

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-142210-06

Date:
May 21, 2007

Legend

Corporation =

State =
Address =

A% =
B% =
C% =
D% =

Dear :

We received a letter dated from your authorized representative requesting a ruling for Corporation regarding the application of § 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. Corporation has been formed on a “non-stock” membership basis. However, members will possess the normal and usual rights of stockholders, including: a pro rata distribution of assets upon liquidation, participation in management by reason of electing the board of directors, and transferability of their membership interest.

Each cooperative member, upon purchase of their membership interest, will have the exclusive right to possession of the dwelling unit that is appurtenant to their membership interest, occupancy of which will be governed by the terms of a proprietary lease.

Applicants for membership in Corporation will purchase their respective membership interest pursuant to a subscription agreement. The subscription price payable by

members for their interest will be payable in cash in the minimum required amount equal to A% of the initial value assigned to the dwelling unit that will be appurtenant to the membership interest acquired.

The initial value of each of the various dwelling unit types is a pro-rata allocation among the dwelling units of the total projected development cost of Corporation's housing facility. An amount equal to A% of the initial values of all of the dwelling units, representing Corporation's minimum equity requirement, will be used to determine the maximum amount of Corporation's blanket mortgage loan. However, subscribers for membership will have the right to elect any one of three additional optional payment tiers for their respective membership interests as follows: (1) a payment option in an amount equal to B% (inclusive of the minimum A% mandatory payment) of the dwelling unit's initial value; (2) a payment option in an amount equal to C% (inclusive of the minimum A% mandatory payment) of the dwelling unit's initial value; and (3) an optional payment in an amount equal to D% (inclusive of the minimum A% mandatory payment) of the dwelling unit's initial value.

The additional cash equity resulting from the three additional payment tiers will be used to reduce the principal amount of the blanket mortgage loan that will encumber the entire housing facility. In addition, members electing one of the additional three payment tiers will receive a corresponding reduction in the allocation of the blanket mortgage principal and interest that would otherwise be allocated to them.

Notwithstanding the varying payment tiers available to the members with respect to purchase of their membership interests, all membership interests have identical rights with respect to valuation, voting control, distributions and liquidation. In addition, all members will have a common contractual obligation to pay their monthly pro-rata share of all of the Corporation's operating expenses, including real estate taxes.

Based on the facts above, Corporation has requested a ruling that the D% payment tier will not create a second class of stock in violation of § 216(b)(1)(A).

Section 216(a) provides that in the case of a tenant-stockholder (as defined in § 216(b)(2)), there shall 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 houses 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 only one class of stock outstanding; (B) each shareholder of which is entitled, solely by reason of the shareholder’s ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by the 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 the corporation 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 216(b)(3)(A) provides that except as provided in § 216(b)(3)(B), the term “tenant-stockholder’s proportionate share” means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).

Section 216(b)(3)(B)(i) provides that if, for any taxable year: (I) each dwelling unit owned or leased by a cooperative housing corporation is separately allocated a share of such corporation’s real estate taxes described in subsection (a)(1) or a share of such corporation’s interest described in subsection (a)(2), and (II) such allocations reasonably reflect the cost to such corporation of such taxes, or of such interest, attributable to the tenant-stockholder’s dwelling unit (and such unit’s share of the common areas), then the term “tenant-stockholder’s proportionate share” means the shares determined in accordance with the allocations described in subclause (II).

Section 216(b)(3)(B)(ii) provides that § 216(b)(3)(B)(i) shall apply with respect to any cooperative housing corporation only if such corporation elects its application. Such an election, once made, may be revoked only with the consent of the Secretary.

Section 1.216-1(b) provides, in relevant part, that the deduction allowable under § 216 shall not exceed the amount of the tenant-stockholder’s proportionate share of the taxes and interest described therein. If a tenant-stockholder pays or incurs only a part of his proportionate share of such taxes and interest to the corporation, only the amount so paid or incurred which represents taxes and interest is allowable as a deduction under § 216. If a tenant-stockholder pays an amount, or incurs an obligation for an amount, to the corporation on account of such taxes and interest and other items, such as maintenance, overhead expenses, and reduction of mortgage indebtedness, the

amount representing such taxes and interest is an amount which bears the same ratio to the total amount of the tenant-stockholder's payment or liability, as the case may be, as the total amount of the tenant-stockholder's proportionate share of such taxes and interest bears to the total amount of the tenant-stockholder's proportionate share of the taxes, interest, and other items on account of which such payment is made or liability incurred.

Section 1.216-1(d)(2) provides that for taxable years beginning after December 31, 1986, if a cooperative housing corporation allocates to each tenant-stockholder a portion of the real estate taxes or interest (or both) that reasonably reflects the cost to the corporation of the taxes or interest attributable to each tenant-stockholder's dwelling unit (and the unit's share of the common areas), the cooperative housing corporation may elect to treat the amounts so allocated as the tenant-stockholders' proportionate shares.

Section 1.216-1(d)(2)(ii) provides that the election under § 216(b)(3)(B)(ii) of the Code is effective only if, by January 31 of the year following the first calendar year that includes any period to which the election applies, the cooperative housing corporation furnishes to each person that is a tenant-stockholder during that period a written statement showing the amount of real estate taxes or interest (or both) allocated to the tenant-stockholder with respect to the tenant-stockholder's dwelling unit or units and share of common areas for that period. The election must be made by attaching a statement to the corporation's timely filed tax return (taking extensions into account) for the first taxable year for which the election is to be effective. The statement must contain the name, address, and taxpayer identification number of the cooperative housing corporation, identify the election as an election under § 216(b)(3)(B)(ii) of the Code, indicate whether the election is being made with respect to the allocation of real estate taxes or interest (or both) and include a description of the method of allocation being elected. The election applies for the taxable year and succeeding taxable years. It is revocable only with the consent of the Commissioner and will be binding on all tenant-stockholders.

Section 1.216-1(d)(2)(iii) provides that it is reasonable to allocate to each tenant-stockholder a portion of the real estate taxes or interest (or both) that bears the same ratio to the cooperative housing corporation's total interest or real estate taxes as the fair market value of each dwelling unit (including the unit's share of the common areas) bears to the fair market value of all the dwelling units with respect to which stock is outstanding (including stock held by the corporation) at the time of allocation. If real estate taxes are separately assessed on each dwelling unit by the relevant taxing authority, an allocation of real estate taxes to tenant-stockholders based on separate assessments is a reasonable allocation. If one or more of the tenant-stockholders prepays any portion of the principal of the indebtedness and gives rise to interest, an allocation of interest to those tenant-stockholders will be a reasonable allocation of interest if the allocation is reduced to reflect the reduction in the debt service attributable

to the prepayment. In addition, similar kinds of allocations may also be reasonable, depending on the facts and circumstances.

Based on the representations in your ruling request, we conclude that the D% payment tier does not create a second class of stock within the meaning of § 216(b)(1)(A).

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process.

No opinion is expressed regarding other provisions of the Code or Income Tax Regulations. Specifically, we express or imply no opinion whether Corporation otherwise meets the requirements of § 216.

This 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. A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be forwarded to your representatives.

Sincerely,

Joseph H. Makurath
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)