Internal Revenue Service

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Date:
September 29, 2000

LEGEND

Company	=
Operating Partnership	=
Management Company	=
Subsidiary Corporation	=
State A	=
State B	=
a	=
b	=
c	=

This letter is in response to a letter dated March 24, 2000, and subsequent correspondence, submitted on behalf of the Company requesting various rulings relating to the Company's status as a real estate investment trust ("REIT") under section 856 of the Internal Revenue Code.

The Company is a publicly held State A corporation. The Company is a calendar year taxpayer that has elected to be treated as a REIT under section 856. The Company conducts all of its operations through Operating Partnership, a State B limited partnership. The Operating Partnership owns or has an interest in a portfolio of a multifamily properties (the "Properties") located throughout the United States.

A. GENERAL SERVICES

1. FACTS

Company represents that all of the services described below provided by the Company or the Operating Partnership are customarily provided to tenants of multifamily residential properties in the relevant geographic areas in which the Properties are located.

Administration

The Company performs administrative functions with respect to the Properties that include marketing space in its Properties to prospective tenants, soliciting and processing tenant applications, and directly negotiating tenant leases. The Company

also performs administrative and accounting functions such as billing, bookkeeping, lease tracking functions, and the collecting and depositing of rents and other receipts.

Maintenance

The Company performs various repair and maintenance activities with respect to the Properties involving equipment, fixtures, systems, and appliances. The Company maintains and repairs the ceilings, walls, doors, floors and floor coverings, cabinets, hallways, stairs, building exteriors, and the common areas. Common area maintenance includes providing pest control, landscaping, and snow removal services. Tenants generally are responsible for bringing their trash to designated spaces at the Property, with the Company being responsible for disposing of the trash from these collection points.

Between leases, the Company may clean, repair, repaint, re-carpet, and redecorate apartments to put them in condition for leasing. These activities may include supplying drapes, mini-blinds, floor coverings, mirrors, cabinets and light fixtures. These activities are performed in accordance with general standards established by the Company, rather than to any tenant's specifications.

Laundry machines, vending machines and public telephones

At certain Properties, individual apartments are provided with washers and dryers. These machines are maintained by the Company as part of the lease arrangement with the tenant, and the Company receives an increased amount of rent for apartments containing such machines. At other Properties, coin operated laundry machines are available to tenants in common areas. The Company may provide these machines itself, or contract with third parties to maintain the machines in exchange for fees. The fees may be determined on either a fixed or percentage of gross revenue basis.

At many Properties, the Company leases space to third party operators to provide vending machines and public telephones in exchange for rental fees. The rents either will be a flat fee or fee based on a percentage of the gross revenues generated by the vending machines and public telephones in place at a particular Property. The third party operators will own and maintain the machines.

Utilities

The Company provides water, electric, sewer, and gas utility services to tenants. In some instances, amounts for the utilities are included in the tenants rent. In other instances, utility charges are separately metered and/or sub-metered for individual tenants. Those tenants either pay the applicable utility company directly, or pay the Company the metered amount. In some cases the metered amount will exceed the amount that the Company is required to pay the utility company, and the Company will retain this difference.

Telecommunication Services

The Company intends to enter into one or more arrangements to provide a range of telecommunications services to the tenants at its various Properties either through agreements with providers of telecommunications services, through joint ventures with providers of telecommunications services, or by providing such services directly. Pursuant to arrangements with telecommunications service providers, the Company would give the providers access to the Company's tenants and the Company would market the providers' services to tenants in exchange for a flat fee or a fee based on a percentage of the gross revenues generated by the provider from the Company's tenants. Joint ventures would be structured in a substantially similar manner.

Under the Company's plan to provide telecommunications services, tenants will have available a range of capabilities including local and long distance telephone service, cable television service (and premium channels), high-speed data capability, Internet access services, the ability to host individual web sites, multiple e-mail boxes, and the opportunity to create direct connections to the residences' places of employment. To assist in providing high quality access to these services, the Company intends to equip certain of its Properties with high-speed data and phone lines. At certain Properties, the Company may wire the tenant's units for home theater surround sound. Such units would be wired in a standard fashion and no unit would be wired to an individual tenant's specifications.

In particular, the Company is entering into agreements with Subsidiary Corporation for the purpose of providing telecommunication services to the Company's tenants. The Company will contribute cash and access rights to certain of its Properties to Subsidiary Corporation, which will install the equipment necessary to provide telecommunications services to the Company's tenants. In consideration for the cash and rights to provide the telecommunications services, Subsidiary Corporation will issue shares of voting and non-voting stock to the Company and pay to the Company an ongoing license fee equal to b% of the revenues derived by the Subsidiary Corporation from the Company's Properties for the telecommunications services. The stock issued by the Subsidiary Corporation to the Company will have a value that exceeds the cash paid by the Company, and the Company will treat the amount equal to that excess as income, with the income to be recognized in accordance with applicable tax principles.

The Subsidiary Corporation will provide the Company's tenants with telecommunication services including "always on" high-speed connectivity to the Internet; private local and wide area networks with bandwidth sufficient to quickly send and receive a wide array of data, video, and telephony related products; web-enabled property and financial management software linking the Company's employees with corporate headquarters; comprehensive network and customer support; multi-channel video services; and traditional web-hosting services.

The Company represents that the telecommunications services that will be provided to tenants under these arrangements are customarily provided to residents of

similar classes of apartments located in the same geographic region in which the Properties are located. The Company further represents that no telecommunications provider will offer services to tenants of the Company that it does not offer to at least some other residential customers who are not tenants of the Company and that the actual telecommunications services provided to tenants will not be customized to fit the specific needs of a particular tenant.

Miscellaneous Services

Many of the Properties have party rooms that tenants can use in exchange for a nominal clean-up fee. The Company does not provide catering or any similar services to tenants who use the party room. In addition, certain Properties may hold holiday parties or other similar periodic social events. At certain Properties, the Company may occasionally provide complimentary continental breakfast at a central location in the building. These breakfasts are not held on any regularly scheduled basis and are not an amenity held out to tenants as a benefit of becoming a resident at the Property.

2. ANALYSIS AND CONCLUSIONS

Section 856(c)(2) requires at least 95% of a REIT's gross income to be derived from passive sources, including dividends, interest, rents from real property and certain other items.

Section 856(c)(3) requires at least 75% of a REIT's gross income to 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(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 both the real and personal property leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15 percent of the total rent for the year attributable to both the real and personal property leased under, or in connection with, such lease.

Section 1.856-4(b)(1) of the Income Tax Regulations provides that services provided to tenants of a particular building will be considered customary if, in the geographic market in which the building is located, tenants in buildings which are of a similar class are customarily provided with the service. Such services include the furnishing of water, heat, light, air conditioning and telephone answering services. Where it is customary in a particular geographic marketing area to furnish electricity or other utilities to tenants in buildings of a particular class, the submetering of such utilities to tenants in such buildings will be considered a customary service.

Section 856(d)(2)(C) excludes from the definition of "rents from real property"' any impermissible tenant service income as defined in section 856(d)(7). Section

856(d)(7)(A) provides, in relevant part, that the term impermissible tenant service income means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the real estate investment trust for managing or operating such property.

Section 856(d)(7)(C) excludes from the definition of impermissible tenant service income amounts received for services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income. Similarly, subparagraph (C) excludes amounts 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).

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 rent from real property. Generally, services are considered rendered to the occupant if they are primarily for the tenant's 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. Payments for the use or occupancy of entire private residences or living quarters in duplex or multiple housing units or offices in an office building are generally treated as rent from real property.

The Report of the Conference Committee on the Tax Reform Act of 1986, H.R.Rep. No. 99-841, 99th Cong., 2d Sess. 1 (1986), 1986-3 (Vol. 4) C.B. 1, 220, in discussing section 856(d)(2)(C), provides that:

> The conferees wish to make certain clarifications regarding those services that a REIT may provide under the conference agreement without using an independent contractor, which services would not cause the rents derived from the property in connection with which the services were rendered to fail to qualify as rents from real property (within the meaning of section 856(d). 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 to be rents from real property (and not merely income from services) in such circumstances if services are performed by an independent contractor.

The Company represents that the activities described above are customary services in similar multifamily properties in the relevant geographic markets in which the Properties are located within the meaning of section 856(d)(1)(B). These services will be those ordinarily rendered in connection with the rental of a unit in a multifamily property for occupancy only and will not be considered rendered primarily for the convenience of the tenants of the Properties under section 1.512-1(c)(5) for purposes of section 856(d)(7). As a result, the services are not treated as generating impermissible service income and will not prevent amounts received from the Properties from qualifying as "rents from real property" under section 856(d)(1).

Based on the facts as represented by the Company, we conclude that the activities described above will not cause the Company's share of income from the Properties to be excluded from "rents from real property" as defined in section 856(d). Further, income earned by Company from utility services, telecommunications services (including any taxable income attributable to the receipt of Subsidiary Corporation stock in excess of the Company 's cash investment, as well as the ongoing licensee fees received from Subsidiary Corporation), and laundry machines, vending machines and public telephones will constitute "rents from real property" under section 856(d).

B. SEPARATE LINE OF BUSINESS

1. FACTS

At one Property there is an adjacent public golf course that is open to tenants and non-tenants. The golf course is owned by Management Company, a taxable C corporation in which the Company owns a c% economic interest. The golf course has its own staff and equipment, but also shares employees and equipment with Company employees that work at the Property, if separate employees would result in the impracticable duplication of services.

The golf course is operated and accounted for separately from the rental operations of the Property and is an independent separate business. The golf course keeps its own books and records and income from the golf course is kept separately from the rents derived by the Company from the Property. Further, no discounts are offered to tenants, no special tee times are available to tenants, and the golf course is used more by the public than by tenants.

2. ANALYSIS AND CONCLUSIONS

The golf course should not be treated as a service rendered to the tenants of the Property since the facility is not made available in connection with the rental of the units located in the Property. The golf course is owned and operated by Management Company and its operation is independent from that of the Property. Tenants will be

given no preferences or discounts in using the golf course, and the golf course will be completely accessible to the general public. The golf course is a separate cost and profit center operated independently with largely its own employees and equipment. Accordingly, the golf course constitutes a separate and independent business and will not cause rental income of Company derived from tenants of the Property to be treated as other than “rents from real property” under section 856(d).

Based on the facts as represented by Company, we conclude that the management and operation of the golf course by Management Company will not cause the Company’s share of income that otherwise qualifies as rents from real property to be excluded by reason of section 856(d)(2)(C).

C. ACTIVITIES PERFORMED BY A TAXABLE REIT SUBSIDIARY

1. FACTS

Effective January 1, 2001 the Company will form a taxable REIT subsidiary pursuant to section 856(l) of the Code (“TRS”). The Company will either contribute to the TRS for no consideration or sell to the TRS for nominal consideration the rights to market the Company’s tenant base to third party product and service providers. These rights would include the ability to refer the Company’s tenants to third party providers, negotiate discounts for the Company’s tenants from third party providers, and furnish marketing information to the Company’s tenants regarding third party providers including, for example, identifying the providers as “preferred providers”. As a result, the TRS will enter into agreements with third party providers, receive any referral fees, program access fees, or other amounts from those providers, and include all such fees into its income. In the case of third party providers offering discounts to the Company’s tenants, the Company would pay the TRS a fee for negotiating discounts for its tenants equal to 150% of the TRS’s direct cost of obtaining those discounts, reduced by any compensation received by the TRS from the providers in connection with their inclusion in the discount program.

2. ANALYSIS AND CONCLUSIONS

Section 856(d)(2)(C) excludes from the definition of "rents from real property"' any impermissible tenant service income as defined in section 856(d)(7). Section 856(d)(7)(A) provides, in relevant part, that the term impermissible tenant service income means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the real estate investment trust for services rendered by the trust to the tenants of such property. Effective for taxable years beginning after December 31, 2000, section 856(d)(7)(C) 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 receive any income or through a taxable REIT subsidiary of such trust shall not be treated as furnished, rendered, or provided by the trust.

Effective January 1, 2001, the TRS will be treated as a taxable REIT subsidiary. The activities performed by the TRS or third party providers in connection with the agreements discussed above will not be treated as being rendered by the Company to the tenants within the meaning of section 856(d)(7)(A). In addition, the Company will not be treated as having directly or indirectly received any amount for services furnished by the Company as a result of the TRS's receipt of fees from third party providers. Accordingly, these activities will not generate any impermissible tenant service income for the Company.

Based on the facts as represented by the Company, we conclude that the agreements between the Company and the TRS, and the TRS and the third party providers, will not cause the Company's share of income that otherwise qualifies as rents from real property to be excluded by reason of section 856(d)(2)(C).

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. No opinion is expressed concerning whether the Company will otherwise qualify as a REIT under section 856 following the reorganization discussed above.

Additionally, no opinion is expressed whether the Company satisfies the ownership requirements of section 856(c)(4)(B) with respect to Management Company or Subsidiary Corporation.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code 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 the taxpayer.

Sincerely,
Acting Associate Chief Counsel
Financial Institutions & Products
By: William E. Coppersmith
Chief, Branch 2