

Internal Revenue Service

Department of the Treasury
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Dear

This is in reply to a letter dated January 26, 2012, and subsequent correspondence, requesting rulings that the inclusion of the Taxpayer's deferred offering costs on its balance sheet, determined in accordance with generally accepted accounting principles ("GAAP"), will not cause Taxpayer to fail the "asset test" under § 856(c)(4) of the Code.

Facts:

Taxpayer is a newly formed State corporation that intends to acquire multifamily properties in selected markets throughout the United States. Taxpayer intends to make an election to be treated as a REIT within the meaning of § 856 for 2011, its first taxable year. Taxpayer is a calendar year taxpayer using an accrual method of accounting. In addition to owning multifamily properties for rent, Taxpayer may also acquire senior mortgage loans, subordinate loans or mezzanine debt secured by interests in multifamily properties and partnership interests in multifamily properties.

On Form 10-Q filed for its first quarter ending March 31, 2011, Taxpayer listed the following four assets: (1) highly liquid investments with original maturities of three months or less; (2) deposits and other assets (principally "two mortgage application fees related to financings on two real estate acquisitions that closed in April of 2011"); (3) due from other parties (fees owed to taxpayer by its external advisor (the "Manager") for

trademark related legal fees that Taxpayer had previously paid on behalf of the Manager); and (4) deferred offering costs (non-deductible costs incurred by Taxpayer in connection with its planned IPO of common stock, which closed on IPO Date). During its first quarter, Taxpayer was in its development stage and had no assets other than the items listed above. The deferred offering costs accounted for over A% of the assets listed on Taxpayer's 10-Q for the quarter ending March 31, 2011.

In order to pay for some of the expenses of its IPO prior to its closing on IPO Date, Taxpayer borrowed money from a related party. These expenses included: legal; accounting; underwriting fees and expenses; printing and mailing; travel; sales and marketing; and similar expenses associated with the IPO.

Taxpayer has represented that the trustees acting in good faith have determined that the fair value of the IPO offering costs are zero.

Under the circumstances described above, Taxpayer has requested a ruling that the inclusion of the deferred offering costs on Taxpayer's balance sheet will not cause Taxpayer to fail the "asset test" for the first quarter of 2011.

Law and Analysis:

Section 856(c)(4)(A) provides that at the close of each quarter of its taxable year, at least 75 percent of the value of the REIT's total assets must be represented by real estate assets, cash and cash items (including receivables), and Government securities (the aforementioned "asset test").

Treas. Reg. § 1.856-2(d)(3) defines the term "total assets" as gross assets of the trust determined in accordance with GAAP.

Section 856(c)(5)(A) provides that the term "value" means, with respect to securities for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the trustees with a limitation on the value assignable to the securities of other real estate investment trusts. See also Treas. Reg. § 1.856-3(a).

The assets that are includible in the "asset test" are determined under GAAP in accordance with Treas. Reg. § 1.856-2(d)(3), and the value applied to those assets is determined under § 856(c)(5)(A).

The offering costs described in Taxpayer's request are an asset under GAAP and are includible in "total assets" in the "asset test" in accordance with Treas. Reg. § 1.856-2(d)(3). The value of the offering costs are zero, as determined in good faith by the trustees of Taxpayer in accordance with § 856(c)(5)(A). Including the offering costs in the "asset test" at a value of zero produces the same numerical result as if the offering

costs were not included at all and, therefore, the inclusion of Taxpayer's deferred offering costs on its GAAP balance sheet will not cause Taxpayer to fail the "asset test" under § 856(c)(4).

Ruling Request: The inclusion of Taxpayer's deferred offering costs on its GAAP balance sheet will not cause Taxpayer to fail the "asset test" under § 856(c)(4).

Holdings:

The inclusion of Taxpayer's deferred offering costs on its GAAP balance sheet will not cause Taxpayer to fail the "asset test" under § 856(c)(4)

The rulings contained in this letter are based upon information and representations submitted by the taxpayer 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 rulings, it 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.

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.

Sincerely,

Robert A. Martin
Robert A. Martin
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)