

**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:TEGE:EB:QP1  
PLR-105628-16

Date:  
August 26, 2016

In Re:

Taxpayer =

Dear :

This is in response to your request dated February 2, 2016, in which you request a private letter ruling.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer is a pension trust fund that invests in U.S. real estate, including real estate mortgages and other real estate backed debt. Taxpayer holds some of its real estate through real estate investment trusts ("REITs") and may acquire interests in REITs in the future.

Taxpayer received a ruling from the IRS dated June 24, 2004 in which the IRS determined that Taxpayer is a group trust arrangement described in Revenue Ruling 81-100, 1981-1 C.B. 326, as modified by Rev. Rul. 2011-1, 2011-2 I.R.B. 251 (which was modified by Notice 2012-6, 2012-3 I.R.B. 293) (an "81-100 group trust"). The ruling specifies that Taxpayer is exempt from federal income tax (i) under Internal Revenue Code ("Code") section 501(a) for the funds that equitably belong to its participating trusts that qualify under section 401(a), (ii) under section 408(e) for the funds that equitably belong to its participating individual retirement accounts that qualify under section 408, (iii) under section 457(g) for the funds that equitably belong to its participating eligible governmental plan trusts or custodial accounts under section 457(b), (iv) under sections 403(b)(7)(B) and 501(a) for the funds that equitably belong to custodial accounts under section 403(b)(7), (v) under section 1.403(b)-9(a)(7) of the Income Tax Regulations for the funds that equitably belong to retirement income accounts under section 403(b)(9), and (vi) under section 401(a)(24) for the funds that

equitably belong to governmental plans. The investment by each participant in Taxpayer is governed by the pension plans of the participant.

#### Issue

Taxpayer requests a ruling that although it is a single entity, solely for purposes of determining whether any REIT held by Taxpayer is a “pension-held REIT” (as such term is defined in section 856(h)(3)(D)), pursuant to the principles in Rev. Rul. 2011-1, to the extent the stock of any REIT is treated as owned by Taxpayer, such stock will not be treated as owned by a single “qualified trust” (as such term is defined in section 856(h)(3)(E)) solely due to the Taxpayer’s ownership. Instead, for this purpose, the concentration of ownership in a REIT held by the Taxpayer would be evaluated by examining the interests equitably held for each participating entity separately.

#### Applicable Law

Section 856(h)(3)(C) of the Code provides that if any qualified trust holds more than 10 percent (by value) of the interests in any pension-held REIT at any time during a taxable year, the trust shall be treated as having for such taxable year gross income from an unrelated trade or business in an amount which bears the same ratio to the aggregate dividends paid (or treated as paid) by the REIT to the trust for the taxable year of the REIT with or within which the taxable year of the trust ends (the “REIT year”) as (i) the gross income (less direct expenses related thereto) of the REIT for the REIT year from unrelated trades or businesses (determined as if the REIT were a qualified trust), bears to (ii) the gross income (less direct expenses related thereto) of the REIT for the REIT year. However, this provision shall apply only if the ratio determined under the preceding sentence is at least 5 percent.

Section 856(h)(3)(D) defines the term “pension-held REIT” generally as a REIT that would not have qualified as a REIT but for the provisions of section 856(h)(3) if the REIT is predominantly held by qualified trusts. For this purpose, a REIT is predominantly held by qualified trusts if (I) at least 1 qualified trust holds more than 25 percent (by value) of the interests in such REIT, or (II) 1 or more qualified trusts (each of whom own more than 10 percent by value of the interests in such REIT) hold in the aggregate more than 50 percent (by value) of the interests in such REIT

Section 856(h)(3)(E) defines the term “qualified trust” as any trust described in section 401(a) and exempt from tax under section 501(a).

Section 501(a) provides, in part, that a trust described in section 401(a) is exempt from income tax.

Section 401(a) provides that a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the

exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under section 401(a), if the requirements specified in section 401(a)(1) through (4) are met, and certain other applicable requirements specified in sections 401(a)(5) through (37) are also satisfied.

Section 401(a)(24) specifies that any group trust which otherwise meets the requirements of section 401(a) shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any governmental plans described in section 818(a)(6).

Rev. Rul. 81-100 provides that a group trust, which satisfies the requirements listed in the revenue ruling, is exempt from taxation under section 501(a) with respect to its funds which equitably belong to participating trusts described in section 401(a) and is exempt from taxation under section 408(e) with respect to its funds which equitably belong to individual retirement accounts, which satisfy the requirements of section 408.

Rev. Rul. 2004-67, 2004-2 C.B. 28 provides that the assets of eligible governmental plan trusts described in section 457(b) may be pooled with the assets of a group trust described in Revenue Ruling 81-100 and, if the requirements listed in Rev. Rul. 2004-67 are satisfied, a trust that is part of a qualified retirement plan, an individual retirement account (including a Roth individual retirement account described in section 408A and a deemed individual retirement account described in section 408(q) that is exempt from taxation under section 408(e), or an eligible plan under section 457(b) may pool its assets in a group trust without adversely affecting the tax status of any of the separate trusts or the group trust.

Rev. Rul. 2011-1 provides that, if the requirements listed in the revenue ruling are satisfied, the assets of qualified plans under section 401(a), IRAs, and eligible governmental plans under section 457(b) may be pooled in a group trust with the assets of custodial accounts under section 403(b)(7), retirement income accounts under section 403(b)(9) and section 401(a)(24) governmental plans without affecting the tax status of the group trust or the tax status of each of the separate retiree benefit plans participating in the group trust. In addition, if the requirements of the revenue ruling are satisfied, the tax status of the group trust will be derived from the tax status of the participating entities to the extent of their equitable interests in the group trust.

Rev. Rul. 2014-24, 2014-2 C.B. 529 provides that section 1022(i)(1) plans and certain insurance company separate accounts are eligible to participate or invest in an 81-100 group trust if certain requirements are met. It also notes that an 81-100 group trust is liable for any unrelated business income tax that arises under section 511 on account of unrelated business taxable income, as described in section 512 that is generated by the investment of the assets of the group trust. While the group trust is liable for any tax attributable to unrelated business taxable income, Rev. Rul. 2014-24 also takes note of the holding under Rev. Rul. 2011-1 that the tax status of the group trust is derived from

the tax status of the entities' participating in the group trust to the extent of the entities' equitable interests in the group trust, if certain requirements are met.

### Analysis

Pursuant to Revenue Ruling 2011-1, the tax exempt status of a group trust is derivative of the tax exempt status of its participants.

Taxpayer is exempt from federal income tax (i) under Code section 501(a) for the funds that equitably belong to its participating trusts that qualify under section 401(a), (ii) under section 408(e) for the funds that equitably belong to its participating individual retirement accounts that qualify under section 408, (iii) under section 457(g) for the funds that equitably belong to its participating eligible governmental plan trusts or custodial accounts under section 457(b), (iv) under sections 403(b)(7)(B) and 501(a) for the funds that equitably belong to custodial accounts under section 403(b)(7), (v) under section 1.403(b)-9(a)(7) of the Regulations for the funds that equitably belong to retirement income accounts under section 403(b)(9), and (vi) under section 401(a)(24) for the funds that equitably belong to governmental plans. The tax-exempt status of a group trust is derived not just from a qualified section 401(a) trust, but also from other tax-exempt arrangements and, to the extent a group trust is treated as a section 401(a) qualified trust, this classification is due to each individual participant that is a section 401(a) qualified trust and the interest that each such participant has in the group trust. Thus, for purposes of determining the concentration of ownership under the pension-held REIT rules, the tax classification and the concentration of ownership in a REIT held by the group trust should be determined by evaluating the interests equitably held for each participating entity separately.

### Conclusion

Thus, with respect to your ruling request, we conclude as follows:

Solely for purposes of determining whether a REIT held by Taxpayer is a "pension-held REIT" (as such term is defined in section 856(h)(3)(D)), pursuant to the principles in Rev. Rul. 2011-1, to the extent the stock of a REIT is treated as owned by Taxpayer, such stock will not be treated as owned by a single "qualified trust" (as such term is defined in section 856(h)(3)(E)) solely due to the Taxpayer's ownership. The concentration of ownership in a REIT held by the Taxpayer will be determined by examining the interests equitably held for each participating entity separately, because Taxpayer is an 81-100 group trust.

No opinion is expressed or implied concerning the application of sections 542 or 544 of the Code.

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 a REIT held by Taxpayer 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.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

Sincerely,

William B. Hulteng  
Acting Branch Chief  
Qualified Plans Branch 1  
Office of Associate Chief Counsel  
(Tax Exempt & Government Entities)

cc: