

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201450004**
Release Date: 12/12/2014
Index Number: 1033.07-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Attention:

Refer Reply To:
CC:ITA:B05
PLR-108989-14
Date:
September 2, 2014

Taxpayer Identification Number

Legend

Taxpayer =
Operating Partnership =
Country A =
m =
n =
x =
y =
z =

Dear :

In a letter dated February 28, 2014, the taxpayer named above, through its authorized representatives, requested a private letter ruling under Rev. Proc. 2014-1, 2014-1 I.R.B. 1. On April 11, 2014, and on June 26, 2014, you submitted additional information.

Taxpayer requested rulings that certain of its assets are, or are parts of, outdoor advertising displays and are eligible for an election under section 1033(g)(3) of the Internal Revenue Code¹ to be treated as real property for purposes of chapter 1 of the Code.

¹ Unless noted otherwise, all section references are to the Internal Revenue Code in effect on the date of this letter ruling.

FACTS

Taxpayer is a publicly held company that has elected under section 856(c) to be treated as a real estate investment trust for purposes of Federal income taxation. Through Operating Partnership and various limited liability companies, partnerships or real estate investment trusts, Taxpayer owns and operates real properties throughout Country A.

Sign Structure

Taxpayer plans to construct and affix electric sign structures to several of its existing outdoor steel sign structures that are permanently affixed to some of the real properties it owns (combined units of electric sign structure and steel sign structure referred to as "Sign Structures"). Each Sign Structure operates using light emitting diode (LED) technology.

A typical Sign Structure is m wide and n high. Depending on the property to which it is affixed, the Sign Structure may be on the roof of the building or on an exterior wall of the building.

In the case of a Sign Structure on the roof of a building, the steel sign structure is braced back to multiple columns installed in the building structure. A horizontal steel frame of wide flange beams connects the column extensions and supports the sign. In the case of a Sign Structure mounted on the wall of a building, first, the building's structural columns and spandrel beams are exposed. Next, the exterior of the building is removed locally to expose the structural columns, and new extensions of structural steel are attached to the existing structure to extend sign connections beyond the exterior face of the building. The exterior of the building is then reconstructed around the new connection.

Whether the Sign Structure is constructed on the roof or on the wall, a series of large sign cabinets that each are approximately x high by y wide by z deep and made of aluminum and steel are bolted together, hoisted with a crane, and bolted to the underlying steel sign structure. Each sign cabinet houses and supports a series of rectangular LED panels that are bolted to the sign cabinet. Each LED panel is composed of a series of rectangular LED modules that are bolted to the LED panel. The LED panels contain power supplies, cables, voltage regulators, electrical wiring, and fans that provide ventilation to prevent the LED modules from overheating.

Taxpayer represents that the Sign Structures will be inherently permanent structures. They will be designed and constructed to remain in place permanently and will be difficult to remove once constructed. Taxpayer further represents that it has no intention of removing the Sign Structures once constructed.

Taxpayer will lease each Sign Structure to an unrelated third party under a lease for a fair market value rent. Each lessee will program and display advertising contents on the Sign Structure. As a lessor, Taxpayer will not perform any services in connection with the lease agreement, other than preventative and corrective maintenance and repair services necessary to ensure the safety and security of the Sign Structures, the associated buildings, its tenants and visitors, and the public, and other usual and customary services.

Ancillary Housing Structure and Ancillary Sign Assets

In addition to the Sign Structure, Taxpayer will lease to the lessee a separate housing structure (the "Ancillary Housing Structure") and certain equipment, including processors, computers, fiber optic cables and power cables dedicated for use with each Sign Structure (the "Ancillary Sign Assets").

Each Ancillary Housing Structure is dedicated to a particular Sign Structure, and is a permanent structure built adjacent to the particular Sign Structure. It is built on top of steel dunnage that is bolted and welded to the structural system of the building on which the Sign Structure is located. The walls of the Ancillary Housing Structures are made of steel stud framing, and clad on the exterior with metal panels and on the interior with dry walls. An Ancillary Housing Structure has a roof. It is equipped with lighting and electricity, and is air-conditioned.

The Ancillary Sign Assets consist of equipment dedicated for use with each Sign Structure that is contained within the Ancillary Housing Structure and cables that connect such equipment in the Ancillary Housing Structure to the Sign Structure. The lessee of the Sign Structure, or its agent, will initiate programming of the Sign Structure from a remote location, which is then transmitted to the server and computers in the associated Ancillary Housing Structure. The advertising content is in turn transmitted via fiber optic cables that connect the server and computers to the base of the Sign Structure. Taxpayer represents that none of the programming equipment or other assets at the remote location is owned or operated by Taxpayer. Accordingly, this remote equipment is not part of the Ancillary Sign Assets and is not the subject of this ruling.

Taxpayer represents that the Ancillary Housing Structure and Ancillary Sign Assets are integral parts of the Sign Structure and, therefore, constitute parts of the "outdoor advertising displays" within the meaning of section 1033(g)(3)(C).

Taxpayer represents that it has not made and will not make any section 179(a) election for any Sign Structure, Ancillary Housing Structure or Ancillary Sign Assets. Taxpayer further represents that it will make a section 1033(g)(3) election to treat all its Sign

Structures, Ancillary Housing Structures and Ancillary Sign Assets as real property for all purposes of chapter 1 of the Code, including for purposes of cost recovery.

REQUESTED RULINGS

Taxpayer has requested the following rulings:

1. Each Sign Structure constitutes an “outdoor advertising display” that is eligible for an election under section 1033(g)(3) to be treated as real property for purposes of chapter 1 of the Code.
2. Because the Ancillary Sign Assets and Ancillary Housing Structures are integral parts of these “outdoor advertising displays,” any election under section 1033(g)(3) to treat the Sign Structures as real property also applies to the Ancillary Sign Assets and the Ancillary Housing Structures.

LAW AND ANALYSIS

Section 1033(g)(3)(A) provides that a taxpayer may elect, in accordance with the rules prescribed by the Secretary, to treat property that constitutes an outdoor advertising display as real property for purposes of Federal income taxation. No section 1033(g)(3) election may be made, however, for property for which the taxpayer has made a section 179(a) election.

Section 1033(g)(3)(C) defines an “outdoor advertising display” as a “rigidly assembled sign, display, or device permanently affixed to the ground or permanently attached to a building or other inherently permanent structure constituting, or used for the display of, a commercial or other advertisement to the public.” Section 1.1033(g)-1(b)(3) of the Income Tax regulations defines an “outdoor advertising display” as “a rigidly assembled sign, display, or device that constitutes, or is used to display, a commercial or other advertisement to the public and is permanently affixed to the ground or permanently attached to a building or other inherently permanent structure.” These regulations further provide that “[t]he term includes highway billboards affixed to the ground with wooden or metal poles, pipes, or beams, with or without concrete footings.”

According to Taxpayer, the Sign Structures are rigidly assembled signs, displays or devices permanently attached to buildings or other inherently permanent structures. In addition, they will be used to display commercial or other advertisements to the public. Accordingly, the Sign Structures constitute outdoor advertising displays within the meaning of section 1033(g)(3)(C).

According to Taxpayer, the Ancillary Sign Assets are used to make each Sign Structure function as an outdoor advertising display. Taxpayer further represents that the servers, computers, processors, fiber optic cables and power lines that constitute the Ancillary Sign Assets are dedicated to the Sign Structure and thus are an integral part thereof. Accordingly, the Ancillary Sign Assets are part of an outdoor advertising display, and Taxpayer's election under section 1033(g)(3)(C) to treat the Sign Structures as real property also applies to the Ancillary Sign Assets.

According to Taxpayer, each Ancillary Housing Structure is dedicated to a particular Sign Structure and is located adjacent to the particular Sign Structure. An Ancillary Housing Structure is used to secure Ancillary Sign Assets serving an associated Sign Structure and ensure that advertising contents are properly displayed on the Sign Structure. Taxpayer further represents that each Ancillary Housing Structure is an integral part of a particular Sign Structure. Accordingly, the Ancillary Housing Structures are part of an outdoor advertising display, and Taxpayer's election under section 1033(g)(3)(C) to treat the Sign Structures as real property also applies to the Ancillary Housing Structures.

RULINGS

Based on the facts presented, we hold as follows:

1. Each Sign Structure constitutes an "outdoor advertising display" that is eligible for an election under section 1033(g)(3) to be treated as real property for purposes of chapter 1 of the Code.
2. Because the Ancillary Sign Assets and Ancillary Housing Structures are integral parts of these "outdoor advertising displays," any election under section 1033(g)(3) to treat the Sign Structures as real property also applies to the Ancillary Sign Assets and the Ancillary Housing Structures.

Except as expressly provided herein, no opinion is expressed or implied on the tax consequences of any aspect of any transaction or item discussed or referred to in this letter. Further, we express no opinion about whether any income that Taxpayer receives from leasing the Sign Structures qualifies as "rents from real property" for purposes of section 856(d) or whether Taxpayer qualifies as a real estate investment trust under subchapter M of the Code.

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 the Power of Attorney on file with this office, copies of this letter are being sent to Taxpayer's authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant.

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.

Sincerely,

William A. Jackson
Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure

Copy for § 6110 purposes

cc: