

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:7-PLR-103471-99

Date:

JULY 27, 1999

Re:

Legend: Corporation:

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Year:

Date:

State:

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Dear :

We received your representative's letter, dated , , requesting rulings concerning the application of § 216(b) of the Internal Revenue Code to Corporation.

The represented facts are as follows. Corporation was formed on Date as a cooperative housing corporation under the laws of State. There are S residential apartments in the building to which T shares of stock are allocated. The building also includes professional offices and retail space. Corporation now proposes to create one unit (Commercial Unit) in the commercial space and to convert the Commercial Unit to cooperative ownership by selling U additional shares of stock attributable to the Commercial Unit to one purchaser. Currently, the proposed Commercial Unit is being leased to V retail stores. The retail store leases expire within W years.

The proposed proprietary lease entitles the purchaser of the additional shares

attributable to the Commercial Unit to occupy for dwelling purposes the Commercial Unit solely by reason of the ownership of shares of Corporation stock. In addition, under the proprietary lease, the purchaser of the shares of Corporation stock allocated to the Commercial Unit may, at the purchaser's option, use the unit for commercial or residential purposes.

The Corporation also represents that the local zoning law and building regulations currently permit modification of the Commercial Unit to residential use. Based on the facts and representations submitted, it would be reasonable to convert the Commercial Unit to residential use. The size and location of the Commercial Unit is such that, with certain modifications, it could be converted into one dwelling unit.

You have specifically requested two rulings:

1) Provided the Corporation satisfies the requirements of § 216(b)(1)(A), (C), and (D), neither the issuance of stock by the Corporation to be allocated to the Commercial Unit nor the possible nonresidential use of the Commercial Unit will prevent the Corporation from qualifying as a cooperative housing corporation within the meaning of Section 216(b)(1).

2) A person who purchases the stock of the Corporation attributable to the Commercial Unit for the commercial use of such space will qualify as a "tenant-stockholder" for purposes of § 216(b)(2), provided such stock is fully paid up in an amount which bears a reasonable relationship to the portion of the value of the Corporation's equity in the apartment building and land attributable to the apartment which the purchaser is entitled to occupy.

Section 216(a) provides that in the case of a tenant-stockholder (as defined in § 216(b)(2)), there shall be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to the extent that such amounts represent the tenant-stockholder's proportionate share of—(1) the real estate taxes allowable as a deduction to the corporation under § 164 which are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses (or building) are situated, or (2) the interest allowable as a deduction to the corporation under § 163 which is paid or incurred by the corporation on its indebtedness contracted—(A) in the acquisition, construction, alteration, rehabilitation, or maintenance of the houses or apartment building, or (B) in the acquisition of the land on which the houses (or apartment building) are situated.

Section 216(b)(1) provides that the term "cooperative housing corporation" means a corporation—(A) having one and only one class of stock outstanding, (B) each

of the shareholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by the corporation, (C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and (D) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in § 216(a) are paid or incurred is derived from tenant stockholders.

Section 216(b)(2) provides that the term “tenant-stockholder” means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation’s equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

Rev. Rul. 74-241, 1974-1 C.B. 68, holds that, for purposes of § 216(b)(1)(B), the term “apartment in a building” means an independent housekeeping unit consisting of one or more rooms which contains facilities for cooking, sleeping, and sanitation normally found in a principal residence.

Rev. Rul. 90-35, 1990-2 C.B. 48 provides that Rev. Rul. 74-241 does not require that a unit presently contain all the facilities normally found in a principal residence in order to constitute an apartment in a building for purposes of § 216(b)(1)(B). Accordingly, a unit will be treated as meeting that definition if (1) the stockholder is entitled to convert the unit to an apartment, as defined in Rev. Rul. 74-241, solely by reason of ownership of stock in the cooperative housing corporation; (2) the conversion of the unit would be reasonable under all the facts and circumstances, including structural feasibility and cost; and, (3) the applicable zoning, building, and fire codes permit both the conversion referred to in (1) and residential use of the unit as a matter of right.

Applying the above standards to the facts and representations submitted and subject to the limitation below, we have concluded that Corporation meets the requirements of § 216(b)(1) provided that Corporation satisfies the requirements of § 216(b)(1)(A), (C), and (D). Specifically, neither the issuance of stock by the Corporation to be allocated to the Commercial Unit nor the possible nonresidential use of the Commercial Unit will prevent the Corporation from qualifying as a cooperative housing corporation within the meaning of Section 216(b)(1).

We also conclude that the person who purchases the stock of the Corporation attributable to the Commercial Unit for the commercial or residential use of such space will qualify as a “tenant-stockholder” for purposes of § 216(b)(2), provided such stock is

fully paid up in an amount which bears a reasonable relationship to the portion of the value of the Corporation's equity in the apartment building and land attributable to the apartment which the purchaser is entitled to occupy.

Except as ruled above, no opinion is expressed or implied as to the federal tax consequences of this transaction under any other provision of the Code.

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

A copy of this ruling should be attached to the taxpayer's tax return filed for the year in which the transaction referred to in this ruling is completed.

Sincerely,

Joseph H. Makurath  
Senior Technician Reviewer, Branch 7  
Office of the Assistant Chief Counsel  
(Passthroughs & Special Industries)