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Date:

December 2, 2010

Legend:

Taxpayer =

State =

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Partnership =

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Dear :

This is in response to your letter dated March 3, 2010, and subsequent correspondence dated October 21, 2010 and November 18, 2010, submitted on behalf of Taxpayer requesting a ruling that the Tax Loans (as defined below) qualify as real

estate assets for purpose of section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended (the "Code").

FACTS

Taxpayer is a State corporation which intends to either elect to be treated as a real estate investment trust (a "REIT") or merge with an existing corporation that will elect to be treated as a REIT for federal income tax purposes. Taxpayer is in the business of making advances for the payment of real property taxes in the form of Tax Loans, as described below. Currently, Taxpayer has a percent interest in Partnership which holds Tax Loans through an entity that is disregarded for federal income tax purposes. Upon electing to qualify as a REIT, Taxpayer or its successor will acquire a greater interest in Partnership and Partnership will remain in existence and will serve as its operating partnership.

Counties, municipalities, school districts, and other local divisions of state governments (each, a "Tax Unit") generally impose real property taxes on real property located within their jurisdictions in an amount from b percent to c percent of the assessed value of the real property. These Tax Units often depend on real property taxes to provide their principal source of funding.

The principal mechanism available to a Tax Unit for collecting real property taxes and related interest, penalties and fees (the "Tax Liability") is a tax lien. Generally, if the tax is not paid by a due date, a statutory lien is created in favor of the Tax Unit on the real property that is senior in priority (a "Super Priority Lien") to a lien held by the first mortgage holder.

In some states, the owner of real property (the "Owner") can resolve a Tax Liability with the assistance of a third party, such as the Taxpayer that advances funds to the Tax Unit on behalf of the Owner in the amount of the Tax Liability ("Tax Loan"). The Owner gradually repays the Tax Loan to the Taxpayer with interest.

An Owner can apply for a Tax Loan from the Taxpayer by filling out an application and supplying materials that are similar to those required to apply for a typical real estate loan. If the Taxpayer approves the Tax Loan, the Owner signs and delivers a note (a "Note") to the Taxpayer reflecting the amount of the Tax Loan. The Note provides for a fixed rate of interest, generally from d percent to e percent, and matures at the end of a fixed period, generally f to g years. The Owner also signs a deed of trust (a "Deed of Trust") and an affidavit authorizing the transfer of a lien on the real property from the Tax Unit.

The Taxpayer then pays the amount of the Tax Liability to the Tax Unit on behalf of the Owner. As security, the Tax Unit signs a document transferring its Super Priority Lien on the real property to the Taxpayer (the "Tax Lien Transfer"). The Deed of Trust and Tax Lien Transfer are then recorded in the local land records.

Taxpayer represents that there are many safeguards in place to ensure that the Tax Loan is adequately secured by real property. First, state law provides that the Tax Loan has priority over any mortgage loans previously recorded against the real property, including first lien mortgages. Second, the Taxpayer cannot make a Tax Loan in an amount exceeding the Tax Liability and related closing costs, such as inspections, credit reports, legal fees, courier fees, inspection fees, origination fees, etc. ("Related Costs"). The entire amount of the Tax Loan must be used to pay the Tax Liability and Related Costs. Third, the Taxpayer gathers information about the Owner and the value and condition of the real property, to determine whether the real property will provide sufficient collateral for the Tax Loan. Fourth, the Taxpayer only makes Tax Loans when certain underwriting criteria are satisfied; such criteria include the Owner's credit worthiness and the real property's value and condition. The Taxpayer generally avoids making a Tax Loan in excess of h percent of the appraised value of the real property. Taxpayer also represents that it will never make a Tax Loan in excess of i percent of the appraised value of the real property. Finally, the Super Priority Lien on the real property enables the Taxpayer to foreclose upon the real property.

LAW AND ANALYSIS

Section 856(c)(5)(B) of the Code defines the term "real estate assets", in part, to mean real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs. Section 856(c)(5)(C) provides that the term "interests in real property" includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon, but does not include mineral, oil, or gas royalty interests.

Section 1.856-3(b)(1) of the Income Tax Regulations (the "Regulations") provides that the term "real estate assets" means real property, interests in mortgages on real property (including interests in mortgages on leaseholds of land or other improvements thereon), and shares in other qualified REITs. Section 1.856-3(c) provides that "interests in real property" includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

Under section 1.856-3(g) of the Regulations, a REIT that is a partner in a partnership is deemed to own its proportionate share of each of the assets of the partnership and to be entitled to the income of the partnership attributable to that share. For purposes of section 856, the interest of a partner in the partnership's assets is determined in accordance with the partner's capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross

income of the partnership retain the same character in the hands of the partners for all purposes of section 856.

The legislative history underlying the REIT asset test in section 856(c)(4) indicates that the test "is designed to give assurance that the bulk of the trust's investments are in real estate." H.R. Rep. No. 2020, 86th Cong., 2d Sess. 4 (1960) at 6, 1960-2 C.B. 819, 822.

In the instant case, Taxpayer, or a successor corporation, through Partnership and its disregarded entity, will hold Tax Loans that are secured by a Super Priority Lien on the Owners' real property. The Taxpayer's Tax Loans arise through an agreement between the Taxpayer and the Owner with respect to real property. In addition to authorizing a Tax Lien Transfer, the Owner transfers a Note and a Deed of Trust for the benefit of Taxpayer in exchange for the relevant Tax Loan. The Tax Lien Transfer, Note and Deed of Trust attach a Super Priority Lien on the real property securing the Tax Loan. Accordingly, a Tax Loan is secured by an interest in the underlying real property. As the Tax Loans are fully secured by real property, they qualify as real estate assets within the meaning of sections 856(c)(5)(B) and 1.856-3(b)(1).

CONCLUSION

Based on the facts as represented, we rule that the Tax Loans qualify as real estate assets within the meaning of section 856(c)(5)(B) of the Code.

Except as specifically ruled upon above, we express no opinion on the federal tax consequences of the transactions described above under any other provisions of the Code and Regulations. Additionally, we express no opinion on the valuation of any real property securing a Tax Loan and whether any Tax Loan is fully secured by real property. In particular, no opinion is expressed concerning whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,
Richard LaFalce
Richard LaFalce
Assistant to the Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)