

Internal Revenue Service

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Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:PSI:B01
PLR-106909-15

Date:
August 19, 2015

Legend

X =

State =

Dear _____ :

This letter responds to a letter, dated February 17, 2015 submitted on behalf of X by X's authorized representative, requesting a ruling under § 7704(d)(1)(C) of the Internal Revenue Code (the "Code").

Facts

X is a limited partnership created under the laws of State. X represents it is a "publicly traded partnership" within the meaning of § 7704(b) and is classified as a partnership for federal income tax purposes. X derives income from leases of raw land and building rooftops (collectively, the "Sites").

Typically, the fee owner of a Site will enter into a Ground Lease with a third party tenant. Pursuant to the Ground Lease, the tenant will construct, own and maintain freestanding cellular towers, rooftop wireless and broadband internet installations, billboards, wind turbines and solar arrays on the Site. During the term of the Ground Lease, the fee owner will sell all of its rights, title and interest in and to the Ground Lease to X or to a third party from which X later acquires the Ground Lease. The Ground Leases held by X are for the lease of raw land or building rooftops. X represents that at least 85% of the rent received under each Ground Lease is attributable to either land or a structure,

such as a building, that is permanently attached to the ground, not intended to be moved, and likely to sustain substantial damage if moved.

In general, the rents due under the Ground Leases are fixed in amounts. Under certain Ground Leases of Sites used for billboards, however, the rent is calculated as a “percentage rent” equal to a specified percentage of the tenant’s gross revenue or receipts from the billboards as adjusted for certain expenses associated with the Site or billboards thereon. For purposes of calculating the percentage rent, the tenant’s gross revenue or receipts received from the billboards may be reduced by one or more of the following: (i) agency fees or commissions, which are amounts paid by the tenant to the advertising agency that identified the advertiser on the Site; (ii) illumination charges, (iii) business license fees, which are amounts paid by the tenant for a license to advertise on the Site, (iv) continuity discounts, and (v) taxes (other than income taxes) paid or payable by the tenant in connection with the tenant’s billboards located on the Site. X represents that the Ground Leases it acquired were the result of arms-length negotiations between the landowners and tenants.

X represents that the amounts received by X under the Ground Lease will be for use of, or the right to use, the Sites. X represents that: (1) the tenants will not be related to X within the meaning of § 856; (2) the tenant will operate the new construction on the Sites and X will not provide services to the tenants in connection with the Ground Lease other than services that are customarily furnished or rendered in connection with the rental of real property of a similar class in the geographic areas in which the applicable Sites are located; and (3) the tenants are responsible for maintenance, repair and insurance at the Sites.

Law and Analysis

Qualifying Income

Section 7704(a) provides that, except as provided in § 7704(c), a publicly traded partnership will be treated as a corporation.

Section 7704(b) provides that the term “publicly traded partnership” means any partnership if (1) interests in that partnership are traded on an established securities market, or (2) interests in that partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 7704(c)(1) provides that § 7704(a) does not apply to a publicly traded partnership for any taxable year if such partnership meets the gross income requirements of § 7704(c)(2) for the taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence.

Section 7704(c)(2) provides, in relevant part, that a partnership meets the gross income requirements of § 7704(c)(2) for any taxable year if 90 percent or more of the gross income of the partnership for the taxable year consists of qualifying income.

Section 7704(d)(1)(C) provides that the term “qualifying income” includes income derived from real property rents.

Section 7704(d)(3) provides that the term “real property rent” means amounts which would qualify as rent from real property under § 856(d) if (A) § 856(d) was applied without regard to § 856(d)(2)(C) (relating to independent contractor requirements), and (B) stock owned, directly or indirectly, by or for a partner would not be considered as owned under § 318(a)(3)(A) by the partnership unless 5 percent or more (by value) of the interests in such partnership are owned, directly or indirectly, by or for such partner.

Real Property

Section 856(c)(5)(B) provides that the term “real estate assets,” for purposes of § 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 §§ 856 through 859.

Section 1.856-3(d) provides that “real property” includes land or improvements thereon, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). Local law definitions will not be controlling for purposes of determining the meaning of “real property” for purposes of § 856 and the regulations thereunder. “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, etc. even though such items may be termed fixtures under local law.

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.

Rents from Real Property

Section 856(d)(1) provides that rents from real property include (subject to exclusions provided in § 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, the lease.

Section 1.856-4(a) provides that the term “rents from real property” means, generally, the gross amounts received for the use of, or the right to use, real property of the REIT. Section 1.856-4(b)(1) provides that, for purposes of sections 856(c)(2) and (c)(3), the term “rents from real property” also includes charges for services customarily furnished or rendered in connection with the rental of real property, whether or not the charges are separately stated. Services rendered to tenants of a particular building will be considered customary if, in the geographic market in which the building is located, tenants in buildings of a similar class are customarily provided with the service. In particular geographic areas where it is customary to furnish electricity or other utilities to tenants in buildings of a particular class, the submetering of those utilities to tenants in the buildings will be considered a customary service.

Section 856(d)(2)(A) provides that, subject to certain exceptions, the term “rents from real property” does not include any amount received or accrued, directly or indirectly, with respect to any real or personal property, if the determination of such amount depends in whole or in part on the income or profits derived by any person from such property (except that any amount so received or accrued shall not be excluded from the term “rents from real property” solely by reason of being based on a fixed percentage or percentages of receipts or sales).

Section 1.856-4(b)(3) provides that an amount received or accrued as rent for the taxable year which consists, in whole or in part, of one or more percentages of the lessee's receipts or sales in excess of determinable dollar amounts may qualify as “rents from real property” if (i) the determinable amounts do not depend in whole or in part on the income or profits of the lessee and (ii) the percentages and determinable amounts are fixed at the time the lease is entered into and are not renegotiated during the term of the lease in a manner which has the effect of basing rent on income or profits. It further provides that an amount will not qualify as “rents from real property” if, considering the lease and all the surrounding circumstances, the arrangement does not conform with normal business practice but is in reality used as a means of basing the rent on income or profits.

Conclusion

Based solely on the information submitted and representations made, we conclude that income earned attributable to the Ground Leases qualifies as “rents from real property” under § 856(d), as modified by § 7704(d)(3), and therefore, constitute qualifying income within the meaning of § 7704(d)(1)(C).

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.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to whether X meets the 90 percent gross income requirement of § 7704(c)(1) in any taxable year for which this ruling may apply.

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. However, in the event of a technical termination of X under § 708(b)(1)(B), the resulting partnership may continue to rely on this ruling in determining its qualifying income under § 7704(d)(1)(C).

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Laura C. Fields

Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes