

described below qualifies as an “interest in real property” under Section 856(c) of the Internal Revenue Code.

Facts:

Taxpayer is a publicly traded State A corporation that has elected to be taxed as a real estate investment trust (“REIT”) beginning with its taxable year ended Date. Taxpayer uses the calendar year and accrual method of accounting for U.S. federal income tax purposes.

Taxpayer currently owns and operates, directly and through a series of wholly owned subsidiaries, manufactured home communities and RV resorts, which are located in various states in the U.S. and Foreign Country. Taxpayer represents that each of its subsidiaries are treated either as a REIT, a qualified REIT subsidiary as defined in Section 856(i)(2) (a “QRS”), or a taxable REIT subsidiary as defined in Section 856(l) (a “TRS”). Taxpayer’s business is operated through Operating Partnership, a limited partnership of which Taxpayer is general partner and A percent owner.

Taxpayer is interested in purchasing, through Operating Partnership, interests in Corporation. Corporation is a non-profit Mobile Home Cooperative Homeowners’ Association organized under State B law in Year for the purpose of acquiring and managing an existing manufactured home community in City (the “Community”). The Community consists of approximately B acres of land on which there are lots to accommodate C manufactured homes. In addition, within the Community there are certain shared facilities, including a clubhouse, swimming pool, and shuffleboard courts.

Corporation operates in accordance with its articles of incorporation and bylaws (collectively, the “Organization Documents”). Under the Organization Documents, the purposes of the Corporation are limited to acquiring, managing and dealing with the properties comprising the Community. Specifically, the Articles of Incorporation provide that the purpose of the Corporation is to engage solely in the following activities:

- (1) Acquire certain parcels of real property, together with all improvements located thereon, commonly known as Corporation;
- (2) Own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Community, and
- (3) Exercise all powers enumerated in the bylaws necessary or convenient to the conduct, promotion, or attainment of the purpose set forth in the articles of incorporation.

Corporation is not permitted to incur indebtedness other than in an amount necessary to acquire, operate, and maintain the Community, or to merge with or into any other entity or convey or transfer its properties to any entity unless the

organizational documents of the transferee or surviving entity contain the same limitations.

Each person interested in a home plot within the Community must buy a membership certificate from Corporation or an existing membership certificate holder at the prevailing fair market value, and become a member of Corporation. The membership certificate entitles each member to vote on Corporation matters.

Each such purchaser of a membership certificate simultaneously enters into a corresponding occupancy agreement with Corporation. Each occupancy agreement entitles the purchaser to quiet enjoyment and possession of a designated home plot for a period of up to 99 years. Under the occupancy agreements, members agree to pay to Corporation their allocable share of common expenses and debt service payments. Each occupancy agreement specifies that the membership certificate is appurtenant to, and inseparable from the related home plot designated for use by the member. The bylaws of Corporation indicate that the membership certificate and occupancy agreement may not be transferred without the approval of the board of directors of Corporation and that, upon death of the member, the membership certificate and occupancy agreement must be resold to Corporation for an amount equal to the original purchase price paid, or sold to a third party at fair market value.

Corporation files an annual U.S. federal income tax return on Form 1120-H as a homeowners association, and reports its rental income as well as amounts received under occupancy agreements as income.

Operating Partnership proposes to purchase Corporation's unsold membership certificates, and to enter into one or more occupancy agreements that will grant Taxpayer quiet enjoyment and possession of the Corporation's currently unsold home plots. Operating Partnership expects to lease these plots to individuals who will either set their own manufactured homes on the home plots or reside in manufactured homes that Taxpayer will situate on the plots, and Operating Partnership expects to derive rental income from leasing the plots and manufactured homes.

Law and Analysis:

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

Section 856(c)(5)(B) provides that the term "real estate assets," for purposes of section 856, means 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 that meet the requirements of sections 856 through 859.

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 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 improvements thereon), and shares in other qualified REITs. Section 1.856-3(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. The term also includes timeshare interests that represent undivided fractional fee interests or undivided leasehold interests in real property and that entitle the holders of the interests to the use and enjoyment of the property for a specified period of time each year. The term also includes stock held by a person as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216). Local law definitions will not be controlling for purposes of determining the meaning of “real property” for purposes of section 856 and the regulations thereunder.

Section 216(b)(1) provides that the term “cooperative housing corporation” means a corporation—

- (A) having one and only one class of stock outstanding,
- (B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation,
- (C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and
- (D) meeting 1 or more of the following requirements for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred:
 - (i) 80 percent or more of the corporation's gross income for such taxable year is derived from tenant-stockholders.
 - (ii) At all times during such taxable year, 80 percent or more of the total square footage of the corporation's property is used or available for use by the tenant-stockholders for residential purposes or purposes ancillary to such residential use.
 - (iii) 90 percent or more of the expenditures of the corporation paid or incurred during such taxable year are paid or incurred for the acquisition, construction, management, maintenance, or care of the corporation's property for the benefit of the tenant-stockholders.

Section 216(b)(2) provides that the term "tenant-stockholder" means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

Section 1.216-1(e)(2) provides, in relevant part, that each stockholder of a cooperative housing corporation, whether or not the stockholder qualifies as a tenant-stockholder under section 216(b)(2) and paragraph (f) of that section, must be entitled to occupy for dwelling purposes an apartment in a building or a unit in a housing development owned or leased by such corporation. The stockholder is not required to occupy the premises. The right as against the corporation to occupy the premises is sufficient. Such right must be conferred on each stockholder solely by reason of his or her ownership of stock in the corporation. That is, the stock must entitle the owner thereof either to occupy the premises or to a lease of the premises. The fact that the right to continue to occupy the premises is dependent upon the payment of charges to the corporation in the nature of rentals or assessments is immaterial.

Section 528(a) provides that a homeowners association shall be subject to taxation under Subtitle A only to the extent provided in section 528. Section 528(b) provides that a tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association. Such tax shall be equal to 30 percent of the homeowners association taxable income.

Section 528(c)(1) provides that the term "homeowners association" means an organization which is a condominium management association, a residential real estate management association, or a timeshare association if—

- (A) such organization is organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property,
- (B) 60 percent or more of the gross income of such organization for the taxable year consists solely of amounts received as membership dues, fees, or assessments from—
 - (i) owners of residential units in the case of a condominium management association,
 - (ii) owners of residences or residential lots in the case of a residential real estate management association, or
 - (iii) owners of timeshare rights to use, or timeshare ownership interests in, association property in the case of a timeshare association,
- (C) 90 percent or more of the expenditures of the organization for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property and, in the case of a timeshare association, for activities provided to or on behalf of members of the association,

(D) no part of the net earnings of such organization inures (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual, and (E) such organization elects (at such time and in such manner as the Secretary by regulations prescribes) to have Section 528 apply for the taxable year.

Section 528(d)(1) provides that the homeowners association taxable income for purposes of section 528 for any taxable year is an amount equal to the excess (if any) of the gross income for the taxable year (excluding any exempt function income), over the deductions allowed by Chapter 1 which are directly connected with the production of the gross income (excluding exempt function income) computed with the modifications provided in section 528(d)(2). Section 528(d)(3) provides that, for purposes of section 528, the term "exempt function income" means any amount received as membership dues, fees, or assessments from owners of condominium housing units in the case of a condominium management association, owners of real property in the case of a residential real estate management association, or owners of timeshare rights to use, or timeshare ownership interests in, real property in the case of a timeshare association.

The Taxpayer's acquisition of interests in Corporation and the corresponding occupancy agreements will provide Taxpayer with quiet use and enjoyment of designated parcels of real property. Furthermore, the purpose of the Corporation is limited by its Organization Documents to owning and managing real estate and the interests in Corporation are inseparable from the corresponding occupancy agreements granting Taxpayer quiet use and enjoyment of the designated parcels of real property. The interests in Corporation are similar to tenant-stockholder interests in cooperative housing corporations that qualify as interests in real property under section 1.856-3(c). See also, Rev. Rul. 77-459, 1977-2 C.B. 239 (holding that interest in trust is a "real estate asset" under section 856 when trust's only asset was a loan secured by a mortgage). Although Corporation is organized as a homeowners association as described in section 528 and not a cooperative housing corporation as defined in section 216, an interest in Corporation confers rights similar to those held by a tenant-stockholder in a cooperative housing corporation. Therefore, it is appropriate for interests in Corporation to be considered interests in real property under section 856(c).

Conclusion:

We hereby rule that an interest in Corporation as described above constitutes an interest in real property under section 856(c).

This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. 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. In particular, no opinion is expressed

regarding any part of an interest in Corporation that represents or is attributable to personal property owned by Corporation. Further, no opinion is expressed with regard to whether Taxpayer otherwise qualifies as a REIT under subchapter M of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the provisions of a Power of Attorney on file, we are sending a copy of this ruling letter to your authorized representatives.

Sincerely,

Robert A. Martin
Senior Technician Reviewer, Branch 1
(Financial Institutions & Products)