

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B02
PLR-104841-20

Date:
August 19, 2020

Legend

Taxpayer =

State =

Date 1 =

Date 2 =

Parent =

Address A =

Address B =

a =

b =

c =

d =

e =

f =

Sign TRS =

Type 1 Sign =

Type 2 Sign =

Portion A =

Portion B =

Dear :

This responds to a letter dated October 30, 2019, and subsequent submissions, requesting a ruling on behalf of Taxpayer with respect to income derived by Taxpayer for the use of advertising space on its Type 1 Signs (as defined below).

FACTS

Taxpayer is a State limited liability company that has elected to be treated as a corporation and to be taxed as a real estate investment trust ("REIT") under sections 856 through 859 of the Internal Revenue Code ("Code"), each election effective as of Date 1.

Through partnerships, Taxpayer owns real property, including buildings, located at Address A and Address B. Affixed to the exterior sides of the building located at Address A is a steel billboard superstructure to which d Type 1 Signs and b Type 2 Signs are attached (the Type 1 signs, the "Address A Type 1 Signs," and the property located at Address A, including the Address A Type 1 Signs and Type 2 Signs, "Property A").

Affixed to the exterior sides of the building located at Address B is a steel billboard superstructure to which a Type 1 Sign is attached (such sign, the "Address B Type 1 Sign;" the property located at Address B, including the Address B Type 1 Sign, "Property B;" Property A and Property B, the "Properties;" and the Address B Type 1 Sign and the Address A Type 1 Signs collectively, the "Type 1 Signage").

Taxpayer has made the election under section 1033(g)(3) and the regulations thereunder to treat each Type 1 Sign as real property for purposes of chapter 1 of the Code. Taxpayer leases the space on the Type 1 Signage to user-tenants wishing to display advertisements to the public.

With respect to the Address A Type 1 Signs, the space on each of c of the Address A Type 1 Signs (the "Address A Single-tenant Signs") is leased to a different long-term user-tenant. These leases generally have terms of multiple years, and the user-tenants display their advertisements continuously. With respect to the remaining Address A Type 1 Sign (the "Multi-Tenant Address A Sign"), user-tenants will lease increments of time to display advertisements, and each user-tenant's advertisements

will be displayed only for certain intervals of time in an e hour rotation with those of the other user-tenants. While a portion of the lease agreements for space on the Multi-Tenant Address A Sign are expected to encompass f days or more, others may be for shorter periods.

With respect to the Address B Type 1 Sign, the terms and nature of each lease depends on whether the leased space is on Portion A or Portion B of the Address B Type 1 Sign. Portion A of the Address B Type 1 Sign (the "Address B Single-tenant Sign", collectively with the Address A Single-tenant Signs, the "Single-tenant Signs") is divided into segments, each of which is leased to a different long-term user-tenant. These leases have terms of multiple years, and the user-tenants display their advertisements on their respective segments continuously. With respect to Portion B of the Address B Type 1 Sign (the "Address B Multi-tenant Sign", collectively with the Address A Multi-tenant Sign, the "Multi-tenant Signs") user-tenants lease increments of time to display advertisements, and each user-tenant's advertisements are displayed only for certain intervals of time in an e hour rotation with those of the other user-tenants. While most of the lease agreements for space on the Address B Multi-tenant Sign encompass f days or more, some may be for shorter periods.

Taxpayer's lease agreements for space on the Multi-tenant Signs are generally expected to encompass f days or more, but Taxpayer may engage in relatively less significant leasing activities with user-tenants for shorter periods ("short-term leases"). Therefore, Taxpayer may realize income from short-term leases ("Short-Term Revenues"), which will comprise no more than a de minimis portion of Taxpayer's total revenues from the leased signs at the Properties for the calendar year.

Under each lease entered into with a user-tenant, the user-tenant pays Taxpayer a fixed, arm's-length rent. Taxpayer represents that any services rendered by it will be usual or customary services rendered in connection with the rental of Type 1 Signs in the geographic area, and such services will not be rendered primarily for the convenience of Sign TRS, as described below, or the other Type 1 Sign user-tenants.

Taxpayer has formed Sign TRS, a subsidiary that is a State limited liability company. Effective Date 2, elections have been made with respect to Sign TRS to treat it as both a corporation for federal tax purposes and as a taxable REIT subsidiary ("TRS") pursuant to section 856(l). Taxpayer intends to enter into a lease with Sign TRS of the Multi-tenant Signs, with a term of at least a years.

Under any such lease entered into between Taxpayer and Sign TRS, Sign TRS will pay to Taxpayer a fixed, arm's-length rent. Taxpayer represents that such rent will be comparable to the rents paid by the other Type 1 Sign user-tenants, adjusted to reflect the then-current market conditions. In the event Sign TRS rents the entirety of the Type 1 Signage, Taxpayer represents that the rental payments by Sign TRS will be substantially comparable to rents paid by unrelated tenants for comparable space located in the same geographic area.

Other than the leases to Sign TRS described above, Taxpayer will lease all space in the Properties to parties unrelated to Taxpayer. Taxpayer represents that in all cases at least 90 percent of the leased space of Property A and at least 90 percent of the leased space of Property B will be leased to persons other than TRSs of Taxpayer, including Sign TRS, and other than persons described in section 856(d)(2)(B).

RULING REQUESTED

Under the circumstances described above, Taxpayer's income from leasing signs at the Properties will not be considered other than "rents from real property" under section 856(d) solely by reason of (1) the Short-Term Revenues or (2) the leases to Sign TRS covering up to the entirety of the leased signs at each Property, so long as TRSs of Taxpayer, including Sign TRS, and persons described in section 856(d)(2)(B) lease less than 10 percent of the leased space at Property A and less than 10 percent of the leased space at Property B.

LAW & ANALYSIS

Section 856(c)(2) provides that at least 95 percent of a REIT's gross income must be derived from, among other sources, "rents from real property."

Section 856(c)(3) provides that at least 75 percent of a REIT's gross income must be derived from, among other sources, "rents from real property."

Section 856(d)(1) provides that "rents from real property" includes (subject to exclusions provided in section 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, such lease.

Section 856(d)(2)(B) provides that the term "rents from real property" does not include any amount received or accrued directly or indirectly from any person if the real estate investment trust owns, directly or indirectly, in the case of any person which is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of such person.

Section 856(d)(8) provides that amounts paid to a REIT by a TRS of such REIT shall not be excluded from rents from real property by reason of section 856(d)(2)(B) if, with respect to any property, at least 90 percent of the leased space of the property is rented to persons other than TRSs of such trust and other than persons described in

section 856(d)(2)(B). The rents will only be excluded to the extent that the amounts paid to the REIT as rents from real property are substantially comparable to such rents paid by the other tenants of the REIT's property for comparable space.

Taxpayer expects the vast majority of revenues from leasing signs to user-tenants to be attributable to long-term leases. In the limited cases in which Taxpayer may lease space directly to user-tenants on a short-term basis, Taxpayer represents that the resulting Short-term Revenues will represent at most a de minimis portion of Taxpayer's overall revenue from leasing signs. The Short-Term Revenues will be derived from contracts for the use of advertising space and not contracts for the provision of services. Under the facts submitted and representations made, the short-term nature of the leases resulting in the Short-term Revenues will not preclude Taxpayer's income from the leased signs at the Properties from qualifying as rents from real property within the meaning of section 856(d).

In addition, Taxpayer represents that Sign TRS will lease less than 10 percent of the leased space at each Property. Taxpayer further represents that in all cases at least 90 percent of the leased space of each Property will be leased to persons other than TRSs of Taxpayer and other than persons described in section 856(d)(2)(B). Furthermore, Taxpayer represents that the rent paid by Sign TRS will be comparable to the rents paid by the other Type 1 Sign user-tenants, adjusted to reflect the then-current market conditions. If Sign TRS rents the entirety of the Type 1 Signage, Taxpayer represents that the rental payments by Sign TRS will be substantially comparable to rents paid by unrelated tenants for comparable space located in the same geographic area. Although section 856(d)(2)(B) excludes related party rents from the definition of rents from real property, Taxpayer meets the requirements of the exception provided for rents received from a TRS under section 856(d)(8). Therefore, under the facts submitted and representations made, the fact of Sign TRS leasing the entirety of the leased signs at the Properties will not cause Taxpayer's income from leasing signs at the Properties to fail to qualify as rents from real property within the meaning of section 856(d).

CONCLUSION

Accordingly, based on the facts submitted and representations made, we rule that Taxpayer's income from leasing signs at the Properties will not be considered as other than rents from real property within the meaning of section 856(d) solely by reason of (1) the Short-term Revenues or (2) the leases to Sign TRS covering up to the entirety of the leased signs at each Property, so long as TRSs of Taxpayer, including Sign TRS, and persons described in section 856(d)(2)(B) lease less than 10 percent of the leased space at Property A and less than 10 percent of the leased space at Property B.

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. Specifically, no opinion is expressed or implied whether Taxpayer otherwise qualifies as a REIT or Sign TRS otherwise qualifies as a TRS under part II of subchapter M of chapter 1 of the Code. Further, no opinion is expressed or implied whether any service is customarily furnished within the meaning of section 856(d)(1)(B). Additionally, no opinion is expressed or implied with regard to whether Taxpayer is eligible to make an election under section 1033(g)(3) with respect to any property.

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 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 this ruling request, 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,

Bernard J. Audet, Jr.
Bernard J. Audet, Jr.
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)