



Corporation intends to convert the Commercial Units to cooperative ownership by issuing and selling a total of g shares of common stock for the Commercial Units. Corporation represents that the shares to be issued with respect to each unit will be fully paid up in an amount bearing a reasonable relationship to the portion of the value of Corporation's equity in the building and land that is attributable to each unit.

The proprietary leases will entitle the purchaser of the additional shares attributable to the Commercial Units to occupy the units either for retail purposes or as residential apartments. The owner of the Commercial Units will at all times have the right, as against Corporation, to occupy the units for dwelling purposes.

Corporation represents that the local zoning law and building regulations currently permit modification of the Commercial Units to residential use as a matter of right. Corporation submits facts and representations to show that it would be reasonable to convert the Commercial Units to residential use. The size and location of the Commercial Units are such that, with certain modifications, they could be converted into residential apartments.

You have specifically requested two rulings:

(1) Provided Corporation satisfies the requirements of § 216(b)(1)(A), (B), (C), and (D), neither the issuance of stock by Corporation to be allocated to the Commercial Units nor the possible nonresidential use of the units will prevent Corporation from qualifying as a cooperative housing corporation within the meaning of § 216(b)(1).

(2) A person who purchases the stock of the Corporation attributable to the Commercial Units for the commercial use of such space will qualify as a "tenant-stockholder" for purposes of § 216(b)(2), provided such stock is fully paid up in an amount which bears a reasonable relationship to the portion of the value of Corporation's equity in the building and land which is attributable to the unit which the purchaser is entitled to occupy.

Section 216(b)(1) provides that the term "cooperative housing corporation" means a corporation - (A) having one and only one class of stock outstanding, (B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation, (C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and (D) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in § 216(a) are paid or incurred is derived from tenant-stockholders.

Section 216(b)(2) provides that the term “tenant-stockholder” means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation’s equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

Section 1.216-1(e)(2) provides, in relevant part, that in order to qualify as a “cooperative housing corporation” under § 216, each stockholder of the corporation, whether or not the stockholder qualifies as a tenant-stockholder under §§ 216(b)(2) and 1.216-1(f), must be entitled to occupy for dwelling purposes an apartment in a building or a unit in a housing development owned or leased by such corporation. The stockholder is not required to occupy the premises. The right as against the corporation to occupy the premises is sufficient. Such right must be conferred on each stockholder solely by reasons of his or her ownership of stock in the corporation. That is, the stock must entitle the owner thereof either to occupy the premises or to a lease of the premises. The fact that the right to continue to occupy the premises is dependent upon the payment of charges to the corporation in the nature of rentals or assessments is immaterial.

Rev. Rul. 74-241, 1974-1 C.B. 68, provides that, for purposes of § 216(b)(1)(B), the term “apartment in a building” means an independent housekeeping unit consisting of one or more rooms containing facilities for cooking, sleeping, and sanitation normally found in a principal residence.

Rev. Rul. 90-35, 1990-1 C.B. 48, provides that Rev. Rul. 74-241 does not require that a unit presently contain all the facilities normally found in a principal residence in order to constitute an apartment in a building for purposes of § 216(b)(1)(B). A unit will be treated as meeting that definition if: (1) the stockholder is entitled to convert the unit to an apartment, as defined in Rev. Rul. 74-241, solely by reason of ownership of stock in the cooperative housing corporation; (2) the conversion of the unit would be reasonable under all the facts and circumstances, including structural feasibility and cost; and (3) the applicable zoning, building, and fire codes permit both the conversion and residential use of the unit as a matter of right.

Applying the above standards to the facts and representations submitted and subject to the limitation below and based solely upon those representations, we conclude that provided Corporation satisfies the requirements of § 216(b)(1)(A), (B), (C), and (D), neither the issuance of stock by Corporation to be allocated to the Commercial Units nor the possible nonresidential use of the units will prevent Corporation from qualifying as a cooperative housing corporation within the meaning of § 216(b)(1).

We also conclude that the purchaser of the stock of Corporation attributable to the Commercial Units will qualify as a “tenant-stockholder” for purposes of § 216(b)(2), provided such stock is fully paid up in an amount which bears a reasonable relationship to the portion of the value of Corporation’s equity in the building and land which is attributable to the unit which the purchaser is entitled to occupy.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, we express or imply no opinion whether Corporation otherwise meets the requirements of § 216.

Specifically, we express or imply no opinion as to whether Corporation meets the requirements of § 216(b)(2) concerning whether the stock bears a reasonable relationship to the portion of the value of the Corporation’s equity in the building and land which is attributable to the unit which the purchaser is entitled to occupy.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the 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.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative. A copy of this ruling must be attached to any income tax return to which it is relevant.

Sincerely,

/s/

Joseph H. Makurath  
Acting Branch Chief, Branch 7  
Office of Associate Chief Counsel  
Passthroughs & Special Industries