

**Internal Revenue Service**

Department of the Treasury

Number: **200250030**  
Release Date: 12/13/2002  
index Number: 216.01-02

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

**CC:PSI:B07/PLR-127776-02**

Date:

September 10, 2002

Legend:

Corporation =

State =

Address =

a =

b =

c =

d =

e =

Dear :

We received your letter requesting a ruling under §216 of the Internal Revenue Code. This letter responds to your request.

The represented facts are as follows. Corporation is a cooperative housing corporation organized under the laws of State. Corporation owns the land and building located at Address, which consists of a residential units, a garage and b commercial units. The garage has c parking spaces, all but one of which have been leased to tenant-stockholders, with the remaining space used by the full-time building superintendent. The tenant-stockholders who currently lease parking spaces pay a monthly fee to the Corporation, which is in addition to and separate from their maintenance payments. A waiting list has been established for the additional tenant-stockholders who wish to lease parking spaces.

Corporation proposes to lease an additional d - e parking spaces from garages that are in close proximity to Corporation's building. Corporation would then sublease this additional parking to tenant-stockholders who are on the parking waiting list. These tenant-stockholders would be charged at the same rate for the spaces as is paid by Corporation.

This parking arrangement between Corporation and the tenant-stockholders would be made pursuant to a sublicense rider to the primary lease between the garage and Corporation. The sublicense rider would require the tenant-stockholder to conform to the rules and regulations of the primary lease. Corporation will make all required payments to the lessor garage. The tenant-stockholders will be required to pay to Corporation all charges imposed by the lessor garage. Corporation will not receive any money in excess of what is owed to the lessor garage for providing this service. The payments to Corporation for parking space sublicense fees will be separate and in addition to the tenant-stockholder's maintenance fees.

You requested a ruling that parking space sublicense fees received by Corporation from tenant-stockholders will be considered as being "derived" from tenant-stockholders as described in Internal Revenue Code Sections 216(b)(1)(D) and 216(b)(2), allowing the income to be counted toward Corporation's continued qualification as a cooperative housing corporation.

Section 216(a) of the Internal Revenue Code provides that in the case of a tenant-stockholder (as defined in §216(b)(2)), there will be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to the extent that such amounts represent the tenant-stockholder's proportionate share of --(1) the real estate taxes allowable as a deduction to the corporation under §164 which are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses (or building) are situated, or (2) the interest allowable as a deduction to the corporation under §163 which is paid or incurred by the corporation on its indebtedness contracted -- (A) in the acquisition, construction, alteration, rehabilitation, or maintenance of the house or apartment building, or (B) in the acquisition of the land on which the houses (or apartment building) are situated.

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 and 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.

Rev. Rul. 68-387 provides that the amounts received by a cooperative housing corporation from its tenant-stockholders to defray expenses associated with their occupancy of the corporation's property, including amounts received for maid and secretarial service, garage or parking space, utilities, recreation facilities, cleaning, and related services, will be considered as part of the gross income derived from tenant-stockholders for purposes of the 80-percent requirement prescribed by section 216(b)(1)(D) of the Code. On the other hand, amounts received by a cooperative housing corporation from leases for commercial purposes or from the operation of a trade or business (other than housing) are not considered as part of the gross income derived from tenant-stockholders for purposes of the 80-percent requirement prescribed by section 216(b)(1)(D) of the Code.

Rev. Rul. 79-137 provides that revenue that is generated by a cooperative housing corporation from real estate brokerage services provided to its tenant-stockholders in connection with the transfer of their apartment units and that is applied against recurring expenses for repair and maintenance of the corporation's property is income derived from tenant-stockholders within the meaning of section 216(b)(1)(D) of the Code.

Applying the above standards to the facts and representations submitted and subject to the below limitations, we conclude that parking space sublicense fees received by Corporation from tenant-stockholders will be considered as being “derived” from tenant-stockholders as described in Internal Revenue Code Sections 216(b)(1)(D) and 216(b)(2).

Except as specifically ruled herein, we neither express nor imply any opinion concerning the federal tax consequences under the cited provisions or any other provision of the Code. This ruling is directed only to the taxpayer requesting it. §6110(k)(3) of the Code 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, a copy of this letter is being sent to your representative. A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,  
Joseph H. Makurath  
Acting Branch Chief  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

cc: