

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

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Legend:

Disregarded Entity =

Acquiring =

Acquiring Unit =

Partnership =

Target =

Target Unit =

State A =

State B =

Business X =

Market =

Date 1 =

a =

Dear _____ :

This letter responds to your authorized representative's February 8, 2002 request for rulings on certain federal income tax consequences of a series of transactions. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty 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.

Acquiring is a State A business trust which taxpayer states qualifies as a real estate investment trust ("REIT") under Subchapter M of the Internal Revenue Code (the "Code"). Acquiring engages in Business X and its shares of beneficial interest trade publicly on Market.

Disregarded Entity is a State A corporation wholly-owned by Acquiring. Taxpayer has stated that Disregarded Entity is a qualified REIT subsidiary, as that term is defined in § 856(i)(1) and (2). Disregarded Entity has been treated as a disregarded entity for federal tax purposes.

Partnership is a State A partnership that engages in Business X. Disregarded Entity is the sole general partner of Partnership and it owns a a% interest in Partnership. The remaining ownership of Partnership is held by individual limited partners, none of whom own more than ten percent of the outstanding limited partnership units of Partnership.

Target is a State B corporation that engages in Business X. Target's single class of outstanding common stock is owned by six individuals. Neither Target nor its six shareholders own, directly or indirectly, any stock in Acquiring Unit (defined below). Target has been treated as an S corporation for federal tax purposes since it converted from C corporation status to S corporation status effective Date 1 (the "Date 1 Conversion"). Provided Target met all the requirements to be treated as an S corporation at the time of the Date 1 Conversion, and provided that Target has unrealized built-in gains remaining from the Date 1 Conversion, these gains (the "Target Built-in Gains") are subject to the provisions of § 1374.

For what are represented to be valid business reasons, Acquiring and Target have proposed and partially completed the following series of transactions (collectively, the "Transaction"):

- (i) Acquiring formed Disregarded Entity under the State A Business Corporations Act. Since being formed, Disregarded Entity has been owned solely by Acquiring and has been treated as a disregarded entity for federal tax purposes.

(ii) Pursuant to the State A Business Corporations Act, Target will merge into Disregarded Entity, with Disregarded Entity surviving (the "Merger"). Disregarded Entity will acquire all of the assets and assume all of the liabilities of Target in the Merger. Target shareholders will receive shares of beneficial interest of Acquiring in exchange for their shares of Target common stock in the Merger. No fractional shares or cash in lieu of fractional shares will be received by any Target shareholder in the Merger.

(iii) Following the Merger, all of the former assets and liabilities of Target will be transferred to Partnership.

The following representations have been made regarding the Transaction. For purposes of these representations and the rulings that follow, the following terms are defined:

Acquiring Unit = Acquiring, and all business entities whose assets are treated as Acquiring's for federal tax purposes.

Target Unit = Target, and all business entities whose assets are treated as Target's for federal tax purposes.

(a) The fair market value of the shares of beneficial interest of Acquiring and other consideration, if any, received by each Target shareholder will be approximately equal to the fair market value of the shares of Target common stock surrendered in the exchange.

(b) At least 50% of the proprietary interest of Target will be exchanged for shares of beneficial interest of Acquiring and will be preserved within the meaning of § 1.368-1(e) of the federal income tax regulations (the "regulations").

(c) In connection with the Transaction, neither Acquiring Unit, nor any person related to Acquiring Unit (within the meaning of § 1.368-1(e)(3)) has any plan or intention to reacquire any of the shares of beneficial interest of Acquiring issued in the Transaction in exchange for any consideration other than shares of beneficial interest of Acquiring.

(d) Acquiring Unit does not have any plan or intention to sell or otherwise dispose of any of the assets of Target Unit acquired in the Transaction, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).

(e) The liabilities of Target Unit assumed by Acquiring Unit and the liabilities to which the transferred assets of Target Unit are subject were incurred by Target Unit in the ordinary course of its business.

(f) Following the Transaction, Acquiring Unit will continue the historic business of Target Unit or use a significant portion of Target Unit's historic business assets in its

business.

(g) Acquiring Unit, Target Unit, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the Transaction.

(h) There is no indebtedness between Target Unit and Acquiring Unit that was issued, acquired, or will be settled at a discount.

(i) No parties to the Transaction are investment companies as defined in § 368(a)(2)(F)(iii).

(j) No member of Target Unit is under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(k) The fair market value of the assets of Target Unit to be transferred to Acquiring Unit will equal or exceed the sum of the liabilities to be assumed by Acquiring Unit plus the amount of liabilities, if any, to which the transferred assets are subject.

(l) None of the compensation to be received by any shareholder of Target who is also an employee of Target Unit ("shareholder-employee") will be separate consideration for, or allocable to, any of their shares of Target stock; none of the shares of beneficial interest of Acquiring received by any shareholder-employee will be separate consideration for, or allocable to, any employment agreement; and the compensation paid to any shareholder-employee will be for services actually rendered and will be commensurate with amounts paid to third parties bargaining at arms-length for similar services.

(m) The Merger will be effected pursuant to the laws of the United States or a State or the District of Columbia, in which, as a result of the operation of such laws, the following events will occur simultaneously at the effective time of the Merger: (i) all of the assets (other than those distributed in the Transaction) and liabilities (except to the extent satisfied or discharged in the Transaction) of each member of Target Unit will become the assets and liabilities of one or more members of Acquiring Unit; and (ii) Target will cease its separate legal existence for all purposes.

(n) Target, Acquiring, Disregarded Entity, and any business entity through which Acquiring holds its interest in Disregarded Entity, is organized under the laws of the United States or a State or the District of Columbia.

(o) Disregarded Entity is a State A single member corporation that is a "disregarded entity" within the meaning of § 1.368-2(b)(1)(i)(A) of the proposed regulations.

Based solely on the information submitted and the representations made, we rule as follows regarding the Transaction:

(1) Provided that the Merger qualifies as a statutory merger under applicable state law, it will be a statutory merger as that term is used in § 368(a)(1)(A) and will

constitute a reorganization within the meaning of § 368(a)(1)(A).

(2) Target will recognize no gain or loss on the transfer of all of the assets of Target Unit (other than those distributed in the Transaction) to Acquiring Unit solely in exchange for shares of beneficial interest of Acquiring and the assumption of liabilities by Acquiring Unit in the Merger.

(3) No gain or loss will be recognized by Acquiring on Acquiring Unit's receipt of the assets of Target Unit in exchange for shares of beneficial interest of Acquiring in the Merger.

(4) No gain or loss will be recognized by the Target shareholders on their receipt of solely shares of beneficial interest of Acquiring in exchange for their Target stock in the Merger.

(5) Provided Target met all of the requirements to be treated as an S corporation at the time of the Date 1 Conversion, the Target Built-in Gains will not trigger § 1374 tax as a result of the Merger.

(6) No gain or loss will be recognized by any party on the transfer of Target's former assets and liabilities to Partnership (§ 721(a)).

(7) The transfer of Target's former assets and liabilities to Partnership will not disqualify the Merger under § 368(a)(1)(A), nor will it cause any party to the Merger to recognize gain not otherwise recognized in the Merger.

(8) Provided Target met all of the requirements to be treated as an S corporation at the time of the Date 1 Conversion, the built-in gains inherited by Acquiring Unit on its receipt of the Target assets in the Merger will not trigger § 1374 tax when these assets are transferred by Acquiring Unit to Partnership. Instead, the built-in gains will continue to be deferred during the ten-year recognition period as defined in § 1374(d)(7) (§ 1.337(d)-7T(f)), or until § 1374 tax is otherwise triggered during that period.

No opinion is expressed about the tax treatment of the Transaction under other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction that are not specifically covered by the above rulings. In addition, no opinion is expressed concerning whether: (i) Acquiring will qualify as a REIT under part II of Subchapter M of the Code at the time of, or after, the Transaction; (ii) Target satisfied all of the requirements to be treated as an S corporation at the time of, and following, the Date 1 Conversion; and (iii) Partnership is a limited partnership for federal tax purposes.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Each taxpayer affected by the Transaction must attach a copy of this ruling letter to its, his, or her federal tax return for the taxable year in which the Transaction is completed.

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

Sincerely,

Mary Goode
Reviewer, Branch 4
Office of Associate Chief Counsel (Corporate)