

FACTS

Taxpayer is a State corporation that intends to operate in a manner that qualifies as a real estate investment trust ("REIT") under §§ 856-860 and elected to be taxed as a REIT pursuant to § 856 commencing with its taxable year that ended on Date. Taxpayer owns (directly and indirectly) 100% of General Partner, which is a disregarded entity for Federal income tax purposes. General Partner owns a A% interest in Partnership as the general partner with Partner 1 and Partner 2 owning B% and C%, respectively (General Partner, Partner 1 and Partner 2 each a "Partner" and together the "Partners"). Partnership owns Property. Property is a D-unit residential rental property with some onsite retail tenants.

The partnership agreement (the "Partnership Agreement") among the Partners provides each Partner with a right of first offer (the "Right of First Offer") in the event of a proposed sale of all or part of a partnership interest by another Partner. The Partnership Agreement states that if any Partner wishes to sell all or part of its partnership interest, such Partner must first give written notice to the other Partners ("Notice") of its intent to sell, the purchase price, and such other terms as set forth in the Partnership Agreement. The non-selling Partners then have a E-day period to purchase the selling Partner's partnership interest on the same terms and conditions as are contained in the Notice or to elect to have the entire Property sold. If the non-selling Partners do not act on the Right of First Offer, the selling Partner then has F months from the end of the E-day period to consummate the sale on terms no less favorable to the selling partner than provided in the Notice.

In the proposed transaction, Partner 1 plans to sell its interest in Partnership to a third party. Pursuant to an amendment to the Partnership Agreement (the "Amendment"), General Partner will waive its Right of First Offer for one year, and Partner 1 may retain a G% interest in Partnership that it may dispose of at any time (including at a time beyond the waiver period) without being subject to the Right of First Offer provisions of the Partnership Agreement. In exchange for agreeing to the Amendment, Partner 1 will pay \$H to Taxpayer out of the closing escrow from the sale of Partner 1's partnership interest (the "Payment").

LAW AND ANALYSIS

Section 856(c)(2) provides that, in order for a corporation to qualify as a REIT, at least 95 percent of the corporation's gross income (excluding gross income from prohibited transactions) must be derived from dividends; interest; rents from real property; gain from the sale or other disposition of stock, securities, and real property (including interests in real property and interests in mortgages on real property); abatements and refunds of taxes on real property; income and gain derived from

foreclosure property; certain commitment fees; gain from certain sales or other dispositions of real estate assets; and certain mineral royalty income.

Section 856(c)(3) provides that, in order for a corporation to qualify as a REIT, at least 75 percent of the corporation's gross income (excluding gross income from prohibited transactions) must be derived from rents from real property; interest on obligations secured by real property; gain from the sale or other disposition of real property (including interests in real property and interests in mortgages on real property); dividends and other distributions on, and gain from the sale of REIT stock; abatements and refunds of taxes on real property; income and gain derived from foreclosure property; certain commitment fees; gain from certain sales or other dispositions of real estate assets; and qualified temporary investment income.

Section 856(c)(5)(C) provides that the term "interest 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. Treas. Reg. § 1.856-3(g) provides that a REIT that is a partner in a partnership is deemed to own its proportionate share of each of the assets of the partnership and will be deemed to be entitled to the income of the partnership attributable to such share.

The Right of First Offer represents Taxpayer's future right to purchase interests in a partnership that holds assets that Taxpayer would be treated as owning in proportion to any partnership interests it purchased. Thus, to the extent that Partnership's assets constitute real property, the Right of First Offer is an interest in real property for purposes of § 856(c)(5)(C) and payment for the waiver of the Right of First offer is gain from the disposition of an interest in real property within the meaning of § 856(c)(2)(D) and (3)(C).

CONCLUSIONS

Based on the facts and representations submitted by Taxpayer, we rule that to the extent that Partnership's assets constitute real property, the Payment is gain from the disposition of an interest in real property within the meaning of § 856(c)(2)(D) and (3)(C).

Except as specifically ruled upon above, no opinion is expressed concerning any Federal income tax consequences related to the facts herein under any other provisions of the Code. Specifically, we do not rule whether Taxpayer qualifies as a REIT under Part II of subchapter M of Chapter 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Taxpayer should attach a copy of this ruling to each tax return to which it applies. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the Taxpayer under a penalties 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.

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,

Robert A. Martin
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)