

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B02

PLR-144622-14

Date:

June 5, 2015

LEGEND:

Taxpayer or Sponsor =

Property =

Borough =

City =

State =

Authority =

Authority1 =

The Act =

Project =

Park =

Date1 =

Date2 =

Year =

Ground Lease =

Dear Taxpayer:

This responds to your letter dated . You request a letter ruling on the proper treatment of certain payments in lieu of taxes (PILOT) under § 164 of the Internal Revenue Code, specifically whether such payments are deductible by an individual who purchases from the Taxpayer a condominium leasehold interest in a

residential unit. Additionally, you ask whether the unit owners will be able to deduct PILOT as real property taxes pursuant to §164.

FACTS

RULINGS REQUESTED

The following rulings are respectfully requested:

- 1) That the PILOT payments to be made pursuant to the ground lease to the Authority (or to the City should it reacquire the project area) will constitute real property taxes allowable as a deduction to the payer under IRC §164.
- 2) That following the Taxpayer's submission of the leasehold estate in the property to condominium ownership, the unit owners will be entitled to deduct as real property taxes under §164 that portion of the common charges paid by them to the board of managers as applied by such board towards the PILOT obligations.

A taxpayer may not rely on a private letter ruling that has been issued to another taxpayer. Section 11.02 of Rev. Proc. 2015-1, 2015-1 I.R.B. 1, 56-57. Therefore, a private letter ruling addresses only the tax liability of taxpayers who are party to the ruling request. However, Taxpayer will be the owner of units in the condominium until the units are sold, and as such, will be liable for PILOT until the units are sold. We consider Taxpayer's second ruling request in that context.

LAW AND ANALYSIS

Section 164 allows as a deduction the state, local and foreign real property taxes paid or accrued in the taxable year. Section 1.164-3(b) of the regulations defines real property taxes as taxes imposed on interests in real property that are levied for the general public welfare. Section 1.164-4 provides that assessments for local benefits are not treated as real property taxes.

Whether a particular charge is a "tax" within the meaning of §164 depends on its true nature as determined under federal law. The designation given by local law is not determinative. A charge will constitute a tax if it is an enforced contribution, exacted pursuant to legislative authority in the exercise of taxing power, and imposed and collected for the purpose of raising revenues to be used for public or governmental purposes. See Rev. Rul. 71-49, 1971-1 C.B. 103; Rev. Rul. 61-152, 1961-2 C.B. 42.

Rev. Rul. 71-49 involved tax equivalency payments to the New York City Educational Construction Fund, a public benefit corporation, by a cooperative housing corporation. The payments were applied to debt service on obligations funding public school construction. The ruling holds that the cooperative housing corporation may deduct the payments as real property taxes under § 164 because: (1) The payments are measured by and are equal to the amounts imposed by the regular taxing statutes, (2) the payments are imposed by a specific state statute (even though the vehicle of a lease agreement is used), and (3) the proceeds are designated for a public purpose rather than for some privilege, service, or regulatory function, or for some other local benefit

tending to increase the value of the property upon which the payments are made. Accordingly, each tenant-stockholder of the cooperative housing corporation was allowed to deduct the payments in the amount of the stockholder's proportionate share.

Section 216 provides that a tenant-stockholder in a cooperative housing corporation shall be allowed a deduction for amounts paid or accrued to the corporation within his taxable year representing his proportionate share of real estate taxes paid or incurred by the corporation. To be proportionately deductible by the tenant-stockholders, such taxes must be allowable as a deduction to the corporation under § 164.

The Pilot obligations in this case satisfy the three-prong test of Rev. Rul. 71-49 because they: (1) are imposed at the same general rate at which real property taxes are imposed; (2) are imposed pursuant to the Affordability Plan; and (3) may only be used for public purposes.

Accordingly, we hold as follows:

- 1) The PILOT payments to be made pursuant to the ground lease to Authority (or to City should it reacquire the project area) will constitute real property taxes allowable as a deduction to the payer under § 164.
- 2) Following the Taxpayer submission of the leasehold estate in the property to condominium ownership, the unit owners will be entitled to deduct as real property taxes the portion of the common charges paid by them to the board of managers and that are applied by the board to the PILOT obligations pursuant to § 216.

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, a copy of this letter is being sent to your authorized representatives.

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.

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,

THOMAS D. MOFFITT
Chief, Branch 2
Associate Chief Counsel
(Income Tax & Accounting)