

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:B02  
PLR-134270-15  
Date:  
April 14, 2016

Taxpayer =

State A =

Exchange =

Date 1 =

Year 2 =

Year 3 =

Dear :

We respond to your October 7, 2015, request for rulings under sections 301 and 305 of the Internal Revenue Code of 1986, as amended (the "Code"). The information received in that request is summarized below.

**Summary of Facts**

Taxpayer is a State A corporation that is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return on a calendar year basis. Taxpayer has one class of voting common stock outstanding (the Common Stock), which is publicly traded and listed on the Exchange.

Taxpayer intends to elect under section 856 of the Code to be treated as a real estate investment trust (REIT), effective Date 1 (First REIT Taxable Year) and expects to make one or more distributions during Year 2 and Year 3 to its Common Stock shareholders in a combination of cash and Common Stock (Stock and Cash Distributions).

With respect to each Stock and Cash Distribution, Taxpayer will give each Common Stock shareholder an election to receive its portion of the distribution (i) entirely in cash (the Cash Option) or (ii) entirely in Common Stock (the Equity Option). In the event that a shareholder does not make an election, that shareholder will be considered to have chosen the Equity Option.

In no event will the total amount of cash available in a Stock and Cash Distribution (the Cash Amount) be other than a specified percentage of the aggregate value of each Stock and Cash Distribution, which will not be less than 20 percent of the aggregate value of each Stock and Cash Distribution. If the number of Common Stock shareholders that elect the Cash Option would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Amount, then all shareholders electing the Cash Option will receive cash equal to the amount elected; however, if the number of Common Stock shareholders that elect the Cash Option would result in the payment of cash in an aggregate amount that would exceed the Cash Amount, then each shareholder electing the Cash Option will receive a pro rata portion of the Cash Amount, which will not be less than 20 percent of its entire entitlement under the distribution, and the remaining balance in the Common Stock. A Common Stock shareholder electing the Equity Option will receive its full entitlement in the Common Stock, except possibly with regard to fractional shares. Taxpayer may pay cash in lieu of issuing fractional shares of the Common Stock, although any cash paid in lieu of fractional shares will not count against the Cash Amount.

Taxpayer currently has outstanding one convertible security (the Year 2 Convertible Debt), which contains anti-dilution provisions in its indenture. Thus, in connection with each Stock and Cash Distribution and pursuant to the terms of the Year 2 Convertible Debt, the conversion rate applicable to the Year 2 Convertible Debt will be increased (the Adjustment), which will entitle each holder of the Year 2 Convertible Debt (a Holder) to receive upon conversion a greater number of the Common Stock (and thus a greater proportionate interest in the assets or E&P of Taxpayer) than it otherwise would receive if the Adjustment were not made.

### **Representations**

Taxpayer makes the following representations:

- a. Each Stock and Cash Distribution will be made by Taxpayer to its shareholders with respect to the Common Stock, which is publicly traded on the Exchange.
- b. Each Stock and Cash Distribution will be made during Taxpayer's Year 2 or Year 3 taxable year.
- c. With respect to each Stock and Cash Distribution, each Common Stock shareholder will have the right to elect to receive the Cash Option or the Equity Option, provided that (i) the available Cash Amount will not be less than 20 percent of the aggregate declared distribution, and (ii) in the event that the Cash Option is oversubscribed, each oversubscribing shareholder electing the Cash Option will receive a pro rata amount of cash corresponding to its entitlement under the declaration, but in no event will any shareholder electing the Cash Option receive less than 20 percent of its entire entitlement under the declaration in cash.
- d. The total number of shares of the Common Stock to be issued in each Stock and Cash Distribution will be determined by dividing (i) the product of the total amount of the Stock and Cash Distribution per share multiplied by the number of outstanding shares of Common Stock, less the amount of cash used in the distribution (which shall not be not greater than the Cash Amount), by (ii) the volume-weighted average trading price of a share of the Common Stock on the Exchange as of the close of trading during a specified period before the Stock and Cash Distribution's payment date, the average closing price of a share of the Common Stock on the Exchange during a specified period before the Stock and Cash Distribution's payment date, or a similar formula.
- e. The calculation of the number of shares of the Common Stock to be received by each shareholder in each Stock and Cash Distribution will be determined, over a period of up to two weeks ending as close as practicable to the payment date, based upon a formula utilizing market prices on the Exchange that is designed to equate in value the number of shares to be received with the amount of cash that could be received instead.
- f. The Adjustments for each Convertible Security are typical for comparable convertible securities, in accordance with market practices and norms, and are designed to adjust the conversion rates so that each Holder receives value comparable to the distribution it would have received had it previously converted its holding of the Convertible Security into the Common Stock and then received the Stock and Cash Distribution paid on that Common Stock.

- g. The actual distribution of the cash and the Common Stock in each Stock and Cash Distribution will be made as soon as reasonably practicable following the date of the election deadline for such Stock and Cash Distribution.

### **Rulings**

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

- (1) Any and all cash and the Common Stock distributed in each Stock and Cash Distribution by Taxpayer to holders of the Common Stock pursuant to the election described above shall be treated as a distribution of property with respect to the Common Stock to which section 301 applies (sections 301 and 305(b)(1)).
- (2) Provided that, pursuant to the election described above, Taxpayer distributes some cash to holders of the Common Stock in a Stock and Cash Distribution, then the Adjustment to the Year 2 Convertible Debt required as a result of the distribution shall constitute a deemed distribution, to which section 301 applies by reason of sections 305(b)(2) and (c), to the Holders of the Year 2 Convertible Debt.

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above rulings. Moreover, no opinion is expressed as to whether Taxpayer will qualify as a REIT under subchapter M, part II of Chapter 1 of the Code. Furthermore, no opinion is expressed as to whether any distribution will satisfy the distribution requirements of section 857(a)(1) of the Code.

### **Procedural Statements**

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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 this letter ruling.

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,

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Filiz A. Serbes  
Chief, Branch 3  
Office of the Associate Chief Counsel  
(Corporate)