

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
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Telephone Number:

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PLR-123942-16  
Date:  
January 23, 2017

Legend

Taxpayer =

Year 1 =

Year 2 =

State A =

Exchange =

Common Stock =

Dear :

This letter responds to your letter dated August 1, 2016, requesting two rulings with respect to the Taxpayer's stock and cash distributions in connection with its election to be taxed as a real estate investment trust ("REIT") under the Internal Revenue Code. The information submitted in that letter, as well as other supplemental correspondence, is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer, its representatives, 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.

### **Summary of Facts**

Taxpayer is a State A corporation. It intends to elect to be subject to tax as a REIT commencing with its Year 1 taxable year (the "First REIT Year"). The Taxpayer has one class of Common Stock outstanding. The Common Stock is publicly traded and listed on the Exchange. The Taxpayer is an accrual method taxpayer that files federal income tax returns on a calendar year basis.

Pursuant to its REIT election, the Taxpayer intends to declare a dividend to its shareholders in an amount equal to its accumulated earnings and profits, as determined for federal income tax purposes ("E&P"), during the First REIT Year, and distribute such amount no later than January in Year 2 (the "Purging Distribution"). The Taxpayer intends to make the Purging Distribution with a combination of cash and shares of Common Stock. The Taxpayer may also make other cash and stock distributions in the two years following the effective date of the REIT election that qualify for the deduction for dividends paid under section 857(b)(2)(B) in such amounts as will permit the Taxpayer to satisfy its distribution requirements under section 857(a)(1) (the "Other Distributions" and together with the Purging Distribution, the "REIT Distributions").

The Taxpayer intends, with respect to some or all of the REIT Distributions, to allow each shareholder to elect to receive such distribution in either cash or stock of equivalent value (the "Stock and Cash Distributions"), subject to a limitation on the amount of cash to be distributed in the aggregate to all shareholders (the "Cash Limitation") in each distribution declaration. With respect to any Stock and Cash Distribution, the Taxpayer expects to provide that each shareholder may elect to receive its dividend in the form of: (a) cash (the "Cash Option"), or (b) Common Stock (the "Stock Option"). If a shareholder fails to make a valid election by the election deadline, that shareholder will be deemed to have made an election to be determined by the Taxpayer in its sole discretion. To the extent necessary, the Taxpayer will issue cash in lieu of fractional shares of stock. Although the Taxpayer has not yet determined the amount of the Cash Limitation, it will not be less than 20 percent of each distribution declaration (without regard to any cash that may be paid in lieu of fractional shares). The Stock and Cash Distributions will be made by the Taxpayer to the holders of its Common Stock with respect to the Common Stock.

If the total number of shares of Common Stock with respect to which an election to receive the dividend in cash is made ("Cash Election Shares") would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limitation, then all holders of Cash Election Shares will receive the Stock and Cash Distribution on all Cash Election Shares in cash. If the number of Cash Election Shares would result in the payment of cash in an aggregate amount that is greater than the

Cash Limitation, then shareholders electing to receive the Stock and Cash Distribution in cash will receive the Stock and Cash Distribution on their Cash Election Shares as follows:

- (a) cash on each shareholder's Cash Election Shares equal to the proportion that such shareholder's Cash Election Shares bear to the total Cash Election Shares of all shareholders, multiplied by an amount equal to the Cash Limitation; plus
- (b) shares of Common Stock in payment of the Stock and Cash Distribution on each shareholder's remaining Cash Election Shares.

As a result, if too many shareholders elect to receive the Stock and Cash Distribution in cash, the shareholder may instead receive a pro rata amount of cash, but in no event will any shareholder electing the Cash Option receive less than 20 percent of the shareholder's entire entitlement under the distribution declaration in cash.

### **Representations**

Taxpayer makes the following representations:

1. The Taxpayer intends to qualify as a REIT under the Code for the First REIT Year and to maintain such qualification as a REIT thereafter.
2. The Taxpayer will regularly distribute its E&P as required by Section 857(a)(1).
3. The Common Stock of Taxpayer is publicly traded on an established securities market in the United States.
4. Each Stock and Cash Distribution will be made by the Taxpayer to its shareholders with respect to their Common Stock.
5. Each Stock and Cash Distribution will be made during the first two tax years as a REIT.
6. The Taxpayer will report each Stock and Cash Distribution as a taxable dividend on all Forms 1099 that are distributed to holders of the Company's Common Stock to the extent that the Stock and Cash Distributions are made out of the Company's earnings and profits or to the extent the Stock and Cash Distributions are otherwise subject to Section 857(d)(2). The Taxpayer will withhold any required portion of such dividend in accordance with applicable law. Each Form 1099 will reflect either distributions as capital gain dividends designated by the Company or as a taxable dividend described above. Each such Form 1099 will reflect that the shareholder received an amount in the Stock or Cash Distribution equal to such shareholder's pro rata share of the

- Stock and Cash Distribution, in addition to other amounts distributed with respect to the relevant year.
7. With respect to each Stock and Cash Distribution, each shareholder will have the right to elect to receive the Cash Option or the Stock Option, provided that: (a) the Cash Limitation will not be less than 20 percent of the aggregate declared distribution; and (b) in the event that the cash component is oversubscribed, each 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.
  8. In the event that the shareholders in the aggregate elect to receive cash in lieu of shares in an amount less than the Cash Limitation, then the Taxpayer would fully fund the cash component of the Stock and Cash Distribution. In such a case, all shareholders that elect the Cash Option would receive 100 percent cash.
  9. The total number of shares of Common Stock to be issued in a Stock and Cash Distribution will be determined by dividing (i) the difference between (A) the total amount of such Stock and Cash Distribution, and (B) the total amount of cash to be paid as part of the Stock and Cash Distribution, by (ii) the average closing price of a share of Common Stock on the securities exchange over a period of up to two weeks ending as close as practicable to the payment date. The number of shares of Common Stock and the amount of cash received by any shareholder will depend on: (i) the average closing price of a share of Common Stock on the securities exchange over the valuation period; (ii) the shareholder's own election; and (iii) the combined elections of other shareholders due to the Cash Limitation.
  10. The calculation of the number of shares of Common Stock to be received by any 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 on a formula that will use market prices to equate in value the number of shares of Common Stock to be received by the shareholder with the amount of money that could be received instead.
  11. The actual distribution of 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.
  12. The Taxpayer does not currently have a dividend reinvestment plan ("DRIP") in effect, but with respect to a REIT Distribution and any shareholder participating in any future DRIP, the DRIP will apply only to the extent that, in

the absence of the DRIP, the participating shareholder would have received the distribution in cash under the REIT Distribution election.

### **Rulings**

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

- (1) The distribution of cash and stock by the Taxpayer to its shareholders (determined at the election of each shareholder, subject to a limitation on the aggregate amount of cash distributed of not less than 20 percent of the total distribution and certain other limitations) to effect a distribution of all of the Taxpayer's E&P accumulated in taxable years prior to its REIT election will be treated as a distribution of property with respect to the Taxpayer's stock to which sections 301 and 857(a)(2) apply by reason of section 305(b). Moreover, cash and stock distributions by the Taxpayer to its shareholders in its first two taxable years as a REIT will be treated as distributions of property with respect to the Taxpayer's stock to which sections 301 and 857(a)(1) apply by reason of section 305(b).
- (2) The amount of any distribution of stock received by any shareholder as part of the REIT Distributions will be considered to equal the amount of cash that the shareholder could have elected to receive instead. See Treas. Reg. §1.305-1(b)(2).

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of any aspect of any transaction or item discussed or referenced in this letter 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. In particular, we express no opinion on whether Taxpayer will qualify as a REIT under part II of Subchapter M of Chapter 1 of the Code.

### **Procedural Statements**

This ruling letter 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 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,

Douglas C. Bates  
Chief, Branch 4  
Office of the Associate Chief Counsel  
(Corporate)

cc: