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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:FIP:B01

PLR-132654-04

Date: October 25, 2004

**Legend:**

Taxpayer =

a =b =c =

Charitable Trust =

Hospital =

Dear :

This is in reply to a letter dated June 15, 2004, requesting a ruling on behalf of Taxpayer. You have requested a ruling that for purposes of section 856(a)(6) and (h)(1)(a) of the Internal Revenue Code, stock of the Taxpayer held by a Charitable Trust is not treated as stock held by an individual under section 542(a)(2) and is not treated as constructively owned by another person under section 544(a)(1).

**Facts:**

Taxpayer, through wholly-owned limited liability companies, owns and operates shopping centers. Currently, all of the outstanding shares of stock of the Taxpayer are owned by the Charitable Trust. Taxpayer intends to sell stock to new investors and qualify and operate as a real estate investment trust (REIT) under section 856.

Taxpayer intends to offer shares of stock for sale to at least a new investors pursuant to a private placement. The shares offered will be b senior cumulative

preferred stock and each share will have a face value of c. The b cash dividend will be paid bi-annually to the investors.

The Charitable Trust is an entity that is recognized by the Internal Revenue Service as exempt from federal income tax under section 501(c)(3). Taxpayer represents that the Charitable Trust is not an organization described in section 401(a), 501(c)(17), or 509(a); or a portion of a taxable trust that has been permanently set aside or used exclusively for charitable purposes described in section 642(c). The Charitable Trust conducts research activities in conjunction with Hospital. The Charitable Trust instrument provides that no part of the income or principal of the trust estate shall inure to the benefit of any private shareholder or individual.

### **Law and Analysis:**

Section 856(a)(6) provides that a corporation may qualify to be taxed as a REIT only if it is not closely held. Section 856(h)(1)(A) provides that a corporation is closely held if it meets the stock ownership requirement of section 542(a)(2). A corporation meets the stock ownership requirement of section 542(a)(2) if, at any time in the last half of the taxable year, more than 50 percent in value of the corporation's outstanding stock is owned, directly or indirectly, by or for not more than five individuals. For purposes of section 542(a)(2), an organization described in section 401(a), 501(c)(17), or 509(a), or a portion of a trust permanently set aside or to be used exclusively for purposes described in section 642(c) or a corresponding provision of a prior income tax law shall be considered an individual.

Section 401(a) describes, generally, qualified pension, profit sharing and stock bonus plans that are trusts created or organized in the United States by an employer for the exclusive benefit of its employees.

Section 501(c)(17) describes, generally, the qualifications needed by trusts formed as part of a plan to provide payment of supplemental unemployment compensation benefits to be eligible for tax-exempt status.

Section 509(a) defines the term "private foundation" as a domestic or foreign organization described in section 501(c)(3) other than the organizations described in sections 509(a)(1), (2), (3), or (4). Section 501(c)(3), in part, exempts from federal income tax, generally, organizations organized and operated exclusively for one of various enumerated charitable or public purposes, no part of the net earnings of which inures to the benefit of any private individual.

Section 642(c) allows, generally, in the case of an estate or trust which is not exempt from tax, a deduction for amounts paid for a purpose specified in section 170(c) (generally payments made to a governmental entity exclusively for public purposes or payments made to an organization described in section 501(c)(3) to be used for its exempt purpose).

Under section 544(a)(1), stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries for purposes of section 542(a)(2).

Rev. Rul. 58-556, 1958-2 C.B. 355, provides that an incorporated non-profit foundation, that has no capital stock but has issued certificates of membership to its directors who hold no beneficial interest in the property of the corporation, does not meet the stock ownership requirement of a personal holding company prescribed by section 542(a)(2). The revenue ruling provides that the member's interests were not beneficial because they were not legally entitled to receive any profits or distributions from the foundation. In the absence of such a beneficial interest, it was concluded that there is no stock ownership as contemplated in section 542.

Taxpayer has represented that the Charitable Trust is an organization described in section 501(c)(3) and is not an organization described in sections 401(a), 501(c)(17), and 509(a). Taxpayer further represented that the Charitable Trust is not a portion of a taxable trust that has been permanently set aside or used exclusively for charitable purposes described in section 642(c). Accordingly, the Charitable Trust will not be treated as an individual for purposes of section 542(a)(2).

In addition, because the Charitable Trust instrument does not identify any particular beneficiary, no person is legally entitled to receive any profits or distributions from the Charitable Trust. Thus, no person holds a beneficial ownership interest in the Charitable Trust as contemplated in section 542. Therefore, the stock owned by the Charitable Trust will not be treated as constructively owned by another person under section 544(a)(1).

Accordingly, based solely on the facts and representations submitted, we conclude that for purposes of sections 856(a)(6) and (h)(1)(A), stock of the Taxpayer held by the Charitable Trust will not be treated as stock held by an individual under section 542(a)(2) and the stock will not be treated as constructively owned by another person under section 544(a)(1).

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether Taxpayer will otherwise qualify as a REIT under part II of subchapter M of Chapter 1 of the Code. Also, no opinion is expressed concerning whether the Charitable Trust qualifies as a tax-exempt organization under section 501(c)(3).

This ruling is directed only to the taxpayer requesting it. Taxpayer should attach a copy of this ruling to each tax return to which it applies. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Sincerely,

Elizabeth A. Handler  
Elizabeth A. Handler  
Chief, Branch 1  
Office of Associate Chief Counsel  
(Financial Institutions and Products)

Enclosures:

Copy of this letter  
Copy for § 6110 purposes