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LEGEND:

Taxpayer =

State X =

a =

b =

c =

Government Agency =

Dear :

This ruling responds to a letter dated September 2, 2014, submitted on behalf of Taxpayer. Taxpayer requested a ruling that ski lift towers owned by Taxpayer qualify as “real property” for purposes of § 856 of the Internal Revenue Code.

FACTS

Taxpayer is a State X corporation that operates as a public, non-traded real estate investment trust (REIT). Taxpayer owns a portfolio of properties in the lifestyle sectors including ski resort assets. The ski resort assets at issue are leased to

operators under triple-net leases, with the operators responsible for the day-to-day operations of the resorts.

Taxpayer's typical ski lift conveyer system consists of the following components: concrete foundations, towers, tower head assemblies, walking beams, sheave assemblies, lift chairs or gondolas, cables, machinery, and a building to house the machinery. For purposes of this ruling, a "Ski Lift Tower" is defined to include only the foundation, tower, tower head assembly, and walking beam. Taxpayer owns all of the property constituting a Ski Lift Tower. The function of a Ski Lift Tower is to support the sheave assemblies and the cables on which the lift chairs or gondolas are attached.

A tower designed for a Ski Lift Tower is typically a rolled steel column or tube anchored to a reinforced concrete foundation using threaded galvanized bolts, lock-washers, and nuts. The concrete foundation is typically an eight by eight foot pad that extends more than six feet into the ground. A tower head assembly is made of steel and is bolted to the top of a tower. The function of a tower head assembly is to support the walking beam and sheave assemblies. A walking beam is a walkway constructed of steel and equipped with safety railings. A walking beam is bolted to the tower head assembly and is used to maintain the sheave assemblies.

A Ski Lift Tower is intended to remain in place indefinitely. It is rare for any particular component of a Ski Lift Tower to be replaced due to damage because the damage would likely result from an event that would damage the entire Ski Lift Tower.

A Ski Lift Tower is typically custom-designed and engineered for use at a particular location. A Ski Lift Tower is designed to withstand extreme weather conditions including high winds and avalanches. The removal of a Ski Lift Tower is both costly and time consuming. A removal project typically takes a to b weeks and requires the use of heavy construction equipment such as cranes, and in some cases helicopters. Except in rare circumstances, it is economically impractical to relocate a Ski Lift Tower. A Ski Lift Tower is typically sold for scrap metal or discarded once removed.

Each Ski Lift Tower is constructed on a site that is expected to be available to Taxpayer for a period in excess of c years from the date of the initial erection of the Ski Lift Tower. In most cases, Taxpayer is not permitted to remove a Ski Lift Tower following the expiration of ground leases or Government Agency occupancy permits. Taxpayer is not aware of other circumstances that would require it to remove a Ski Lift Tower.

LAW AND ANALYSIS

Section 856(c)(4)(A) of the Code provides that at the close of each quarter of its taxable 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" 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 § 856 through § 859.

Section 1.856-3(b) of the Income Tax Regulations provides, in part, that the term "real estate assets" means real property. Section 1.856-3(d) provides that the term "real property" means land or improvements thereon, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). In addition, the term "real property" includes interests in real property. Local law definitions will not be controlling for purposes of determining the meaning of "real property" for purposes of § 856 and the regulations thereunder. The term "real property" includes, for example, the wiring in a building, plumbing systems, central heating or central air-conditioning machinery, pipes or ducts, elevators or escalators installed in a building, or other items which are structural components of a building or other permanent structure. The term does not include assets accessory to the operation of a business, such as machinery, printing press, transportation equipment which is not a structural component of the building, office equipment, refrigerators, individual air-conditioning units, grocery counters, furnishings of a motel, hotel, or office building, even though such items may be termed fixtures under local law.

Rev. Rul. 75-424, 1975-2 C.B. 269, considers whether certain assets used in connection with the transmission and reception of microwave signals qualify as "real property" for purposes of § 856. The ruling concludes that the building, the heating and air conditioning system, the transmitting and receiving towers, and the chain link fencing are "real estate assets" within the meaning of § 856(c)(5)(B). The antennae, waveguides, transmitting, receiving, multiplex equipment, and prewired modular racks are "assets accessory to the operation of a business" and therefore not "real estate assets" within the meaning of § 856(c)(5)(B).

A Ski Lift Tower is a large steel structure that is anchored to a reinforced concrete foundation using heavy duty hardware. A Ski Lift Tower is designed and constructed to remain permanently in place. A Ski Lift Tower cannot be readily moved and is most often sold for scrap metal or discarded once removed. Taxpayer's Ski Lift Towers will remain in place following the expiration of Taxpayer's ground lease or occupancy permit. Removing a Ski Lift Tower requires significant time and expense. The permanency and other characteristics of a Ski Lift Tower are similar to those of the transmitting and receiving towers that were held to be "real estate assets" in Rev. Rul. 75-424.

Similar to the transmitting and receiving towers in Rev. Rul. 75-424, each Ski Lift Tower supports or is directly or indirectly connected to components of the ski lift conveyer system (i.e., sheave assemblies, lift chairs or gondolas, cables, and machinery) that are assets accessory to the operation of a business that would not qualify as real estate assets under § 856. However, the fact that the Ski Lift Towers support or are directly or indirectly connected to these assets does not prevent the Ski Lift Towers themselves from qualifying as real estate assets.

CONCLUSION

Based on the information submitted and representations made by Taxpayer, we rule that Taxpayer's Ski Lift Towers are inherently permanent structures that qualify as "real property" for purposes of § 856.

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 concerning whether Taxpayer otherwise qualifies as a REIT under subchapter M, part II of Chapter 1 of the Code.

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 representatives.

Sincerely,

K. Scott Brown
Branch Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)