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Person To Contact: _____, ID No.

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Date:
March 10, 2026

LEGEND:

Taxpayer =

State =

Date =

Dear

This is in reply to a letter dated July 22, 2019, and supplemental correspondence, in which Taxpayer requests rulings under § 856 of the Internal Revenue Code (the "Code"). Specifically, Taxpayer requests the following rulings¹:

- (1) The portion of each Loan from Taxpayer to a JV (including any accrued interest thereon), commensurate with Taxpayer's capital interest in that JV, is excluded from Taxpayer's assets for purposes of § 856(c)(4)(A) and (B)(i) through (iv)(II); and
- (2) Taxpayer's proportionate share of each Loan (including any accrued interest thereon) that a JV lends to Taxpayer, commensurate with Taxpayer's interest in that JV, is excluded from Taxpayer's assets for purposes of § 856(c)(4).

¹ This letter does not address the treatment of any Loan from Taxpayer to a JV for purposes of § 856(c)(4)(B)(iv)(III) because § 856(m) provides comprehensive rules for calculating the portion of each Loan not treated as a security for such purposes.

FACTS

Taxpayer, a State corporation, represents that it made an election to be treated as a real estate investment trust ("REIT") effective beginning the taxable year ended Date. Taxpayer owns multi-tenanted communications towers and other communications real estate. Taxpayer, together with taxable REIT subsidiaries of Taxpayer within the meaning of § 856(l) ("TRSs") (collectively, the "Group"), is primarily in the business of leasing space on and at communications sites to tenants in a number of different industries. Taxpayer represents that the communications sites are primarily comprised of real property or interests in real property within the meaning of § 1.856-10 of the Income Tax Regulations (the "Regulations"). The Group owns and leases communications sites both in the United States and internationally.

In the ordinary course of its business, and together with partners ranging from third parties to its TRSs (each such partner, a "Partner"), Taxpayer forms joint ventures treated as partnerships for federal income tax purposes (the "JVs"). Taxpayer and one or more Partners each own a percentage interest in each JV. Taxpayer represents that each Partner is a separate taxpayer from Taxpayer. Taxpayer from time to time lends or borrows funds to or from the JVs generally for the purpose of financing communications sites (the "Loans"). Each Loan is represented by a note that commemorates and records the transaction and Taxpayer represents that each Loan is indebtedness for federal income tax purposes. The Loans arise from capital financing transactions and not from operational activities. Taxpayer represents that the Loans generally are not receivables as defined in § 1.856-2(d)(1)(iii).

With regard to a Loan made by Taxpayer to a JV, Taxpayer will have a note from the JV for the entire amount of the Loan. Due to Taxpayer's interest in the JV and to the extent provided in § 856(m)(4)(A), a portion of the debt obligation is not treated as a security for purposes of § 856(c)(4)(B)(iv)(III). With regard to a Loan made by a JV to Taxpayer, the JV will have a note from Taxpayer for the entire amount of the Loan and Taxpayer will have the obligation to repay the Loan. However, pursuant to § 856(m)(3)(A)(ii) for purposes of § 856(c)(4)(B)(iv)(III) and pursuant to § 1.856-3(g), Taxpayer is also treated as owning a proportionate share of the note in accordance with Taxpayer's interest in the JV.

LAW AND ANALYSIS

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

Section 856(c)(3) provides that at least 75 percent of a REIT's gross income must be derived from real property interests including rents from real property and interest on obligations secured by mortgages on real property or on interests in real property.

Section 856(c)(4)(A) provides that, at the close of each quarter of the taxable year, at least 75 percent of the value of a REIT's total assets must be represented by real estate assets, cash and cash items (including receivables), and Government securities.

Section 856(c)(4)(B)(i)-(iii) provides that, at the close of each quarter of the taxable year – (i) not more than 25 percent of the value of a REIT's total assets may be represented by securities other than those includable under § 856(c)(4)(A); (ii) not more than 20 percent of the value of a REIT's total assets may be represented by securities of one or more TRSs; and (iii) not more than 25 percent of the value of a REIT's total assets may be represented by nonqualified publicly offered REIT debt instruments.

Section 856(c)(4)(B)(iv) provides that, at the close of each calendar quarter of the taxable year and except with respect to a TRS and securities includable under § 856(c)(4)(A) – (I) not more than 5 percent of the value of a REIT's total assets is represented by the securities of any one issuer; (II) a REIT may not hold securities possessing more than 10 percent of the total voting power of the outstanding securities of any one issuer; and (III) a REIT may not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any one issuer.

Section 856(m)(3)(A) provides that, for purposes of applying § 856(c)(4)(B)(iv)(III) – (i) a REIT's interest as a partner in a partnership (as defined in § 7701(a)(2)) shall not be considered a security and (ii) the REIT shall be deemed to own its proportionate share of each of the assets of the partnership.

Section 856(m)(3)(B) provides that, for purposes of § 856(m)(3)(A) – (i) the REIT's interest in the partnership assets shall be the REIT's proportionate interest in any securities issued by the partnership (determined without regard to § 856(m)(3)(A)(i) and (m)(4)), but not including securities described in § 856(m)(1); and (ii) the value of any debt instrument shall be the adjusted issue price thereof, as defined in § 1272(a)(4).

Section 856(m)(4) provides that, for purposes of applying § 856(c)(4)(B)(iv)(III) – (A) any debt instrument issued by a partnership and not described in § 856(m)(1) shall be not considered a security to the extent of the REIT's interest as a partner in the partnership; and (B) any debt instrument issued by a partnership and not described in § 856(m)(1) shall not be considered a security if at least 75 percent of the partnership's gross income (excluding gross income from prohibited transactions) is derived from sources referred to in § 856(c)(3).

Section 1.856-2(d)(3) provides in relevant part that the "total assets" of a REIT means the gross assets of a REIT determined in accordance with generally accepted accounting principles (GAAP).

Section 1.856-3(g) provides that, in the case of a REIT which is a partner in a partnership, as defined in § 7701(a)(2) and the regulations thereunder, the REIT will be

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. For purposes of § 856, the interest of a partner in the partnership's assets shall be 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 shall retain the same character in the hands of the partners for all purposes of § 856. Thus, for example, if the REIT owns a 30 percent capital interest in a partnership which owns a piece of rental property, the REIT will be treated as owning 30 percent of such property and as being entitled to 30 percent of the rent derived from the property by the partnership.

Ruling 1: Loans to JVs Attributable to Taxpayer's Capital Interests

Taxpayer is required to account for its proportionate share of the assets and income of each JV based on its capital interest in each JV pursuant to § 1.856-3(g). Accordingly, Taxpayer is deemed to own a share of the income and assets of each JV in accordance with its interest in the JV. That share already reflects, in part, the assets financed by each JV with the Loans, and the income used by each JV to repay the Loans. Thus, an equivalent portion of each Loan and the accrued interest thereon will not be treated as separate assets but will be disregarded for purposes of § 856(c).

Ruling 2: Loans from JVs Attributable to Taxpayer's Capital Interests

In this case, it is appropriate to view § 1.856-3(g) as effectively treating Taxpayer as directly engaging in the activities engaged in by each JV to the extent of Taxpayer's capital interest in the JV for purposes of § 856. Pursuant to § 1.856-3(g), a Loan from a JV to Taxpayer is treated as held in part by Taxpayer. Thus, in this case, a Loan from a JV to Taxpayer can be viewed, in part, as a lending transaction between Taxpayer and itself. Accordingly, the portion of a Loan from a JV to Taxpayer that is deemed held by Taxpayer under § 1.856-3(g), including any accrued interest thereon, is excluded from Taxpayer's assets for purposes of § 856(c)(4).

CONCLUSIONS

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

- (1) The portion of each Loan from Taxpayer to a JV (including any accrued interest thereon), commensurate with Taxpayer's capital interest in that JV, is excluded from Taxpayer's assets for purposes of § 856(c)(4)(A) and (B)(i) through (iv)(II); and
- (2) Taxpayer's proportionate share of each Loan (including any accrued interest thereon) that a JV lends to Taxpayer, commensurate with Taxpayer's interest in that JV, is excluded from Taxpayer's assets for purposes of § 856(c)(4).

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, we do not rule whether Taxpayer qualifies as a REIT under Part II of Subchapter M of Chapter 1 of the Code. Furthermore, except as provided herein, we do not rule on any of the tax consequences or aspects of any of the Loans.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by 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.

These rulings are directed only to the taxpayer that requested them. Section 6110(k)(3) provides that these rulings may not be used or cited as precedent.

In accordance with the provisions of a Power of Attorney on file, we are sending a copy of this ruling letter to your authorized representatives.

Sincerely,

Andrea M. Hoffenson
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions and Products)

cc: