that the Handling Service is customarily provided to tenants of warehouses in the geographic market in which each Taxpayer warehouse is located.

Taxpayer represents that the Slots constitute real property within the meaning of section 1.856-10(b) of the Income Tax Regulations. Taxpayer further represents that for purposes of section 856(d)(1)(C) and section 1.856-4(b)(2)(ii), the aggregate amounts attributable to Containers and any other personal property which is leased to

Tenants under, or in connection with, Storage Agreements at a warehouse will not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such Storage Agreements in that warehouse. Taxpayer further represents that Containers are assigned randomly under Storage Agreements, and neither the age nor the value of a Container is taken into account with regard to assigning Containers to Storage Agreements.

At the commencement of a Storage Agreement, the Services TRS will deliver a Container to a location designated by the Tenant. The Tenant will then load the Container with the goods it wishes to store. Once a Container is loaded, the Container will be picked up by the Services TRS and delivered to a warehouse where it will be stored. At the end of the storage period, the Services TRS will deliver the Container to a location designated by the Tenant and return the Container to the warehouse after the stored goods have been unloaded (collectively, with the initial delivery and pick-up, the "Delivery Service"). Taxpayer charges Tenants a separately stated fee for the Delivery Service. The Services TRS will include the separately stated fee in its gross income. Taxpayer represents that none of the fee for the Delivery Service will be included in Taxpayer's gross income. While Tenants typically pack their goods and load and unload Containers themselves, they may instead have the Services TRS pack and/or load and unload their goods (the "Packing and Loading Service"). Taxpayer charges Tenants a separately stated fee for the Packing and Loading Service. The Services TRS will include the separately stated fee in its gross income. Taxpayer represents that none of the fee for the Packing and Loading Service will be included in Taxpayer's gross income.

On occasion, the Services TRS will deliver a Container from a warehouse to a Tenant during the term of a Storage Agreement so that the Tenant can recover an item in the Container, after which the Services TRS will return the Container to the warehouse. Similarly, a Tenant may occasionally request access to its goods at the warehouse. In this case, the Services TRS will move the Container from the warehouse to a common area and then will return the Container to the warehouse after the Tenant has accessed its goods (this service and the delivery service described above in this paragraph, are collectively referred to as the "Access Services"). Taxpayer charges Tenants a separately stated fee for the Access Services. The Services TRS will include the separately stated fee in its gross income. Taxpayer represents that none of the fee for the Access Services will be included in Taxpayer's gross income.

Taxpayer will provide electricity, security, and temperature control at each warehouse, including outdoor lighting and security with respect to the paved areas that will be subject to the Cotenant TRS Leases described below. Security entails locking warehouse doors, keeping the fence around the warehouse locked during non-business hours, the installation of security cameras inside and/or outside some warehouses, and the employment of security guards or contracting of security services to monitor the warehouse grounds in some locations. Tenants place their own locks on their Containers, and Taxpayer does not possess a key to any of those locks. No security

activities are specific to any particular Tenant. The services described above in this paragraph are referred to as the "Facility Services." Taxpayer represents that all the Facility Services are customarily furnished to tenants of similar properties in the geographic market in which the applicable warehouse is located.

Taxpayer will engage in the management activities described in section 1.856-4(b)(5)(ii) with respect to the Storage Agreements. Taxpayer will establish rental terms for the Storage Agreements; enter into and renew Storage Agreements; deal with taxes, interest, and insurance relating to Taxpayer's property subject to the Storage Agreements; make capital expenditures (as defined in section 263) with respect to such property; and make decisions regarding and bear the costs of repairs (of the type which would be deductible under section 162) of such property.

B. Cotenant TRS Activities

The Cotenant TRS will earn revenue from (i) transportation and certain consulting services related to long-distance moves by certain Tenants, (ii) providing contents protection to Tenants, and (iii) selling packing supplies (such as boxes, tape, and blankets) to Tenants for use in packing their goods in a Container (the "Other Activities").

The Cotenant TRS will also engage in a separate business pursuant to which it will lease Containers to customers ("Customers") for use at each Customer's location ("Customer-Site Leasing"). The Cotenant TRS will engage the Services TRS to deliver a Container to a Customer's location, leave the Container at the Customer's location for the duration of the lease of the Container, and retrieve the Container at the end of the Customer's use.

All other activities associated with the Other Activities and the Customer-Site Leasing will be performed by the Cotenant TRS. The Cotenant TRS will use its own employees and will bear all the costs associated with those activities, including salaries and the costs of equipment and supplies.

Taxpayer represents that revenue from the Other Activities and the Customer-Site Leasing will be earned by the Cotenant TRS. Any amount Taxpayer may receive in relation to the Other Activities or Customer-Site Leasing will be received as an agent of the Cotenant TRS and will be remitted in full to the Cotenant TRS. Accordingly, none of the amounts received will be included in Taxpayer’s gross income.

C. Ownership of Containers

Taxpayer and the Cotenant TRS will each own an undivided interest in the Containers as co-owners so that each has a specific ownership stake in the Containers (“Container Interest Percentage”) and may use the Containers in its respective activities. Taxpayer represents that the Container Interest Percentage is based on a

good faith estimate of each party's expected use of the Containers. Taxpayer's undivided interest in the Containers, reflecting its Container Interest Percentage, is referred to as the "Taxpayer Container Interest" and the Cotenant TRS's undivided interest in the Containers, which reflects its Container Interest Percentage, is referred to as the "Cotenant TRS Container Interest."

Taxpayer and the Cotenant TRS will hold legal title to the Containers as cotenants under the laws of State B and will enter into a co-ownership agreement governing their rights and responsibilities with respect to the Containers under the laws of State B (the "Co-ownership Agreement"). Pursuant to the terms of the Co-ownership Agreement, Taxpayer and the Cotenant TRS will each own an undivided interest in the Containers as tenants in common. The Co-ownership Agreement will reflect the parties' respective Container Interest Percentage and each party will be entitled to use the Containers in its respective business. Taxpayer and the Cotenant TRS will share the costs of the Containers and will each report its allocable share of the depreciation associated with the Containers (all pursuant to each party's Container Interest Percentage) on its respective tax returns.

The Co-ownership Agreement will provide that each party is legally entitled to retain 100 percent of any revenue generated by that party from the use of Containers in such party's business, and neither party will be entitled to any of the revenue generated by the other party from such other party's use of the Containers. Thus, the parties will not share in the revenue generated by the use of the Containers but rather will share the ownership of and the right to use the Containers. The Co-ownership Agreement will further provide that the only circumstance in which either party will have any entitlement to payment with respect to the other party's use of the Containers is if such other party exceeds its contractually agreed-upon Container Days (defined below) for the taxable year. In such case, the party that exceeds its permitted Container Days will be required to pay an Excess Usage Payment (defined below) to the other party. Taxpayer represents that under the Co-ownership Agreement and the laws of State B, neither party will have a claim against or a right to share in revenues attributable to Containers being used by the other party.

A "Container Day" will include any day either party is using a Container in its business (including transporting the Container). Each party will be entitled to use Containers for a number of Container Days each year equal to the product of (i) the total number of Containers, multiplied by (ii) the number of days in the year, multiplied by (iii) the Taxpayer Container Interest or the Cotenant TRS Container Interest, as applicable.

To the extent the Cotenant TRS's aggregate use of Containers during a taxable year in connection with its Customer-Site Leasing business or the Other Activities exceeds its aggregate available Container Days based upon the Cotenant TRS Container Interest, it will be required to pay Taxpayer an arm's length daily rental rate for such excess usage. Taxpayer will treat any such amount as non-qualifying income for purposes of section 856(c)(2) and (3). Likewise, Taxpayer will be required to pay the

Cotenant TRS in the event Taxpayer's aggregate Container usage during a taxable year in connection with its Storage Business exceeds its aggregate available Container Days based upon the Taxpayer Container Interest. Such amount will be taxable income to the Cotenant TRS. Any such payment from Taxpayer to the Cotenant TRS or from the Cotenant TRS to Taxpayer is referred to as an "Excess Usage Payment." Pursuant to the Co-ownership Agreement, the Excess Usage Payment will be for the rental of the Container and calculated based upon an agreed-upon arm's length rental rate per excess Container Day used. The Co-ownership Agreement will provide that the arm's length rental rate used to calculate the Excess Usage Payment may be adjusted from time to time by mutual agreement of Taxpayer and the Cotenant TRS to reflect fair market value rent at such time. For example, the Excess Usage Payment may be increased due to inflation.

D. Lease of Space to Cotenant TRS and Services TRS

Taxpayer will lease space on the grounds at each warehouse to the Cotenant TRS so that the Cotenant TRS can store the Containers it uses to conduct its Customer-Site Leasing business and Other Activities (each, a "Cotenant TRS Lease"). Each Cotenant TRS Lease will provide the Cotenant TRS with the right to store its share of the Containers in the outdoor Slots at a warehouse for a term of b months with automatic renewals. Taxpayer currently leases, and will continue to lease, outdoor Slots at certain warehouses to third parties and Taxpayer will use a portion of the outdoor Slots to store its share of the Containers. Accordingly, the leased space under each Cotenant TRS Lease will equal a percentage of the available outdoor Slots at the applicable warehouse.

A Cotenant TRS Lease will provide the Cotenant TRS with the same legal rights to occupy space as provided to Tenants under Storage Agreements (other than the fact that the Slots made available to the Cotenant TRS are outside of the warehouse). Like the Tenants, the Cotenant TRS will lease only Slot space for its Containers and will not have a right of ingress or egress, will not maneuver forklifts to move Containers, and will not have the right to exclude anyone from the property. The Services TRS will perform the Handling Service with respect to the Cotenant TRS's Containers, and the Cotenant TRS will have no right to choose the Slot in which its Container is stored.

Each Cotenant TRS Lease will provide that the Cotenant TRS will make a monthly payment to Taxpayer for its share of the outdoor Slots located on the grounds of the warehouse leased pursuant to the Cotenant TRS Lease (a "Cotenant TRS Lease Payment"), regardless of whether the Cotenant TRS actually uses such outdoor Slots. Pursuant to section 856(d)(8), at the time the lease is entered into and at the time of any extension or modification, the Cotenant TRS Lease Payments will be comparable to rents paid by any third-party lessee for outdoor Slots at the applicable warehouse, or, where there is no such third-party lessee, will otherwise be at arm's length and will be substantially comparable to rents paid for comparable space located in the same geographic area. The Cotenant TRS Lease Payment will be calculated as a specified

dollar amount per outdoor Slot. The specified dollar amount may be adjusted when a Cotenant TRS Lease term is renewed to reflect fair market value rent at the time of renewal. For example, the Cotenant TRS Lease Payment may be increased due to positive increases in the consumer price index or a similar inflation-based index. Taxpayer represents that the Cotenant TRS Lease Payment will not depend, in whole or in part, on the income or profits of any person within the meaning of section 856(d)(2)(A).

Cotenant TRS will receive the Facility Services from Taxpayer with respect to its rental of outdoor Slots. Taxpayer will engage in the management activities described in section 1.856-4(b)(5)(ii) with respect to the Cotenant TRS Leases. Taxpayer will establish rental terms for the Cotenant TRS Leases; enter into and renew Cotenant TRS Leases; deal with taxes, interest, and insurance relating to Taxpayer's property subject to the Cotenant TRS Leases; make capital expenditures (as defined in section 263) with respect to such property; and make decisions regarding and bear the costs of repairs (of the type which would be deductible under section 162) of such property.

Taxpayer will also lease office space at each warehouse to the Services TRS. Pursuant to section 856(d)(8), at the time the lease is entered into and at the time of any renewal or modification, payments made by the Services TRS to Taxpayer for leasing office space ("Services TRS Lease Payments") will be comparable to rents paid by any third-party lessee for office space at the applicable warehouse, or, where there is no such third-party lessee, will otherwise be at arm's length and will be substantially comparable to rents paid for comparable space located in the same geographic area.

Taxpayer represents that at least 90 percent of the leased space at a warehouse will be leased to persons other than the Services TRS, the Cotenant TRS, and other related persons described in section 856(d)(2)(B).

E. Cost Sharing Agreement

For administrative convenience, certain employees of Taxpayer will perform services for Taxpayer, the Services TRS, and the Cotenant TRS. Taxpayer expects that its human resources, legal, accounting, and other administrative departments will provide services to Taxpayer, the Services TRS, and the Cotenant TRS. The Services TRS and the Cotenant TRS will each reimburse Taxpayer for its allocable share of employee costs (including salaries, benefits, and other compensation) and other shared costs (including overhead, office supplies, furniture and equipment, corporate office space, utilities, taxes, rent, mortgage payments, and maintenance or improvement expenses) pursuant to a cost sharing agreement (the "Cost Sharing Agreement"). These reimbursements will not include a mark-up.

The reimbursement required with respect to shared employee expenses will be computed periodically and will be determined on the basis of the relative amount of time such employees spend performing services on behalf of each of Taxpayer, the Services

TRS, and the Cotenant TRS, or under a similar reasonable allocation method. The other costs will be allocated on an arm's length basis.

Taxpayer will not deduct or capitalize any costs reimbursed by the Services TRS and the Cotenant TRS; rather, the Services TRS and the Cotenant TRS will deduct or capitalize those costs, as appropriate. Taxpayer will not be in the business of receiving compensation for services of the type that will be reimbursed under the Cost Sharing Agreement.

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 such personal property for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

Section 1.856–4(b)(2)(ii) provides that where a REIT rents all (or a portion of all) the units in a multiple unit project under substantially similar leases (such as the leasing of apartments in an apartment building or complex to individual tenants), the 15-percent test in section 856(d)(1)(C) may be applied with respect to the aggregate rent received or accrued for the taxable year under the similar leases of the property.

Section 1.856-4(a) defines "rents from real property" generally as the gross amounts received for the use of, or the right to use, real property of the REIT.

Section 1.856-4(b)(1) provides that services furnished to tenants of a particular building will be considered customary if, in the geographic market in which the building is located, tenants in buildings of a similar class are customarily provided with the service. To qualify as a service customarily furnished, the service must be furnished or rendered to the tenants of the REIT or, primarily for the convenience or benefit of the tenants, to the guests, customers, or subtenants of the tenants.

Section 856(d)(2)(C) provides that any impermissible tenant service income is excluded from rents from real property. Section 856(d)(7)(A) defines "impermissible tenant service income" to mean, with respect to any real or personal property, any

amount received or accrued directly or indirectly by the REIT for services furnished or rendered by the REIT to the tenants of the property, or for managing or operating such property.

Section 856(d)(7)(C) provides certain exceptions from impermissible tenant service income. Section 856(d)(7)(C)(i) provides that impermissible tenant service income does not include amounts for 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. Section 856(d)(7)(C)(ii) provides that impermissible tenant service income does not include any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

Section 1.512(b)-1(c)(5) provides that payments for the use or occupancy of rooms and other space where services are also rendered to the occupant, such as 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 rents 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)(5)(ii) provides that the 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 or 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 renewal of leases, and dealing with taxes, interest, and insurance relating to the REIT's property. The trustees may also make capital expenditures with respect to the REIT's property (as defined in section 263) and may make decisions as to repairs of the REIT's property (of the type that would be deductible under section 162), the cost of which may be borne by the REIT. See also Rev. Rul. 67-353, 1967-2 C.B. 252.

Section 856(d)(2)(B) provides, in part, that except as provided in section 856(d)(8), the term rents from real property does not include any amount received or accrued directly or indirectly from any person if the REIT owns, directly or indirectly: (i) in the case of any person that is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of such

person; or (ii) in the case of any person that is not a corporation, an interest of 10 percent or more in the assets or net profits of such person.

Section 856(d)(8) provides that rent received by a REIT from its TRS will not be excluded from rents from real property under section 856(d)(2)(B) if the terms of the limited rental exception of section 856(d)(8)(A) are met. The requirements of section 856(d)(8)(A) are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than TRSs of such REIT and other than related parties described in section 856(d)(2)(B), but only to the extent that the amounts paid to the REIT by the TRS as rents from real property (without regard to section 856(d)(2)(B)) are substantially comparable to such rents paid by the other tenants of the REIT's property for comparable space. Pursuant to section 856(d)(8), the substantial comparability requirement must be met at the time the lease is entered into, at the time of each extension of the lease, and at the time of any modification of the lease.

Section 1.856-2(c)(1) provides that the term “gross income” has the same meaning as that term has under section 61 and the regulations thereunder.

Section 61(a) defines gross income as all income from whatever source derived. Thus, payments are includible in gross income unless specifically excluded. In General Management Corporation v. Commissioner, 46 B.T.A. 738 (1942), aff'd on other grounds, 135 F.2d 882 (7th Cir.1943), cert. denied, 320 U.S. 757 (1943), the Board of Tax Appeals stated that mere advancements partake of the nature of loans; thus, amounts received in reimbursement for such advancements are not includible in gross income. In Jergens Co. v. Commissioner, 40 B.T.A. 868 (1939), certain cost-sharing reimbursements were held to be includible in the recipient's gross income because the recipient was in the business of rendering the type of services which were reimbursed by a related corporation.

Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

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, 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 Revenue Ruling 82-61, 1982-1 C.B. 13, two utilities (X and Z) owned a coal-fired electric generating facility as cotenants. Z sold its 50 percent undivided interest in the facility to Y and leased that undivided interest back from Y. The ruling notes that, under the terms of the lease, Y would receive fixed rent from Z regardless of the profits or losses from the facility, Y had no right to share in the power generated by the facility, Y bore no expenses with respect to the facility's operations, and Y was not held out as a participant in the operation of the facility. As a result, X and Y were cotenants in the facility with X receiving income from the operation of the facility and Y receiving rent from leasing its interest in the facility to Z. The ruling concluded that X and Y were not partners for federal income tax purposes and that an undivided interest in an electric generating facility is a property interest that can be separately leased. Thus, the ruling respected the arrangement between the co-owners, such that one cotenant (X) realized income from its utility business activities and the other cotenant (Y) received rent from its tenant. Neither party was required to recognize a portion of the income earned by the other party from such other party's separate use of the co-owned property.

Taxpayer's Storage Business entails providing space in warehouses to Tenants for the storage of household goods under the terms of the Storage Agreements in exchange for a fixed monthly Storage Fee. Upon entering into a Storage Agreement with a Tenant, Taxpayer reserves space in a warehouse in the form of a Slot. Taxpayer represents that the Slots constitute real property within the meaning of section 1.856-10(b). Each Storage Agreement is for a term of a and grants the Tenant a right to store its property in a Slot in a warehouse during the term of the Storage Agreement. The Tenants do not have direct access to their stored items and do not have a designated Slot within a warehouse during the term of the Storage Agreement; however, Taxpayer has represented that it does not oversell storage capacity. The Services TRS will provide the Delivery Service, the Access Services, the Packing and Loading Service, and the Handling Service. The Services TRS will include the separately stated fee for the Delivery Service, the Access Services, and the Packing and Loading Service in its gross income, and none of the fees for these services will be included in Taxpayer's gross income. Taxpayer will pay the Services TRS an arm's length amount for providing the Handling Service to all Tenants. Taxpayer represents that the Handling Service is customarily provided to tenants of warehouses in the geographic market in which each Taxpayer warehouse is located.

Taxpayer will furnish the Facility Services. The Facility Services are usual or customary services and are not rendered primarily for the convenience of the Tenants or the Cotenant TRS.

Additionally, Taxpayer represents that for purposes of section 856(d)(1)(C) and section 1.856-4(b)(2)(ii), the aggregate amounts attributable to Containers and any other personal property which is leased to Tenants under, or in connection with, Storage Agreements at a warehouse will not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such Storage Agreements in that warehouse. Taxpayer further represents that

Containers are assigned randomly under Storage Agreements, and neither the age nor the value of a Container is taken into account with regard to assigning Containers to Storage Agreements. Accordingly, amounts received by Taxpayer from Tenants for the use of Taxpayer's real property and personal property leased pursuant to section 856(d)(1)(C) qualify as rents from real property within the meaning of section 856(d).

Taxpayer represents that in the case of each Cotenant TRS Lease and lease of office space to the Services TRS, at least 90 percent of the leased space at a warehouse will be leased to persons other than the Cotenant TRS, the Services TRS, and other related persons described in section 856(d)(2)(B). Each Cotenant TRS Lease will be for a term of b months with automatic renewals. A Cotenant TRS Lease will provide the Cotenant TRS with the same legal rights to occupy space as provided to Tenants under Storage Agreements (other than the fact that the Slots made available to the Cotenant TRS are outside of the warehouse). The Cotenant TRS will lease only Slot space for its Containers and will not have a right of ingress or egress, will not maneuver forklifts to move Containers, will not have the right to exclude anyone from the property, and will not have the right to choose the Slot in which its Container is stored. Rather, the Services TRS will provide Handling Services for all tenants, including the Cotenant TRS. The Cotenant TRS will make Cotenant TRS Lease Payments regardless of whether the Cotenant TRS actually uses its leased Slots.

To meet the limited rental exception of section 856(d)(8)(A), at the time a lease is entered into and at the time of any extension or modification of the lease, amounts paid to a REIT by a TRS must be substantially comparable to rents paid by other tenants. Taxpayer represents that, at the time the lease is entered into and at the time of any extension or modification of the lease, the Cotenant TRS Lease Payments will be comparable to rents paid by any third-party lessee for outdoor Slots at the applicable warehouse. Taxpayer also represents that, at the time the lease is entered into and at the time of any extension or modification of the lease, the Services TRS Lease Payments will be comparable to rents paid by any third-party lessee for office space at the applicable warehouse. Taxpayer further represents that, where there is no such third-party lessee, at the time the leases are entered into and at the time of any extension or modification of the leases, the Cotenant TRS Lease Payments and Services TRS Lease Payments will otherwise be at arm's length and will be substantially comparable to rents paid for comparable space located in the same geographic area.

Accordingly, provided at least 90 percent of the leased space at a warehouse is leased to persons other than TRSs or related parties described in section 856(d)(2)(B), amounts received by Taxpayer from the Cotenant TRS and the Services TRS for the leasing of space at a warehouse will be treated as rents from real property under section 856(d) through the application of section 856(d)(8)(A).

In a situation analogous to that described in Revenue Ruling 84-138, Taxpayer, the Services TRS, and the Cotenant TRS will share some administrative personnel.

Pursuant to the Cost Sharing Agreement, the Services TRS and the Cotenant TRS will each reimburse Taxpayer for its allocable share of employee costs (including salaries, benefits, and other compensation) and other shared costs (including overhead, office supplies, furniture and equipment, corporate office space, utilities, taxes, rent, and maintenance or improvement expenses). These reimbursements will not include a mark-up. Further, Taxpayer will not deduct or capitalize any costs reimbursed by the Services TRS and the Cotenant TRS; rather, the Services TRS and the Cotenant TRS will deduct or capitalize those costs, as appropriate. Taxpayer will not be in the business of receiving compensation for services of the type that will be reimbursed under the Cost Sharing Agreement. Accordingly, amounts received by Taxpayer under the Cost Sharing Agreement will not be considered gross income under section 61, including for purposes of section 856(c)(2) and (3).

Taxpayer represents that under the Co-ownership Agreement and the laws of State B, neither party will have a claim against or a right to share in revenues attributable to Containers being used by the other party. In this case, the state law rights of Taxpayer and the Cotenant TRS pursuant to the Co-ownership Agreement are respected for federal income tax purposes. Revenue Ruling 82-61 respected the arrangement between the co-owners, such that one cotenant (X) realized income from its utility business activities and the other cotenant (Y) received rent from its tenant. Neither party was required to recognize a portion of the income earned by the other party from such other party's separate use of the co-owned property. This ruling demonstrates that cotenants may agree that each may use the jointly owned property in its own business and retain the proceeds therefrom (whether income from operations or rental income) and that such an agreement may be respected for federal income tax purposes.

However, Taxpayer may receive Excess Usage Payments from the Cotenant TRS for use beyond the Cotenant TRS's co-ownership share in the Containers. The lease of the Containers to the Cotenant TRS for its usage in excess of its Container Days is not incidental to the lease of the real property and is pursuant to the Co-Ownership Agreement which is an agreement separate from the Cotenant TRS Lease. Therefore, the Containers are not leased in connection with a lease of real property and the payments will not qualify as rents from real property under section 856(d).

Accordingly, Taxpayer's gross income from the Cotenant TRS's use of Containers will be the Excess Usage Payment received from the Cotenant TRS. This income is non-qualifying for purposes of section 856(c)(2) and (3).

CONCLUSION

Based on the facts submitted and representations made, we rule that: (1) the Storage Fees qualify as rents from real property within the meaning of section 856(d) for purposes of section 856(c)(2) and (3); (2) provided at least 90 percent of the leased space at a warehouse is leased to persons other than TRSs or related parties described

in section 856(d)(2)(B), amounts received by Taxpayer from the Cotenant TRS and the Services TRS for the leasing of space at a warehouse will be treated as rents from real property under section 856(d) pursuant to the exception in section 856(d)(8)(A); (3) amounts received by Taxpayer under the Cost Sharing Agreement will not be considered gross income for purposes of section 856(c)(2) and (3); and (4) Taxpayer's receipt of any Excess Usage Payment from the Cotenant TRS's use of Containers will be gross income to Taxpayer, however, that income is non-qualifying for purposes of section 856(c)(2) and (3).

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, we express no opinion regarding whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of chapter 1 of the Code. Additionally, no opinion is expressed as to whether any activities provided by Taxpayer constitute fiduciary duties to manage the REIT itself. Furthermore, no opinion is expressed regarding whether any income attributable to personal property leased in connection with real and personal property does not exceed 15 percent of the total rent under section 856(d)(1)(C).

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) 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 ruling is being sent to your authorized representatives.

Sincerely,

_____

Matthew Howard
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: