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Date:
October 28, 2022

LEGEND:

Taxpayer	=
Operating Partnership	=
State	=
City	=
Content	=
a	=
Building A	=
Building B	=
Building C	=
Building D	=
Date 1	=

Dear

This letter responds to a letter dated March 30, 2022, and subsequent submissions, requesting a ruling on behalf of Taxpayer. Taxpayer requests the following rulings under section 856(d) of the Internal Revenue Code (the "Code"):

(1) Taxpayer's proportionate share, within the meaning of section 1.856-3(g) of the Income Tax Regulations, of the parking revenues derived from the Parking Facilities (defined below), will be treated as rents from real property under section 856(d).

(2) Taxpayer's provision of the Designated Storage Areas (defined below) and the Fitness Centers (defined below), as well as the services provided therein, will not result in impermissible tenant service income within the meaning of section 856(d)(7) ("ITSI"), and thus will not cause otherwise qualifying amounts received by Taxpayer to be excluded from rents from real property under section 856(d) by operation of section 856(d)(2)(C).

(3) Taxpayer's provision of the Listed Services (defined below) will not result in ITSI, and thus will not cause otherwise qualifying amounts received by Taxpayer to be treated as other than rents from real property under section 856(d) by operation of section 856(d)(2)(C).

(4) The availability of the Third-Party Services (defined below) to tenants of the Properties (defined below) will not cause otherwise qualifying amounts received by Taxpayer to be treated as other than rents from real property under section 856(d).

FACTS

Taxpayer is a publicly held entity organized in State that elected to be taxed as a real estate investment trust (REIT) under sections 856 through 859 beginning with the taxable year that ended on Date 1.

Taxpayer is the sole general partner in Operating Partnership, which is a partnership for federal income tax purposes. Taxpayer owns an interest of approximately a percent in Operating Partnership. Through Operating Partnership and subsidiary partnerships of Operating Partnership, Taxpayer owns interests in office properties located in City (each a "Property" and collectively the "Properties"). As discussed below, certain Properties will make available to tenants Parking Facilities, Designated Storage Areas, Fitness Centers, and the Listed Services (each term defined below). Additionally, certain Third-Party Services (defined below) are available at some of the Properties. Taxpayer represents that the Properties are typical of Class A office buildings located in City.

Parking Facilities:

Four of the Properties, Building A, Building B, Building C, and Building D each contain parking facilities that are available to tenants and their guests, customers, and subtenants, as well as the general public, for a fee on an hourly, daily, or monthly unreserved basis (the "Parking Facilities"). Taxpayer represents that the number of available spaces in each of the Parking Facilities is appropriate in size for the expected number of tenants and their guests, customers, and subtenants.

Taxpayer currently leases most of the Parking Facilities to taxable REIT subsidiaries (each a "TRS"). Taxpayer intends to terminate the leases to the TRSs and

will engage either a TRS or an independent contractor within the meaning of section 856(d)(3) from whom the Taxpayer does not derive or receive any income to manage and oversee the operation of each of the Parking Facilities (the “Parking Manager”). The Parking Manager will employ all the individuals, including attendants, who manage and operate each of the Parking Facilities. The Parking Manager will be directly responsible for providing all compensation, benefits, administration, and supervision of its employees. The Parking Manager will receive arm's-length compensation.

The Parking Manager's employees may occasionally, as a courtesy or when necessary, provide minor, incidental, or emergency services, such as jump starting a car or changing a flat tire. Solely for purposes of safety and to facilitate the efficient use of the space in the Parking Facilities, the Parking Manager's employees will at times move vehicles in and out of parking spots.

Designated Storage Areas:

Certain of the Parking Facilities include designated areas for the storage of bicycles, scooters, and similarly sized vehicles (the “Designated Storage Areas”). Tenants are permitted to store these vehicles at the Designated Storage Areas for no charge.

Fitness Centers:

Certain of the Properties contain fitness and exercise facilities with exercise equipment, saunas, steam rooms, and shower and locker facilities (the “Fitness Centers”). Depending on the Property, a Fitness Center may be open to the public or may be available solely for the use of tenants. At certain Fitness Centers, all users will need to pay a monthly membership fee for access to the Fitness Center. In some cases, Taxpayer will offer membership discounts to certain tenants. Taxpayer will treat any amounts it receives in the form of Fitness Center membership fees as other than rents from real property for the purposes of section 856(d).

Some of the Fitness Centers will be “Staffed Fitness Centers.” Taxpayer will directly engage an independent contractor within the meaning of section 856(d)(3) from whom Taxpayer does not derive or receive any income to operate the Staffed Fitness Centers. Employees of the independent contractor will staff and maintain the Staffed Fitness Centers, supply clean towels, and offer exercise classes and other services to patrons.

Other Fitness Centers will be “Unstaffed Fitness Centers.” Unstaffed Fitness Centers are solely open to a Property’s tenants. Taxpayer will only perform maintenance, cleaning, and security. Taxpayer will engage an independent contractor within the meaning of section 856(d)(3) from whom Taxpayer does not derive or receive any income to provide clean towels, which is the only other service offered at Unstaffed Fitness Centers.

The Listed Services:

Routine Lighting & Electrical Maintenance and Repair in Tenant Space

Taxpayer will provide general lighting to its tenants in tenant space. In connection with the provision of lighting in tenant space, for building safety reasons, Taxpayer's employees will repair or replace light switches and outlets, electrical fuses, and overhead lighting fixtures, including light bulbs and ballasts. Taxpayer represents that Taxpayer's lighting and electrical work in tenant space is only for routine maintenance and repair for building safety reasons and does not involve performing any tenant-specific modifications or upgrades. Taxpayer represents that these services are customarily furnished or arranged for by landlords in connection with the leasing of space in Class A office buildings located in City.

Organic Waste Refrigeration and Containment

Each of the Properties will provide refrigerated storage space to temporarily contain organic waste produced by tenants to prevent waste odors from escaping the waste storage areas. The organic waste refrigeration and containment will be conducted on a building-wide basis and is not intended to benefit any particular tenant; rather, the organic waste refrigeration and containment is intended to benefit the entire building.

Taxpayer represents that any services provided by Taxpayer in connection with the organic waste refrigeration and containment are customarily furnished or arranged for by landlords in connection with the leasing of space in Class A office buildings located in City.

Interior Signs

Digital signs will be built into certain interior walls of one or more of the Properties (the "Interior Signs"). The Interior Signs have various functions. The Interior Signs will at times display Content, which consists of still or moving images designed to enhance the atmosphere of the Property. Content will be produced and controlled by an independent contractor within the meaning of section 856(d)(3) from whom Taxpayer does not derive or receive any income. The Interior Signs will at other times display information about tenant businesses or other attractions located at the Property. Certain tenants may, under the terms of their leases, be granted the right to display their company names and logos on certain of the Interior Signs (e.g., those signs that are located by the main lobby elevator bank that serves their floor(s), or in the passenger elevators that serve their floor(s)). The Interior Signs will be controlled and maintained by an independent contractor within the meaning of section 856(d)(3) from whom Taxpayer does not derive or receive any income. Taxpayer represents that any services provided in connection with the Interior Signs are customarily furnished or

arranged for by landlords in connection with the leasing of space in Class A office buildings located in City.

Software Application

Taxpayer will make available at no charge a software application that is only accessible to tenants of the Properties (the "Software"). The Software will be maintained and operated by an independent contractor within the meaning of section 856(d)(3) from whom Taxpayer does not derive or receive any income. The Software enables tenants to access information about the Properties, tenant information, and health and safety advisories, and also to communicate with building staff. The Software will provide entry access at the Properties for tenants, their employees, and guests through integration with automated entry access points. The access points will be equipped with the ability to read electronic credentials (e.g., QR codes) contained on a cellphone or other device, as well as facial-feature recognition or other biometric capability. Additionally, tenants can order food from certain vendors located at a Property to be delivered to their location (including the common areas of a Property), and if available, reserve and pay for parking spaces and book Fitness Center appointments. Local businesses will be permitted to promote their goods and services on the Software, including by offering promotions and discounts to tenants. Taxpayer, however, will not negotiate, sponsor, or otherwise bear the cost of any promotions or discounts. Taxpayer represents that any services offered by Taxpayer in connection with the Software are customarily furnished or arranged for by landlords in connection with the leasing of space in Class A office buildings located in City.

Third-Party Services:

Bicycle Attendant

During certain times at the Designated Storage Areas, an attendant will be present on site to assist bicycle owners with minor repairs and maintenance of their bicycles (the "Bicycle Attendant"). The Bicycle Attendant will be an independent contractor within the meaning of section 856(d)(3) from whom Taxpayer does not derive or receive any income. The Bicycle Attendant will be compensated directly by its customers. Taxpayer does not receive rent from the Bicycle Attendant, and Taxpayer does not derive any income from the provision of any services by the Bicycle Attendant.

Additional Services at Staffed Fitness Centers

In addition to the services stipulated under their contracts, the independent contractors operating the Staffed Fitness Centers may also offer additional services to patrons (such as personal training or massages) for additional fees that will be paid solely and directly to the independent contractors. Taxpayer will derive no income from the rendering of these additional services by the independent contractors to their customers at Staffed Fitness Centers.

LAW AND 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 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 is deemed to be entitled to the income of the partnership attributable to such share. For purposes of section 856, the interest of a partner in the partnership's assets is determined in accordance with the partner's capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross income of the partnership retain the same character in the hands of the partners as in the hands of the partnership for all purposes of section 856.

Section 856(d)(1) provides that rents from real property include (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 taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

Section 1.856-4(a) defines rents from real property generally as the gross amounts received for the use of, or the right to use, real property of the REIT.

Section 1.856-4(b)(1) provides that, for purposes of sections 856(c)(2) and (3), rents from real property includes charges for services customarily furnished or rendered in connection with the rental of real property, whether or not the charges are separately stated. Services furnished to the tenants of a particular building will be considered as customary if, in the geographic market in which the building is located, tenants in buildings of a similar class (such as luxury apartment buildings) are customarily provided with the service. To qualify as a service customarily furnished, the service must be furnished or rendered to the tenants of the REIT or, primarily for the convenience or benefit of the tenants, to the guests, customers, or subtenants of the tenants.

Section 856(d)(2)(C) provides that any ITSI is excluded from rents from real property. Section 856(d)(7)(A) defines ITSI to mean, with respect to any real or personal property, any amount received or accrued directly or indirectly by the REIT for

services furnished or rendered by the REIT to the tenants of the property, or for managing or operating such property.

Section 856(d)(7)(C) provides certain exceptions from ITSI. Section 856(d)(7)(C)(i) provides that for purposes of section 856(d)(7)(A), services furnished or rendered, or management or operation provided, through an independent contractor from whom the REIT does not derive or receive any income, or through a TRS of the REIT shall not be treated as furnished, rendered, or provided by the REIT.

Section 856(d)(7)(C)(ii) provides that ITSI does not include any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

Section 512(b)(3) provides, in part, that there shall be excluded from the computation of unrelated business taxable income all rents from real property and all rents from personal property leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

Section 1.512(b)-1(c)(5) provides that payments for the use or occupancy of rooms and other space where services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses, or apartment houses furnishing hotel services, or in tourist camps or tourist homes, motor courts or motels, or for the use or occupancy of space in parking lots, warehouses, or storage garages, do not constitute rents from real property. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The supplying of maid service, for example, constitutes such service; whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways, and lobbies, and the collection of trash are not considered as services rendered to the occupant.

Rev. Rul. 2004-24, 2004-1 C.B. 550, identifies circumstances in which a REIT's income from providing parking facilities at its rental real properties qualifies as rents from real property under section 856(d). In Situation 1, the REIT provides unattended parking lots for the use of the tenants of its buildings and their guests, customers, and subtenants. Each parking facility is located in or adjacent to a building occupied by tenants of the REIT and is appropriate in size for the number of tenants and their guests, customers, and subtenants who are expected to use the facility. The parking facilities do not have parking attendants. The REIT maintains, repairs, and lights the parking facilities as well as performs certain fiduciary functions, such as dealing with taxes and insurance, as permitted by section 1.856–4(b)(5)(ii). In Situation 2, the facts are the same as in Situation 1 except that at some of the REIT’s parking facilities, parking spaces are reserved for use by particular tenants. The REIT assigns and marks the reserved spaces in connection with leasing space in the buildings to the tenants,

and any recurring functions unique to the reserved spaces (such as enforcement) are provided by an independent contractor from whom the REIT does not derive or receive any income. In Situation 3, the facts are the same as in Situations 1 and 2 except that some of the parking facilities are available for use by the general public and have parking attendants. An independent contractor from whom the REIT does not derive or receive any income manages and operates the parking facilities under a management contract with the REIT whereby the independent contractor remits the parking fees from those using the parking facilities to the REIT and receives arm's-length compensation. The independent contractor employs all the individuals who manage and operate the parking facilities, including the parking attendants and is directly responsible for providing all salary, wages, benefits, administration, and supervision of its employees. In addition to collecting parking fees from those using the parking facilities, the parking attendants may park cars, without charging a separate fee, and may provide minor, incidental, and emergency services at a parking facility.

Rev. Rul. 2004-24 quotes from the conference report underlying the 1986 revision of section 856(d) ("the 1986 Conference Report").[1] The 1986 Conference Report provides guidance on services performed directly by REITs, as well as services performed through an independent contractor. The 1986 Conference Report provides, in part:

> The conferees intend, for example, that a REIT may provide customary services in connection with the operation of parking facilities for the convenience of tenants of an office or apartment building, or shopping center, provided that the parking facilities are made available on an unreserved basis without charge to the tenants and their guests or customers. On the other hand, the conferees intend that income derived from the rental of parking spaces on a reserved basis to tenants, or income derived from the rental of parking spaces to the general public, would not be considered to be rents from real property unless all services are performed by an independent contractor. Nevertheless, the conferees intend that the income from the rental of parking facilities properly would be considered rents from real property (and not merely income from services) in such circumstances if services are performed by an independent contractor.

Rev. Rul. 2004-24 holds that amounts received by the REIT for furnishing unattended parking facilities, under the circumstances described in Situations 1 and 2, and for furnishing attended parking facilities, under the circumstances described in Situation 3, qualify as rents from real property under section 856(d).

The Tax Relief Extension Act of 1999 established the TRS and amended section 856(d)(7)(C) to provide that either an independent contractor within the meaning of

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[1] 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-220 (1986), 1986-3 (Vol. 4) C.B. 220.

section 856(d)(3) from whom the REIT does not derive or receive any income or a TRS could be used to provide services to tenants without causing amounts received for the services to be treated as ITSI.[2]

Parking Facilities

The size, use, management, and operation of the Parking Facilities are comparable to those of the parking facilities described in Situation 3 of Rev. Rul. 2004-24. Moreover, the use by Taxpayer of TRSs to operate the Parking Facilities instead of independent contractors does not change the analysis. Accordingly, Taxpayer's proportionate share of the parking revenues derived from the Parking Facilities under the circumstances described above, will be treated as rents from real property under section 856(d).

Designated Storage Areas

The Designated Storage Areas are common areas available for use by all tenants of a Property for no additional charge. In determining whether a taxpayer has income that is ITSI, only the income that is attributable to a provision of a service is analyzed. The Designated Storage Areas are themselves not services. Accordingly, income that is attributable to making the Designated Storage Areas available to all tenants of the Properties for no additional charge is not income from the provision of a service and, therefore, is not ITSI.

Fitness Centers

Like the Designated Storage Areas, the Fitness Centers available for use by all tenants at no additional charge are common areas and, therefore, are not services. Income that is purely attributable to making Fitness Centers available to all tenants of the Properties at no additional charge is not income from the provision of a service and, therefore, is not ITSI. Taxpayer represents that income from Fitness Centers requiring membership fees to use the facilities will not be treated as rents from real property.

Unstaffed Fitness Centers are available to all tenants at no additional cost and, thus, are common areas of the building. Taxpayer has represented that it provides maintenance, cleaning, and security in the Unstaffed Fitness Centers. The portion of the rents from the Properties that is attributable to these services provided by Taxpayer in the Unstaffed Fitness Centers is income that would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2). Pursuant to section 856(d)(7)(C)(ii), the income from these services will not be treated as ITSI.

[2] Pub. L. 106-170, sections 542 and 543.

All services performed at Staffed Fitness Centers and the towel service provided at Unstaffed Fitness Centers will be provided by independent contractors within the meaning of section 856(d)(3) from whom Taxpayer does not derive or receive any income. Section 856(d)(7)(C)(i) provides, in part, that services furnished, or operation provided through an independent contractor within the meaning of section 856(d)(3) from whom the REIT does not derive or receive any income shall not be treated as provided by the REIT. Accordingly, any portion of the rents from the Properties attributable to services provided by independent contractors at the Fitness Centers under the circumstances described above will not be treated as ITSI.

The Listed Services

Taxpayer represents that the routine lighting and electrical maintenance and repair in tenant space, organic waste refrigeration and containment, interior signs, and the software application are services customarily provided to tenants of Class A office buildings located in City. Taxpayer further represents that these services are provided to all tenants and are not personal services rendered to any particular tenant.

The portion of the rents from the Properties that is attributable to the routine lighting and electrical maintenance and repair in tenant space and the organic waste refrigeration and containment is income that would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2). Pursuant to section 856(d)(7)(C)(ii), this income from these services will not be treated as ITSI.

The development of the Content displayed on the Interior Signs, as well as the control and maintenance of the Interior Signs, will be performed by an independent contractor within the meaning of section 856(d)(3) from whom Taxpayer does not derive or receive any income. Similarly, the development, maintenance, and operation of the software application will be performed by an independent contractor within the meaning of section 856(d)(3) from whom Taxpayer does not derive or receive any income. Pursuant to section 856(d)(7)(C)(i), any portion of the rents from the Properties attributable to these services provided by independent contractors under the circumstances described above will not be treated as ITSI.

For the reasons set forth above, any portion of the rents from the Properties attributable to the provision of the Listed Services will not be treated as ITSI.

Third-Party Services

All fees for Third-Party Services are separately billed to customers and paid by those customers directly to the providers of the Third-Party Services, which are independent contractors within the meaning of section 856(d)(3) from whom Taxpayer does not derive or receive any income. Taxpayer bears none of the direct costs of providing the Third-Party Services and derives no income from the provision of the

Third-Party Services. Thus, availability of the Third-Party Services will not result in ITSI to Taxpayer.

CONCLUSIONS

Based on the information submitted and representations made, we conclude the following:

(1) Taxpayer's proportionate share, within the meaning of section 1.856-3(g), of the parking revenues derived from the Parking Facilities under the circumstances described above, will be treated as rents from real property under section 856(d).

(2) Taxpayer's provision of the Designated Storage Areas and the Fitness Centers, as well as the services provided therein, as described above, will not result in ITSI, and thus will not cause otherwise qualifying amounts received by Taxpayer to be excluded from rents from real property under section 856(d) by operation of section 856(d)(2)(C).

(3) Taxpayer's provision of the Listed Services, as described above, will not result in ITSI, and thus will not cause otherwise qualifying amounts received by Taxpayer to be treated as other than rents from real property under section 856(d) by operation of section 856(d)(2)(C).

(4) The availability of the Third-Party Services to tenants of the Properties will not cause otherwise qualifying amounts received by Taxpayer to be treated as other than rents from real property under section 856(d).

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, we express no opinion regarding whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of chapter 1 of the Code. Additionally, no opinion is expressed regarding whether any services are customarily provided to tenants of similar properties in the same geographic market. Moreover, with the exception of parking fees derived from the Parking Facilities, we are not ruling on the treatment of income that Taxpayer receives from the Properties.

Furthermore, the rulings herein related to whether any portion of the rents from the Properties attributable to services performed by Taxpayer is ITSI are specifically limited to REIT qualification purposes. The definition of rents from real property under section 856(d) differs in scope and structure from the definition of rents from real property under section 512(b)(3), which applies to exempt organizations described in section 511(a)(2). Therefore, an exempt organization providing the same service may have unrelated business taxable income because the income may not be excluded under section 512(b)(3) as rents from real property.

The ruling contained in this letter is based upon information submitted and representations made by Taxpayer, and accompanied by penalties of perjury statements executed by the appropriate parties. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

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.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

_____

Jason D. Kristall
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:
Copy for section 6110 purposes

cc: