



TaxNewsFlash

United States



No. 2019-524
November 1, 2019

PLR: Amounts REIT receives from tenants for boat slips, marina storage

The IRS today publicly released a private letter ruling* in which it ruled that income received by a real estate investment trust (REIT) from its tenants for the use of the boat slips and storage spaces at a marina (as described) would constitute rents from real property for REIT qualification purposes.

The IRS further ruled that income that is attributable to making available to all tenants, at no additional cost, a space such as the shower facilities is not income from the provision of a service and is, therefore, not impermissible tenant service income.

Finally, the IRS ruled that income from the described services that will be provided at the marina is not impermissible tenant service income based on certain representations from the REIT and, therefore, would not cause otherwise qualifying rents from real property to be treated otherwise.

Read [PLR 201944011](#) [PDF 59 KB] (released November 1, 2019, and dated August 6, 2019)

*Private letter rulings are taxpayer-specific rulings furnished by the IRS Office of Chief Counsel in response to requests made by taxpayers and can only be relied upon by the taxpayer to whom issued. Pursuant to section 6110(k)(3), written determinations such as private letter rulings are not intended to be relied upon by third parties and may not be cited as precedent. These written determinations may, however, offer an indication of the IRS's position on the issues addressed.

Background

The facts presented in the letter ruling are summarized as follows:

- The taxpayer, a REIT, owns through lower-tier subsidiaries a portfolio of real estate assets, including a property consisting of a ground lease, an apartment building, and a marina in Area A.
- The taxpayer (through subsidiaries) leases the land and adjacent water space of the property in Area A from a county under a long-term ground lease and has substantially redeveloped the

property into a new apartment community and a marina to contain an approximate number of boat slips.

- Both the apartments and the marina will be held for lease to tenants, and the taxpayer expects that the overwhelming majority of tenants at the marina will not reside in the apartments.
- The marina includes a number of floating piers that extend from the seawall into the water, with individual boat slips arrayed alongside each pier. Each individual boat slip is a space on the water to moor a watercraft. The boat slips will be demarcated either by floating "fingers" attached to the piers or by an end tie at the end of each pier. The piers will be kept in place by pylons, which are represented by the taxpayer to be inherently permanent structures (i.e., real property under the REIT rules).
- The taxpayer will make dock carts available for the marina tenants as self-service items to move items around the piers, and from their cars to the piers and their boats.
- The marina will also have ice machines and bike racks available for use by tenants.
- The marina will include restrooms and unattended showers available to all the marina tenants without an additional fee and without towel service.
- Each boat slip will be leased to a tenant pursuant to a wharfage contract, under the terms of which a tenant will be assigned a specific slip for the purpose of mooring a specifically identified boat. However, the taxpayer will have the right to reassign a tenant to another slip, either permanently or as needed in the case of emergency or operational necessity.
- The taxpayer will have the right to temporarily assign another boat to a tenant's slip during periods when the tenant's boat is absent. During such periods, the tenant will remain obligated to pay slip fees (as described below).
- Wharfage contracts are entered into on a month-to-month basis, with the minimum term of one month.
- The rental charge, or slip fee, under a wharfage contract will be a fixed monthly amount based on the length of the slip. A wharfage contract cannot be assigned or sublet. Although a tenant must register the specific boat to be moored in the slip it is renting, the tenant may change the registration to that of a different boat that then may be moored in the slip without entering into a new wharfage contract.
- The marina will also have limited areas for storage that is not on the water. These areas are leased under storage contracts on a monthly basis, for a fixed amount, and without any services being furnished in connection with these areas.
- The taxpayer will provide utilities to tenants of the marina through self-service utility hookups at each boat slip to connect a boat to sewage facilities, electricity, cable TV/phone/internet, and water. Charges for the utilities will either be included in the monthly slip fee or billed directly to the tenant by the utility company.
- The taxpayer will contract with service providers to provide a dock master, porters, a courtesy officer, and a vessel recovery specialist at the marina.

- The dock master will manage all aspects of the marina, such as leasing, collecting rents, enforcing rules, serving late rent notices, filing unlawful detainer actions, advertising, maintaining income receipts and other documentation, and managing tenant relationships.
- The porters will perform routine maintenance and janitorial activities for the marina, including the shower facilities, and also will ensure that utility hookups at the boat slips are properly connected by the tenants.
- The courtesy officer will regularly patrol the marina.
- The vessel recovery specialist will provide salvage services at the marina.
- The taxpayer represents that each service provider will be either an independent contractor from whom the taxpayer will not derive or receive any income or its taxable REIT subsidiary.
- The taxpayer also represents that all of the services performed at the marina will be usual and customary for marinas in the geographic market where the marina will be located.
- The taxpayer further represents that any persons performing services at the marina (not described above) will be employees of an independent contractor or a taxable REIT subsidiary.
- The taxpayer represents that the utility services rendered by the taxpayer at the marina are available to all tenants and do not constitute personal services rendered to any particular tenant.

IRS letter ruling

With respect to payments received by the taxpayer, the IRS reasoned:

The rights to use a boat slip to moor a boat under a wharfage contract and to use a storage space under a storage contract are rights to use and occupy the space above the seabed or in buildings permanently affixed to the shore.

Based on the taxpayer's representation concerning services being customary and the value of any personal property, the IRS ruled that the income received by the taxpayer from its tenants for the use of the boat slips and storage spaces would constitute rents from real property under the REIT rules.

With respect to shower facilities, the IRS reasoned "[a]lthough services may be provided in the Shower Facilities, the Shower Facilities themselves are not services," and "[a]ny services that are provided in or with respect to the Shower Facilities are analyzed as any other service provided to tenants." Based on the manner under which services will be furnished and represented by the taxpayer, the IRS ruled income from the services that will be provided at the marina would not be impermissible tenant service income and, therefore, would not cause any portion of the qualifying rents received by the taxpayer to fail to qualify as rents from real property under the REIT rules.

KPMG observation

Tax professionals have noted that Reg. section 1.856-10(c) already contains an example involving a marina, which is comprised of U-shaped boat slips and end ties. The example concludes that the boat slips and end ties are water space superjacent to land that is land under the regulations and, therefore, are real property.

It is further noted that this is the third letter ruling involving a marina property for REIT purposes.

- In PLR 201930003, the IRS ruled that floating docks affixed to real property (as described) would be considered real property under the REIT rules. The IRS also concluded that amounts received for the use of racking structure space in dry-dock storage facilities would not be considered as other than rents from real property by reason of the storage leases' failure to convey to tenants a right of entry or a right to use specifically enumerated space within the dry-dock storage facilities.
- In PLR 201310020 (issued before the proposed and final regulations defining "real property" for REIT rules), the IRS ruled that a REIT's boat slips would constitute real property. In that same letter ruling, the IRS also ruled that rental income from the boat slips would constitute rents from real property for REIT purposes, and the employment of the dock master at the property would not cause otherwise qualifying income to be excluded from being considered rents from real property for REIT purposes.

These letter rulings provide a road map for using the REIT structure to acquire, own and operate marina properties.

Finally, note that because of the definition of "impermissible tenant service income" takes into account rules for the unrelated business taxable income for exempt organizations, the IRS has expanded its disclaimer lately. Specifically, the IRS stated in PLR 201944011:

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 services may have unrelated business taxable income because the income may not be excluded under section 512(b)(3) as rents from real property.

It is comforting to see that the IRS has continued with its view (expressed in PLR 201812009) that making facilities available to tenants by itself is not considered a service for purposes of impermissible tenant service income.

For more information, contact a tax professional with KPMG's Washington National Tax:

David W. Lee | +1 202 533-4071 | dwlee@kpmg.com

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