

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
February 11, 2009

EIN:

Legend:

Corporation =
Landlord =
Assignor =

Cotenant =
Sponsor =
Property =
Date 1 =
Date 2 =
Portion A =

x =
y =
z =

Dear :

This letter is in response to a letter dated October 22, 2008, that was submitted by the authorized representative of Corporation. In that letter, a ruling was requested that tenant-stockholders of Corporation are entitled to deduct under § 216(a) of the Internal Revenue Code their proportionate shares of certain real estate taxes paid or accrued by Corporation.

Landlord and Assignor entered into a lease (the ground lease) for a building and the underlying land of Property on Date 1. The ground lease has a term of x years and provides for base rent that escalates to fixed amounts at periodic intervals. Assignor assigned its interest in the ground lease to Cotenant on Date 2. Cotenant is

substantially renovating the building, which will have a useful life of y years following renovation. Cotenant will then assign an undivided $z\%$ interest in the ground lease to, and enter into a Co-Tenancy and Reciprocal Operating Agreement (CTROA) with, Sponsor. Sponsor will then assign its interests in the ground lease and the CTROA to Corporation. Corporation will have the use of a portion of the building, consisting of Portion A, while Cotenant will have the use of the remainder of the building.

Corporation intends to qualify as a cooperative housing corporation, as defined in § 216(b)(1). Corporation was formed for the primary purpose of acquiring an interest in the ground lease for Property and making dwelling units at Property available to its shareholders.

An appraisal of Property obtained by Corporation concludes that the rent payable under the ground lease is allocated solely to the land, and no part of the rent payable under the ground lease is attributable to the improvements.

Section 164(a)(1) of the Internal Revenue Code allows a deduction for state, local, and foreign real property taxes in the taxable year in which such taxes are paid or accrued. Section 1.164-1(a) of the Income Tax Regulations provides that taxes generally are deductible only by the person on whom they are imposed. Furthermore, § 1.162-11(a) provides that taxes paid by a tenant to or for a landlord for business property are considered additional rent; thus, the landlord rather than the tenant is allowed a deduction for the payment of the taxes under § 164.

Section 216(a) allows a tenant-stockholder (as defined in § 216(b)(2)) a deduction for certain amounts paid or accrued to a cooperative housing corporation within the taxable year. These amounts include the tenant-stockholder's proportionate share of real estate taxes which are allowable as a deduction to the corporation under § 164 and which are paid or incurred by the corporation on (a) the houses or apartment building owned or leased by the corporation and (b) the land on which such houses (or building) are situated. Section 216(a)(1).

In Rev. Rul. 62-178, 1962-2 C.B. 91, a lessee was allowed a deduction under § 164 for real estate taxes paid on a building (but not the underlying land), even though legal title to the building was vested in the lessor of the land. The ruling reasoned that the enjoyment of the entire worth of the building was in the lessee because the lessor received no rental income attributable to the building and the useful life of the building, which was erected by the lessee with its own funds, was substantially shorter than the term of the lease. Thus, the lessee was treated as the owner of the building for purposes of § 164, and the tenant-stockholders of the lessee were allowed a § 216(a) deduction for amounts paid to the lessee representing their proportionate shares of the real estate taxes paid with respect to the building.

In contrast, in Rev. Rul. 62-177, 1962-2 C.B. 89, a lessee was not allowed a deduction under § 164 for real estate taxes that the lessee had paid on a building. In that case,

the building was pre-existing and it was not constructed by the lessee. Although the useful life of the building was less than the term of the lease, the lessor was treated as the owner of the building for purposes of § 164 because the lessor received rental income attributable to the building. Thus, the lessee was not treated as the owner of the building for purposes of § 164, and the tenant-stockholders of the lessee were not allowed a § 216(a) deduction for amounts paid to the lessee representing their proportionate shares of the real estate taxes paid with respect to the building.

The facts in the present case, as provided by Corporation, are substantially similar to the facts in Rev. Rul. 62-178. The appraisal obtained by Corporation concludes that the rent payable under the ground lease is allocated solely to the land, and no part of the rent payable under the ground lease is attributable to the improvements. In addition, the useful life of the building is substantially shorter than the remaining term of the ground lease. Thus, in accordance with Rev. Rul. 62-178, Corporation will be treated as the owner of the building for purposes of § 164, and the tenant-stockholders will be allowed a § 216(a) deduction for their proportionate share of the real estate taxes paid by Corporation, but only to the extent that the taxes are attributable to the portion of the building containing the dwelling units and are not attributable to the remainder of the building or the land.

The ruling contained in this letter is based upon information and representations submitted by Corporation 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 ruling, including the appraisal obtained by Corporation, the material is subject to verification on examination. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including whether Corporation is a cooperative housing corporation within the meaning of § 216(b)(1) and whether all other requirements of § 216(a) have been met.

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.

In accordance with a power of attorney on file with this office, copies of this letter are being sent to Corporation's authorized representatives.

Sincerely,

Kimberly L. Koch
Senior Technician Reviewer, Branch 2
(Income Tax & Accounting)

cc: