

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:1 - PLR-151867-03

Date:

September 15, 2003

Legend:

Taxpayer =

LLC =

Company A =

Company B =

Company C =

Parent =

Sub 1 =

Sub 2 =

Merger Co. =

State R =

M =

N =

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Date 1 =
 Date 2 =
 Date 3 =
 Year A =
 Year B =
 \$a =
 \$b =
 \$c =
 y% =
 z% =
 Class 1 Common Stock =
 Class 2 Common Stock =
 Class 3 Common Stock =
 Class 4 Common Stock =

Dear _____ :

This letter responds to your authorized representative's letter dated September 3, 2003, requesting rulings concerning the proper charge to earnings and profits resulting from a redemption distribution under § 302(b) of the Internal Revenue Code. The material information submitted for consideration is summarized below.

SUMMARY OF FACTS

Taxpayer is a State R corporation that has elected to be treated as a real estate investment trust ("REIT") within the meaning of § 856. Taxpayer elected REIT status for its first taxable year beginning on Date 1 of Year A. Taxpayer operates on a calendar-year basis and uses the accrual method of accounting. Taxpayer is engaged indirectly in the business of rental commercial real estate. Its various properties, located nationwide, are owned and managed directly and indirectly by lower-tier partnerships.

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Taxpayer is owned by LLC, a State R limited liability company taxable as a partnership, and by M other individuals. Member interests in LLC are owned by affiliates of Company A, Company B, and Company C. Company A, Company B, and Company C are collectively referred to as the "Purchasers." It is anticipated that Company C will purchase, directly or indirectly, the member interests in LLC held by the affiliates of Purchasers.

Previously, Taxpayer was owned by Sub 1, Sub 2, and N other individuals (collectively, the "Former Shareholders"). Sub 1 and Sub 2 are owned by Parent, a publicly-traded corporation.

In connection with a larger transaction in which Parent sold all of its other assets to the Purchasers, Taxpayer originally intended to sell all of its assets, subject to liabilities, for cash and to distribute the proceeds to the Former Shareholders in one liquidating distribution. Certain assets consisting of partnership interests (the "Retained Assets") could not be sold as of the proposed closing date due to third-party transfer restrictions. Because the Purchasers were unable to resolve these third-party transfer restrictions prior to closing, the acquisition with respect to Taxpayer was structured as follows:

- (i) LLC formed Merger Co. and, on Date 2 of Year B, paid \$a as a subscription for all of Merger Co.'s common shares.
- (ii) On Date 2 of Year B, the Board of Directors of Taxpayer adopted a 24-month plan of liquidation.
- (iii) Following the adoption of the plan of liquidation, Taxpayer in Year B sold approximately y% of its assets, subject to liabilities, to affiliates of the Purchasers for cash, with each such asset being transferred by deed or assignment to a designated affiliate of one of the Purchasers (the "Asset Sale"). A portion of the proceeds received from the Asset Sale was used to repay corporate debt.
- (iv) Effective Date 3 of Year B, Merger Co. merged into Taxpayer pursuant to the laws of State R, with Taxpayer surviving (the "Merger"). Immediately prior to the Merger, the Former Shareholders held all of the outstanding stock of Taxpayer, which consisted of three classes: Class 1 Common Stock, Class 2 Common Stock, and Class 3 Common Stock. At this time, Taxpayer held, in addition to the Retained Assets, \$c of cash as a result of operations through Date 3 of Year B and the Asset Sale. Pursuant to the Merger, Merger Co.'s shares were automatically converted into one share of Taxpayer's newly issued Class 4 Common Stock, Taxpayer's Former Shareholders received the right to \$b (which is equal to \$a plus \$c) in exchange for their Taxpayer stock, and the shares of each class of stock held by the Former Shareholders were cancelled. Taxpayer will

report the transaction for federal income tax purposes as a complete termination of the interests of the Former Shareholders under § 302(b)(3) (see Rev. Rul. 79-273, 1979-2 C.B. 125). Accordingly, of the total \$b transferred to the Former Shareholders in exchange for their Taxpayer stock, \$c will be treated as a distribution in payment in exchange for some of the Former Shareholders' Taxpayer stock under § 302(a) (the "Redemption"), and \$a will be treated as a purchase by Purchasers of the remaining Taxpayer stock from the Former Shareholders (the "Stock Purchase").

Subsequent to Date 3 of Year B, Taxpayer determined that it may not be able to resolve the third-party transfer restrictions on the Retained Assets prior to the lapse of the 24-month liquidation period. Taxpayer thus proposes to abandon its plan of liquidation and requests a ruling concerning its proposed methodology for computing the amount of earnings and profits (for purposes of the dividends paid deduction under § 857(b)(2)(B)) attributable to a non-liquidating redemption of all the Former Shareholders under § 302(a).

REPRESENTATIONS

The following representations have been made in connection with the proposed transaction:

- (a) The Redemption, together with the Stock Purchase, was consummated pursuant to an integrated plan that completely terminated the interests of the Former Shareholders within the meaning of § 302(b)(3).
- (b) The Redemption is an isolated transaction; no prior distributions have been treated as redemptions since Taxpayer's inception.
- (c) Taxpayer is able to calculate its current earnings and profits to the date of the redemption distribution with reasonable certainty.
- (d) Taxpayer will have positive earnings and profits for Taxable Year B following the Redemption.
- (e) Taxpayer paid no ordinary dividend distributions during its Year B taxable year, and will pay no "throwback" dividend distributions under § 858 that are treated as paid with respect to Taxpayer's Year B taxable year.
- (f) Upon abandonment of the plan of liquidation, Taxpayer intends to retain substantial assets in order to continue operating a trade or business as a REIT, and Taxpayer has no plan or intention to liquidate completely for a

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period of three years from Date 3.

RULINGS

Based solely on the information submitted and the representations as set forth above, we hold as follows:

- (1) Taxpayer will be permitted to discontinue its plan of liquidation.
- (2) In computing its Year B dividends paid deduction under § 857(b)(2)(B) (as defined in § 561 and § 562(b)(1)(A)) for purposes of § 857(a) and (b), upon abandonment of the plan of liquidation, Taxpayer will be permitted to determine the proper charge to its earnings and profits resulting from the § 302(a) redemption based on actual earnings and profits as of the date of the redemption distribution, such proper charge being determined in an amount which is not in excess of the ratable share (within the meaning of § 312(n)(7)) of such earnings and profits attributable to the Former Shareholders' redeemed stock. For this purpose, the "ratable share" is the ratio of the value of the shares treated as redeemed over the total value of all the Taxpayer's shares outstanding immediately prior to the transactions in step (iv) described above (in this case, \$c over \$b, or approximately z%). Earnings and profits are thus reduced by an amount equal to z% of the actual earnings and profits as of the date of the § 302(a) redemption.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the proposed transaction under any other provision of the Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction. We specifically express no opinion regarding whether Taxpayer qualifies as a REIT.

The rulings contained in this letter are predicated on the facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the factual information, representations, and other data may be required as part of the audit process.

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.

A copy of this letter should be attached to the federal income tax returns of the taxpayers involved for the taxable year in which the transaction covered by this ruling

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letter is consummated.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Michael J. Wilder
Senior Technician Reviewer, Branch 1
Associate Chief Counsel
(Corporate)

cc: