

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

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Refer Reply To:
CC:FIP:B01
PLR-109707-20

Date:
September 18, 2020

Legend:

- Taxpayer =
- Parent REIT =
- Operating Partnership =
- Partnership X =
- Partnership Y =
- Partnership Z =
- State A =
- Exchange =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- a =
- b =
- c =
- d =
- e =
- f =
- g =
- h =
- j =

Dear _____ :

This is in reply to a letter dated March 27, 2020, requesting rulings on behalf of Taxpayer. Taxpayer requests a ruling that it is a publicly offered REIT as defined in section 562(c)(2) of the Internal Revenue Code and that the distribution described below therefore was not a preferential dividend under section 562(c)(1).

FACTS

Taxpayer is a State A corporation that made an election to be a real estate investment trust ("REIT") under section 856 for its taxable year ended Date 1.

Parent REIT is a State A corporation that made an election to be a REIT for its taxable year ended Date 2. Parent REIT is listed on Exchange. Taxpayer represents that Parent REIT has been a publicly offered REIT within the meaning of section 562(c)(2) at all times on and after Date 3.

Parent REIT owns substantially all of its assets and conducts its operations through Operating Partnership, a State A limited partnership classified as a partnership for federal tax purposes. Parent REIT owns approximately a percent of Operating Partnership.

Operating Partnership owns substantially all its assets through two State A limited liability companies classified as partnerships for federal tax purposes, Partnership X and Partnership Y. Operating Partnership owns directly b percent and indirectly c percent of each of Partnership X and Partnership Y. Partnership X owns d percent of Partnership Z. Partnership Y owns e percent of Partnership Z. Therefore, Operating Partnership owns, indirectly, f percent of Partnership Z. Partnership Z owns g percent of the interests in Taxpayer, excluding certain preferred shares.

Taxpayer represents that, at all times since Date 3, Parent REIT has had a controlling interest in Taxpayer, and Taxpayer has been consolidated with Parent REIT under generally accepted accounting principles for purposes of the annual and periodic reports that Parent REIT is required to file with the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934. As such, Taxpayer, Operating Partnership, Partnership X, Partnership Y, and Partnership Z are included in the consolidated financial statements that Parent REIT files with the SEC. For purposes of the consolidated financial statements, Taxpayer is not presented separately. The assets owned by Taxpayer are listed as assets of Parent REIT, and the income, loss, and other activities of Taxpayer are included with those of Parent REIT and the other consolidated entities.

On Date 4, Taxpayer made a distribution on its common stock in the amount of \$h (the "Distribution"). At that time, Partnership X and Partnership Y owned their interests in Taxpayer directly rather than through Partnership Z. The Distribution was intended to be pro rata, but an overdistribution was paid to Partnership Y of \$j due to the rounding of the ownership percentages shown in the organizational charts maintained by Operating Partnership. Upon learning of the error, on Date 5, the overdistribution of \$j was returned to Taxpayer and distributed to Partnership X.

LAW & ANALYSIS

Section 857(b)(2)(B) provides that in determining real estate investment trust taxable income, the deduction for dividends paid (as defined in section 561) shall be allowed.

Section 561(a) provides that the deduction for dividends paid shall be the sum of the dividends paid during the taxable year, and the section 565 consent dividends for the taxable year.

Section 562(a) provides that the term "dividend" shall include only dividends described in section 316.

Section 562(c)(1) provides that, except in the case of a publicly offered REIT, the amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class, except to the extent that the former is entitled to such preference.

Section 562(c)(2) defines a publicly offered REIT as a REIT that is required to file annual and periodic reports with the SEC under the Securities and Exchange Act of 1934.

Section 1.562-2(a) of the Income Tax Regulations further provides that a preference exists if any rights to preference inherent in any class of stock are violated. The disallowance of the dividends paid deduction, where any preference in fact exists, extends to the entire amount of the distribution and not merely to a part of such distribution.

Under the Securities and Exchange Act of 1934, Taxpayer's accounting information is required to be consolidated with Parent REIT's periodic and annual reports that are submitted to the SEC. Thus, Taxpayer's assets, income, loss, and other activities are reported to the SEC as part of Parent REIT's consolidated reports. The consolidation of the reports does not alter the information reported to the SEC in the annual and periodic reporting required under the Securities and Exchange Act of 1934. Therefore, annual and periodic reporting to the SEC is required of Taxpayer, and

Taxpayer meets the definitional requirements to be a publicly offered REIT pursuant to section 562(c)(2).

CONCLUSION

Based on the facts and representations submitted, we rule that Taxpayer is a publicly offered REIT as defined in section 562(c)(2), and, therefore, the Distribution is not a preferential dividend under section 562(c)(1).

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 on whether Taxpayer otherwise qualifies as a REIT or whether Taxpayer's distributions otherwise qualify as dividends.

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

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,

Steven Harrison
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: