

Internal Revenue Service

Department of the Treasury

Number: **200329001**
Release Date: 7/18/2003
Index Number: 704.01-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:Br.1-PLR-161819-02

Date:

Feb 21 2003

Legend:

X =

Y =

Plan =

\$a =

Dear :

This letter responds to your representative's November 7, 2002 request for a private letter ruling on the transactions described below.

FACTS

According to the information submitted, X is a real estate investment trust organized to develop, acquire, manage, operate, and own a diverse portfolio of real property. X is the sole general partner of Y, a limited partnership. X also owns a limited partnership interest in Y. Y is an operating partnership that owns a diverse portfolio of real property.

X currently has an incentive compensation arrangement that provides certain key executives of X, Y, and Y's affiliates with restricted stock grants. X proposes to supplement this arrangement with interests in Plan, under which participating executives will receive interests in Y. These interests will generally be identical to common limited partnership interests of Y, but will be subject to vesting and forfeiture, and will not have redemption rights. Participating executives will make a capital

PLR-161819-02

contribution of \$a per unit in the Plan, and will receive an initial capital account of \$a per unit. In connection with the issuance of Plan units, Y will revalue its assets and adjust its existing partners' capital accounts.

In connection with its ruling request, Y has made the following representations:

1. Y is not a publicly traded partnership within the meaning of section 7704(b).
2. It is not anticipated that any holder of Plan units will dispose of those units within two years of their issuance.
3. Y will treat the holders of Plan units as partners of Y for all federal tax purposes.
4. The Plan units do not relate to a substantially certain and predictable stream of income from partnership assets, such as income from high-quality debt securities or a high-quality net lease.

LAW AND ANALYSIS

Rev. Proc. 93-27, 1993-2 C.B. 343, defines a capital interest as an interest that would give the holder a share of the proceeds if the partnership's assets were sold at fair market value and then the proceeds were distributed in a complete liquidation of the partnership. This determination generally is made at the time of receipt of the partnership interest. Rev. Proc. 93-27 defines a profits interest as a partnership interest other than a capital interest.

Rev. Proc. 93-27 provides that if a person receives a profits interest for the provision of services to or for the benefit of a partnership in a partner capacity or in anticipation of being a partner, the Internal Revenue Service will not treat the receipt of such an interest as a taxable event for the partner or the partnership. Rev. Proc. 93-27 does not apply if any of the following conditions apply: (1) The profits interest relates to a substantially certain and predictable stream of income from partnership assets, such as income from high-quality debt securities or a high-quality net lease; (2) The partner disposes of the profits interest within two years of receipt; or (3) The profits interest is a limited partnership interest in a "publicly traded partnership" within the meaning of section 7704(b).

Rev. Proc. 2001-43, 2001-34 I.R.B. 191, clarifies Rev. Proc. 93-27 by providing guidance on the treatment of the grant of a partnership profits interest that is substantially nonvested for the provision of services to or for the benefit of the partnership. Rev. Proc. 2001-43 provides that where a partnership grants an interest in the partnership that is substantially nonvested to a service provider, the service provider will be treated as receiving the interest on the date of its grant, provided that the

PLR-161819-02

following conditions apply: (1) The partnership and the service provider treat the service provider as the owner of the partnership interest from the date of its grant and the service provider takes into account the distributive share of partnership income, gain, loss, deduction, and credit associated with that interest in computing the service provider's income tax liability for the entire period during which the service provider has the interest; (2) Upon the grant of the interest or at the time that the interest becomes substantially vested, neither the partnership nor any of the partners deducts any amount (as wages, compensation, or otherwise) for the fair market value of the interest; and (3) All other conditions of Rev. Proc. 93-27 are satisfied.

Based solely on the facts submitted and the representations made, we conclude that the issuance and vesting of Plan units issued by Y as compensation for services performed by participating executives to or for the benefit of Y are nontaxable events under Rev. Proc. 93-27, as clarified by Rev. Proc. 2001-43.

Except as specifically ruled on above, we express no opinion about the Federal tax consequences of any aspect of the above described transaction.

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 the taxpayer's authorized representative and to the taxpayer's second authorized representative.

Sincerely,

David R. Haglund
Senior Technician Reviewer
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes