

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-131543-14

Date:
December 23, 2014

LEGEND:

Taxpayer =

Operating Partnership =

Exchange =

Year 1 =

Year 2 =

Year 3 =

Dear :

This letter responds to the August 21, 2014 letter from your authorized representative requesting rulings under Internal Revenue Code sections 301, 305, and 562(c). The information provided in that request is summarized below.

SUMMARY OF FACTS

Taxpayer is an accrual basis taxpayer that files its federal income tax returns as a real estate investment trust (REIT) on a calendar year basis. Substantially all of Taxpayer's business is conducted through Operating Partnership. Taxpayer represents that it

qualifies as a REIT under the Code. Taxpayer regularly distributes at least 90% of its taxable income for each taxable year in order to comply with section 857(a)(1).

Taxpayer has one class of common stock outstanding (the Common Stock), the shares of which are publicly traded and listed on the Exchange. All references to “shareholders” herein refer to holders of Common Stock.

Taxpayer represents that it may generate taxable income in excess of its typical distribution levels in Year 1, Year 2, and Year 3 due to sales of properties, debt repayments, and other transactions. In order to satisfy the requirements of section 857(a)(1), Taxpayer intends to make quarterly distributions to its shareholders in Year 1, Year 2, and Year 3.

With respect to one or more of these distributions (the Stock and Cash Distributions), each shareholder will have the right to elect to receive the distribution entirely in cash (the Cash Option), entirely in Common Stock (the Equity Option) or a combination of 20% cash and 80% Common Stock (the Cash and Equity Option), subject to a limitation on the amount of cash to be distributed in the aggregate to all Common Stock shareholders (the Cash Limitation).

In connection with each Stock and Cash Distribution, Taxpayer will provide its shareholders with election forms after the record date. Each election form will provide the minimum percentage of such aggregate distribution to be in the form of Common Stock and the maximum percentage of such aggregate distribution to be in cash. Taxpayer will pay cash in lieu of issuing fractional shares of Common Stock, though cash paid in lieu of fractional shares will not count toward the Cash Limitation.

The shareholders will have a specified number of days to return the election forms. In the event Taxpayer does not receive an election from a shareholder, that shareholder will default to receiving his or her entire dividend in Common Stock.

In the case of any Stock and Cash Distribution, the Cash Limitation will not be less than 20% of the aggregate declared distribution. In the event the total amount of cash payable under a Stock and Cash Distribution increases, the Cash Limitation will be increased appropriately and all references to a 20% cash limit, including the Cash and Equity Option, as defined above, will refer to the greater cash limit.

If the total number of shares for which a Cash Option or Cash and Equity Option election is made would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limitation, then shareholders electing the Cash and Equity Option will receive 20% of the Stock and Cash Distribution in cash and all shareholders electing the Cash Option will receive cash on all such shares equal to the amount elected.

If the number of shares for which a Cash Option or Cash and Equity Option election is made would result in the payment of cash in an aggregate amount in excess of the Cash Limitation, then shareholders electing the Cash and Equity Option will receive 20% of the Stock and Cash Distribution in cash and shareholders electing the Cash Option will receive a pro rata amount of the cash remaining after the allocation of cash to those shareholders electing the Cash and Equity Option, in an amount corresponding to the shareholder's respective entitlement under the distribution declaration, with the remainder being received in shares of Common Stock. In no event will any shareholder electing the Cash Option receive less than 20% of the shareholder's entire entitlement under the distribution declaration in cash.

Taxpayer represents that the calculation of the number of shares of Common Stock to be received by any shareholder in connection with each Stock and Cash Distribution will be determined over a period of up to two weeks ending as close as practicable to the payment. The calculation will be designed to utilize market prices that will equate in value the number of shares of Common Stock to be received by the shareholder with the amount of money that could be received instead.

With respect to any shareholder participating in Taxpayer's Dividend Reinvestment and Stock Purchase Plan (DRIP), the DRIP will apply only to the extent that, in the absence of the DRIP, the participating shareholder would have received a distribution of cash under the Stock and Cash Distribution.

RULINGS

Based solely on the information submitted and the representations made, we rule as follows:

- (1) The cash and Common Stock distributed in a Stock and Cash Distribution shall be treated as a distribution of property with respect to the Common Stock to which section 301 applies by reason of section 305(b).
- (2) The amount of the distribution of the stock received by any holder of Common Stock electing to receive stock will be considered to equal the amount of money which could have been received instead. Section 301(b)(1); Treas. Reg. § 1.305-1(b)(2).
- (3) The terms of the Stock and Cash Distributions, as described in this letter, will not cause the Stock and Cash Distributions to be considered preferential under section 562(c). Accordingly, if, under those terms, a shareholder receives a combination of stock and money that differs from the combination received by another shareholder and if the fair market value of the stock on the date of distribution differs from the amount of money which could have been received instead, those differences will not cause the distribution to be considered preferential under section 562(c).

CAVEATS

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 with regard to whether Taxpayer qualifies as a REIT under subchapter M of the Code.

PROCEDURAL STATEMENTS

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.

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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Richard M. Heinecke

Richard M. Heinecke
Assistant to the Branch Chief, Branch 5
Office of the Associate Chief Counsel
(Corporate)

cc: