

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201509019**

Release Date: 2/27/2015

Index Number: 856.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B02
PLR-121396-14

Date:
November 17, 2014

Legend:

Taxpayer =

Date 1 =

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Dear :

This is in reply to a letter dated May 27, 2014, requesting a ruling on behalf of Taxpayer. Taxpayer has requested a ruling regarding the definition of “qualified health care property” under section 856(e)(6)(D)(i) of the Internal Revenue Code, for purposes of the related-party rent exception of section 856(d)(8)(B).

Facts:

Taxpayer is a publicly traded domestic corporation that elected to be taxed as a real estate investment trust (REIT) for its tax year beginning Date 1. Taxpayer has intended to qualify as a REIT at all times since that date. Taxpayer owns a geographically diverse portfolio of senior housing and health care properties.

Taxpayer owns a unlicensed, age-restricted residential communities that provide living quarters and significant congregate care services for residents (“Communities”).

The Communities are currently marketed as age-restricted independent living communities. Taxpayer directly owns b of the Communities. The remaining c Communities are currently owned by Taxpayer's wholly-owned taxable REIT subsidiaries ("TRSs"), as defined in section 856(l). Taxpayer represents that if Taxpayer is granted a ruling that the Communities are "qualified health care properties" within the meaning of section 856(e)(6)(D)(i), Taxpayer and its wholly-owned TRSs will jointly revoke the TRS elections, at which point the entities will be wholly-owned subsidiaries of Taxpayer that are treated as disregarded entities and as qualified REIT subsidiaries (QRSs) of Taxpayer for U.S. federal income tax purposes. As a result, all the Communities will be directly owned by Taxpayer. Taxpayer will then lease the a Communities to one of its existing TRSs. Taxpayer represents that each of the a Communities will be operated by an Eligible Independent Contractor ("EIK"), as defined in section 856(d)(9)(A).

Taxpayer further represents that all services offered to residents of the Communities will be provided by an EIK. Taxpayer represents that the Communities offer or provide residents with assistance in obtaining certain congregate care and wellness related services that are generally not offered by typical multi-family residential rental properties located in the applicable geographic markets. The services available to the residents of the Communities may be grouped into three general categories: (i) Community Services, (ii) Wellness Services, and (iii) Healthcare Related Services.

Community Services are those services that do not necessarily have specific healthcare related purposes and are included in the monthly fees for all residents. Community Services include daily meals in a shared and central location, housekeeping and linen services, transportation services, social and recreational activities designed to improve residents' well-being, 24-hour security with staff assistance and monitoring of residents, architectural modifications that include handrails, bathroom rails and other improvements to facilitate mobility, and general maintenance service for all units. Some Communities also offer companion services that provide residents with companions to assist them during offsite transportation or shopping trips.

Wellness Services generally involve on-site wellness program services and are included in the monthly fees for all residents. Wellness Services are designed primarily for the prevention of illness and injury and to support the health of the residents of the Communities. Wellness Services include dietary assistance (i.e., meal planning centered around proper nutrition and specific health concerns), personal emergency call pendants, assistance in contacting and assisting emergency services personnel, assistance with emergency response and evacuation, and monitoring residents for their safety and well-being (including determining whether living conditions are appropriate for the residents and whether alternative living arrangements should be made). For example, assistance may be provided in obtaining an alternative living space for a resident to increase resident safety. Specifically, if there is concern that a resident is a wander risk (i.e., the resident may wander away from the property) and a family

member disagrees, a third party may be contacted to provide assistance in keeping the resident from wandering and to work with the family in relocating the resident to a more suitable living environment.

Healthcare Related Services generally involve personalized related services. Healthcare Related Services include assistance in obtaining third party healthcare services such as on-site rehabilitation clinics for physical, speech and occupational therapy, assisting residents in obtaining on-site skilled nursing services administered by licensed professionals to provide treatments that promote functional independence and improved health, and assistance in obtaining medication management services. The Communities also assist in obtaining Medicare-certified personnel for rehabilitation clinics and provide individualized health education and wellness programs.

Taxpayer is requesting a ruling that its ownership interests in the Communities represent interests in real properties that are “qualified health care properties” within the meaning of section 856(e)(6)(D)(i). Specifically, Taxpayer requests a ruling that the Communities are “congregate care facilities” within the meaning of section 856(e)(6)(D)(ii). Taxpayer further requests a ruling that, if ownership of the Communities is transferred to Taxpayer’s wholly-owned QRS and the Communities are rented to a TRS and operated by an EIK, amounts derived directly or indirectly by Taxpayer from rental of the Communities to the TRS shall not be excluded from the definition of “rents from real property” by operation of section 856(d)(2)(B).

Law and Analysis:

Section 856(c)(2) provides that at least 95 percent of a REIT’s gross income must be derived from, among other sources, rents from real property.

Section 856(c)(3) provides that at least 75 percent of a REIT’s gross income must be derived from, among other sources, rents from real property.

Section 856(d)(1) provides that rents from real property include (subject to exclusions provided in section 856(d)(2)): (A) rents from interests in real property; (B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated; and (C) rent attributable to personal property leased under, or in connection with, a lease of real property, but only if the rent attributable to the personal property for the taxable year does not exceed 15 percent of the total rent for the tax year attributable to both the real and personal property leased under, or in connection with, such lease.

Section 856(d)(2)(B) provides that rents from real property do not include amounts received directly or indirectly from a corporation if the REIT owns 10 percent or more of the total combined voting power or 10 percent or more of the total value of the shares of the corporation.

Section 856(d)(8)(B) provides that amounts paid to a REIT by a TRS shall not be excluded from rents from real property by reason of section 856(d)(2)(B) when a REIT leases a qualified lodging facility or qualified health care property to a TRS, and the facility or property is operated on behalf of the TRS by a person who is an EIK.

Section 856(d)(9)(A) provides that the term EIK with respect to any qualified health care property (as defined in section 856(e)(6)(D)(i)) means any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the TRS to operate such qualified health care property, such contractor (or any related person) is actively engaged in the trade or business of operating qualified health care properties for any person who is not a related person with respect to the REIT or the TRS.

Section 856(e)(6)(D)(i) defines qualified health care property as any real property which is a health care facility.

Section 856(e)(6)(D)(ii) defines a "health care facility" as a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility (as defined in section 7872(g)(4)), or other licensed facility which extends medical or nursing or ancillary services to patients and which was operated by a provider of such services which was eligible for participation in the Medicare program under Title XVIII of the Social Security Act [subchapter XVIII of chapter 7 of Title 42 (42 U.S.C.A. § 1395 et seq.)] with respect to the facility.

In the present case, the services offered to the Communities' residents are specially targeted to monitor and help improve the health and well-being of its residents, as well as provide the type of supportive services offered by a typical congregate care facility. Each Community is managed by an EIK that assists residents in obtaining the healthcare related services they desire. The EIK oversees various programs and services such as health related educational programs, assists residents with obtaining third party medical service providers and emergency service providers, and monitors residents' living conditions including whether such conditions are appropriate for the residents and whether alternative living arrangements should be made. The EIK also supports and monitors certain healthcare related activities of the residents. For example, the EIK often facilitates the provision of in-home health care services from a licensed third party by providing the residents with information regarding the type and availability of such services. EIKs also provide emergency call systems to residents and provide meals to residents in communal locations at the Communities. The Community Services, Wellness Services and Healthcare Related Services available to residents of the Communities are not commonly offered by typical multi-family residential rental properties located in the relevant geographic markets and offer services for residents in a manner that provides for congregate care.

Conclusion:

Based on the facts as represented, we rule that the Communities are congregate care facilities within the meaning of section 856(e)(6)(D)(ii) and, therefore, constitute “qualified health care properties” within the meaning of section 856(e)(6)(D)(i). Accordingly, based on the facts and Taxpayer’s representations, including its representation that the a Communities will be directly owned by Taxpayer, amounts paid, directly or indirectly, to the Taxpayer by the TRS for renting the Communities shall not be excluded from the definition of “rents from real property” by operation of section 856(d)(2)(B) provided the Communities are operated and managed by an EIK.

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code or whether any of the contractors qualify as eligible independent contractors under section 856.

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,

Andrea M. Hoffenson
Andrea M. Hoffenson
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)