

**Internal Revenue Service**

Department of the Treasury  
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**Legend:**

Taxpayer =

LP1 =

Corporation A =

Corporation B =

Corporation C =

Corporation D =

Corporation E =

LP2 =

a =

b =

c =

d =

Building =

Corporation F =

Year 1 =

Dear :

This is in reply to a letter dated February 20, 2008, requesting a ruling on behalf of Taxpayer. The requested ruling is that Taxpayer's share of rental income accrued by LP 1 from Corporation A will not be treated as "related party rents" under section 856(d)(2)(B) of the Internal Revenue Code and thus excluded from "rents from real property" under section 856(d) for purposes of sections 856(c)(2) and (3).

**Facts:**

Taxpayer is a corporation that intends to elect to be treated as a real estate investment trust (REIT) under section 856(c) effective January 1, 2008. Currently, a percent of Taxpayer's stock is owned by Corporation C. Taxpayer owns a percent of the stock of Corporation D. Corporation D owns a percent of the stock of Corporation E. Corporation E holds an approximately b percent capital and profits interest in LP2, a limited partnership that owns and operates numerous rental properties through partnerships or entities that are disregarded for federal income tax purposes.

Among its holdings, LP2 owns a c percent interest in the capital and profits of LP1, a limited partnership, which owns Building. The remaining d percent interest in the capital and profits of LP1 is owned by Corporation F, a wholly-owned subsidiary of Corporation B. Corporation B owns a percent of the stock of Corporation A. Corporation A is the sole tenant of Building, under a lease with LP1 executed in Year 1.

**Law and Analysis:**

Section 856(c)(2) provides a REIT must derive at least 95 percent of its gross income from certain enumerated sources, including dividend, interest, and rents from real property.

Section 856(c)(3) provides that a REIT must derive at least 75 percent of its gross income from certain enumerated real estate sources, including rents from real property and qualified temporary investment income.

Section 856(d)(1) defines "rents from real property" to include rents from interests in real property, charges for services customarily rendered in connection with the rental of real property, and rent attributable to certain leased personal property. Section 856(d)(2)(B)(i) excludes from "rents from real property" any amount received or accrued directly or indirectly from any corporation if the REIT owns, directly or indirectly, ten

percent or more of the total combined voting power of all classes of stock entitled to vote, or ten percent or more of the total value of all classes of stock of that corporation.

Section 856(d)(5) provides that, for purposes of section 856(d), the rules prescribed in section 318(a) apply with certain modifications to determine the ownership of the stock, assets, or net profits of any person.

As modified by section 856(d)(5), section 318(a)(2)(A) provides that stock, assets, and net profits interests owned by a partnership are considered to be owned proportionately by its partners. Section 318(a)(3)(A), as modified by section 856(d)(5), provides that stock, assets, and net profits owned by a partner that owns a twenty-five percent or greater interest in the capital or profits of a partnership are considered to be owned by the partnership. Section 318(a)(2)(C), as modified by section 856(d)(5), provides that if ten percent or more in value of the stock in a corporation is owned by any person, such person is considered as owning the stock, assets, and net profits owned by that corporation in the proportion which the value of the stock that the person owns bears to the value of all the stock of the corporation. Section 318(a)(3)(C), as modified by section 856(d)(5), provides that if ten percent or more in value of the stock of a corporation is owned by any person, the corporation is treated as owning the stock, assets, and net profits owned by that person.

Section 318(a)(5)(A), as modified by section 856(d)(5), generally provides that stock, assets, and net profits constructively owned by a person by reason of the application of sections 318(a)(2) and (3) will, for purposes of applying sections 318(a)(2) and (3), be considered as actually owned by such person. However, section 318(a)(5)(C), as modified by section 856(d)(5), provides an exception to that rule. Under section 318(a)(5)(C), stock, assets and net profits constructively owned by a partnership or corporation pursuant to section 318(a)(3) will not be considered as owned by the partnership or corporation for purposes of applying section 318(a)(2) in order to make another person the constructive owner of the stock, assets, or net profits.

Accordingly, the application of the constructive ownership rules of section 318, as modified by section 856(d)(5), will not cause Taxpayer to own 10 percent or more of the combined voting power of all classes of stock of Corporation A entitled to vote, or 10 percent or more of the total value of all classes of Corporation A stock, within the meaning of section 856(d)(2)(B)(i). Taxpayer's share of the rental income accrued by LP1 from Corporation A will not be excluded from "rents from real property" by application of section 856(d)(2)(B).

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code. Furthermore, no opinion is rendered whether LP1 or LP2 qualify as partnerships for purposes of the Code.

This ruling is directed only to the taxpayer requesting it. Taxpayer should attach a copy of this ruling to each tax return to which it applies. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Sincerely yours,

David B. Silber

David B. Silber

Chief, Branch 2

Office of Associate Chief Counsel

(Financial Institutions & Products)