

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200949031**  
Release Date: 12/4/2009

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

Index Number: 331.00-00, 336.00-00, 336.06-00

ID No.  
Telephone Number:

Refer Reply To:  
CC:CORP:02  
PLR-129401-09  
Date:  
August 24, 2009

**LEGEND**

Parent =

LP =

TRS =

State X =

State Y =

Date A =

a =

b =

c =

d =

e =

Dear :

This letter responds to your June 15, 2009 request for rulings on certain federal income tax consequences of the Proposed Transaction. The information provided in that request and in later correspondence is summarized below.

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

### STATEMENT OF FACTS

Parent, a State X real estate investment trust ("REIT"), owns approximately an a% interest in LP, a State Y limited partnership. Unrelated parties own the remaining approximately b% interest in LP. No election has been made to treat LP as an association taxable as a corporation under Treas. Reg. § 301.7701-3. In what is known as an "UPREIT" structure, Parent does not directly own any real estate or tangible assets, rather those are owned directly by LP or through subsidiary entities in which LP owns an interest.

LP owns all of the single outstanding class of common stock of TRS. Parent and TRS made an election under section 856(l) to treat TRS as a taxable REIT subsidiary. Consistent with its status as a taxable REIT subsidiary, TRS's business has historically been that of acquiring, developing, leasing, and selling real estate. Although TRS is solvent, TRS owns substantial amounts of property with current fair market values significantly below tax basis.

### PROPOSED TRANSACTION

Due to the impact of current economic conditions on the real estate industry, Parent, LP, and TRS recently underwent significant restructuring of their business operations to focus on the REIT activities of owning, leasing, and managing LP's and TRS's real properties on a long-term basis. As a result of the restructuring, Parent believes that at least 70% of TRS's assets and operations will now consist of the ownership and management of real estate on a long-term basis. Such assets can be owned by LP without adversely affecting Parent's federal tax status as a REIT ("REIT assets"). In contrast, 30% or less of TRS's assets will remain in TRS's historic business ("non-REIT assets" and "non-REIT activities"). Thus, Parent proposes the following transaction:

1. TRS will form a new corporation (“Newco”) and transfer nominal cash to Newco in pursuance of the formation.
2. Parent and Newco will make an election to treat Newco as a taxable REIT subsidiary within the meaning of section 856(l).
3. LP will form a new State Y single-member limited liability company (“TRS LLC”) into which LP will cause TRS to merge. TRS will cease to exist as a separate entity. TRS LLC’s default classification under Treas. Reg. § 301.7701-3 will be as an entity disregarded as separate from its sole owner, LP.
4. TRS LLC will transfer its non-REIT assets to a new limited liability company (“New LLC”) in exchange for c% of the interest in New LLC. Simultaneously, Newco will transfer cash to New LLC in exchange for the other d% interest in New LLC. For federal tax purposes, New LLC’s default classification under Treas. Reg. § 301.7701-3 will be as a partnership.
5. TRS LLC will transfer up to e% of the New LLC interests to Newco.

Following step 5, LP will own all of the outstanding interest in TRS LLC. TRS LLC will continue to hold approximately 70% of its historic assets. In addition, TRS LLC will own all of the outstanding stock of Newco and a d% or greater interest in New LLC. Newco will own a c% or lesser interest in New LLC. New LLC will hold the non-REIT assets and conduct Parent’s non-REIT activities.

## **REPRESENTATIONS**

Parent makes the following representations with respect to the Proposed Transaction:

- (a) The merger of TRS into TRS LLC will constitute the adoption of a plan of liquidation of TRS for federal tax purposes.
- (b) No formal or informal plan of liquidation has ever been adopted by TRS, except for the present plan.
- (c) Except for transfers that will occur pursuant to the Proposed Transaction, it is not contemplated that the deemed liquidation of TRS will be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (“Recipient”) of any of the business or assets of TRS, if persons holding more than 20 percent in value of the stock in TRS also hold more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of section 318, as modified by section 304(c)(3).

- (d) No part of the consideration deemed received by LP upon the merger of TRS into TRS LLC will be received by LP as a creditor, employee, or in some capacity other than that of a shareholder of TRS.
- (e) Neither LP nor TRS has any plan or intention to consummate an actual liquidation or cease the corporate operations or affairs of TRS prior to the merger of TRS into TRS LLC.
- (f) On the date of TRS's merger into TRS LLC, the aggregate fair market value of TRS's assets will exceed the total amount of its liabilities and the liabilities to which any of its assets are subject.
- (g) No distribution of assets representing earned but unreported income will be made by TRS to LP in the deemed liquidation pursuant to the merger of TRS into TRS LLC.
- (h) TRS will not have acquired any property, other than cash, in a transaction to which section 351 will have applied, or as a contribution to capital, during the five-year period ending on the date of the merger of TRS into TRS LLC.
- (i) No property will have been contributed to TRS as part of a plan a principal purpose of which is to recognize a loss by TRS with respect to such property in connection with its complete liquidation.
- (j) Since Date A, LP has owned all of the single outstanding class of equity of TRS, which represents all of the voting power and value of TRS.

### **RULINGS**

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Proposed Transaction:

- (1) The merger of TRS into TRS LLC will be treated as a complete liquidation of TRS under section 331.
- (2) LP will recognize gain or loss with respect to its TRS shares in an amount equal to the difference between the fair market value of the property treated as distributed to LP in the deemed liquidation and LP's adjusted basis in its TRS shares. Section 331(a).
- (3) Any loss recognized by LP under section 331 in connection with the complete liquidation of TRS will not be deferred under section 267(f)(2). Section 267(a)(1).

- (4) Gain or loss will be recognized by TRS in connection with the distribution of its property in complete liquidation in an amount equal to the difference between the fair market value of such property on the date of distribution (or, if greater, the amount of any TRS liabilities to which the property is subject) and its adjusted basis on such date. Section 336(a) and (b). The gain or loss will be computed on a property-by-property basis.
- (5) Any loss recognized by TRS under section 336(a) will not be deferred under section 267(f)(2). Section 267(a)(1).
- (6) The adjusted basis of TRS's non-cash property treated as received by LP pursuant to the deemed liquidation will equal the fair market value of such property on the date of such distribution. Section 334(a).

### **CAVEATS**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings.

In particular, no opinion is expressed or implied concerning whether Parent qualifies as a REIT under subchapter M, part II of Chapter 1 of the Code. In addition, no opinion is expressed or implied concerning the value and treatment of assets held directly or indirectly by Parent for purposes of subchapter M, part II of Chapter 1 of the Code.

### **PROCEDURAL STATEMENTS**

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 your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
Associate Chief Counsel (Corporate)

cc: