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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-148883-11

Date:

March 20, 2012

Legend

Taxpayer =

Hotel =

GP =

OP =

LP 1 =

LP 2 =

LP 3 =

LLC 1 =

LLC 2 =

LLC 3 =

Hotel TRS =

Hotel Lessee LLC =

Company =

Date 1 =

Date 2 =

a =

b =

Dear :

This responds to a letter, dated November 22, 2011, on behalf of Taxpayer. Taxpayer requests rulings under sections 856(c), (d), and (l) of the Internal Revenue Code ("Code") concerning the leasing and the operation and management of Hotel.

FACTS

Taxpayer is an affiliate of GP, a domestic corporation that has elected, under section 856(c), to be treated as a real estate investment trust ("REIT") for federal income tax purposes. GP is the managing general partner of OP, owning approximately a percent of the outstanding common units of OP. OP, through separate limited liability companies ("LLCs"), partnerships, or REITs, owns and operates numerous real properties throughout the United States. In particular, OP owns, through wholly owned LLCs disregarded as separate from OP for federal income tax purposes, interests in LP 1 and LP 2. Each of LP 1 and LP 2 is a partnership for federal income tax purposes.

LP 1 owns interests in Taxpayer. LP 2 owns interests in LLC 1. Each of Taxpayer and LLC 1 is an LLC that has elected to be an association taxable as a corporation for federal income tax purposes.

Hotel includes b guest rooms, lobby space, meeting rooms, a restaurant, and steel billboard structures permanently affixed thereto. No wagering activities are conducted at or in connection with Hotel.

As of Date 1, Hotel was owned, for federal income tax purposes, by LP 3 through several tiers of wholly owned, disregarded, LLCs, including LLC 2 and LLC 3. As of the same date, Hotel was managed by Company, a domestic corporation.

In the ruling request submitted on behalf of Taxpayer, Taxpayer stated its intention to engage in the following transaction on or around Date 2:

- a. Each of Taxpayer and LLC 1 will make a capital contribution to LLC 2 in exchange for interests in LLC 2, which will become a partnership for federal income tax purposes.
- b. Taxpayer, LLC 1, LP 1, and LP 2 will form Hotel TRS, an LLC which will elect to be an association taxable as a corporation for federal income tax purposes.
- c. REIT and TRS elections:
 - i. Each of Taxpayer and LLC 1 will elect, under section 856(c), to be treated as a REIT for federal income tax purposes, effective for the tax year beginning on Date 2.
 - ii. Taxpayer and Hotel TRS jointly will make an election, under section 856(l), for Hotel TRS to be treated as a taxable REIT subsidiary ("TRS") with respect to Taxpayer, effective as of Date 2.

- iii. LLC 1 and Hotel TRS jointly will make an election, under section 856(l), for Hotel TRS to be treated as a TRS with respect to LLC 1, effective as of Date 2.
- d. Hotel TRS and LP 3 will form Hotel Lessee LLC, an LLC that will be treated as a partnership for federal income tax purposes.
- e. LLC 3 will lease Hotel to Hotel Lessee LLC, under terms consistent with those of leases of similar property between unrelated parties.
- f. The portion of the rent under the lease of Hotel that will be attributable to personal property will not exceed 15 percent of the total rent attributable to both the real and personal property.
- g. Hotel will be managed and operated on behalf of Hotel Lessee LLC (in which Hotel TRS will be a member) by either Company or another third-party manager. (Hereinafter, Company or such other manager is referred to as "Manager.") At all times:
 - i. Manager will be an "independent contractor" within the meaning of section 856(d)(3) with respect to Taxpayer and LLC 1.
 - ii. Manager will be actively engaged in the trade or business of operating qualified lodging facilities, within the meaning of section 856(d)(9)(A), for entities unrelated to Taxpayer, LLC 1, or Hotel TRS.
 - iii. Manager will be owned by persons unrelated to Taxpayer, LLC 1, and Hotel TRS for purposes of section 856(d)(8) and sections 52(a) and (b).

Taxpayer entered into the above transaction on or around Date 2.

LAW AND ANALYSIS

Section 856(c)(2) provides that at least 95 percent of a REIT's gross income must be derived from, among other sources, "rents from real property."

Section 856(c)(3) provides that at least 75 percent of a REIT's gross income must be derived from, among other sources, "rents from real property."

Section 856(d)(1) provides that the term "rents from real property" includes (A) rents from interests in real property, (B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are

separately stated, and (C) rent attributable to personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

Section 856(d)(3) provides that a person is an "independent contractor" if --

(A) it does not own, directly or indirectly, more than 35 percent of the shares or certificates of beneficial interest in the REIT, and

(B) if such person is a corporation, not more than 35 percent of the total combined voting power of its stock (or 35 percent of the total shares of all classes of its stock) -- or, if such person is not a corporation, not more than 35 percent of the interest in its assets or net profits -- is owned, directly or indirectly, by one or more persons owning 35 percent or more of the shares or certificates of beneficial interest in the REIT.

Section 856(d)(2)(B) states that, except as provided in section 856(d)(8), the term "rents from real property" does not include any amount received or accrued directly or indirectly from any person if the REIT owns, directly or indirectly--

(i) in the case of any person which is a corporation, stock of the person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of the person; or

(ii) in the case of any person which is not a corporation, an interest of 10 percent or more in the assets or net profits of the person

Section 856(d)(8)(B) provides that amounts paid to a REIT by a TRS of the REIT will not be excluded from qualifying as "rents from real property" by reason of section 856(d)(2)(B) when a REIT leases a "qualified lodging facility" or "qualified health care property" to a TRS of the REIT and the facility or property is operated on behalf of the TRS by a person who is an "eligible independent contractor."

Section 856(d)(9)(A) provides that the term "eligible independent contractor" means, with respect to any "qualified lodging facility" or "qualified health care property," any "independent contractor" if, at the time the contractor enters into a management agreement or similar service contract with a TRS to operate the facility or property, the contractor (or any related person) is actively engaged in the trade or business of operating "qualified lodging facilities" or "qualified health care properties" for any person who is not a related person with respect to the REIT or the TRS. Section 856(d)(9)(F) provides that, for purposes of section 856(d)(8)(B), persons are treated as related to

each other if they are treated as a single employer under subsection (a) or (b) of section 52.

Section 856(d)(9)(D)(i) defines a "qualified lodging facility" as "any lodging facility unless wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility." Under section 856(d)(9)(D)(ii), the term "lodging facility" means a "(I) hotel, (II) motel, or (III) other establishment more than one-half of the dwelling units in which are used on a transient basis."

Section 856(l)(1) provides that, if a REIT directly or indirectly owns stock in a corporation (other than a REIT), the REIT and the corporation may jointly elect for the corporation to be treated as a TRS.

Section 856(l)(3)(A) provides that a TRS cannot directly or indirectly operate or manage a "lodging facility" or a "health care facility."

In this case, Taxpayer represents that Manager, which will operate and manage Hotel at all times, (i) will qualify as an "independent contractor" under section 856(d)(3) with respect to Taxpayer and LLC 1, and (ii) will be actively engaged in the trade or business of operating qualified lodging facilities, within the meaning of section 856(d)(9)(A), for entities unrelated to Taxpayer, LLC 1, or Hotel TRS. Thus, under section 856(d)(9)(A), Manager will meet the definition of an "eligible independent contractor" with respect to the management and operation of Hotel.

Since Manager will manage and operate Hotel at all times, (i) Manager will be treated as managing and operating Hotel on behalf of Hotel TRS for purposes of section 856(d)(8)(B), and (ii) Hotel TRS will not be treated as operating or managing a lodging facility in violation of section 856(l)(3)(A).

Hotel is a "lodging facility" within the meaning of section 856(d)(9)(D)(ii). No wagering activities are conducted at or in connection with Hotel by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with Hotel. Thus, under section 856(d)(9)(D)(i), Hotel meets the definition of a "qualified lodging facility".

Thus, a qualified lodging facility will be leased by LLC 3 to Hotel Lessee LLC (in which Hotel TRS will be a member). Accordingly, the qualified lodging facility will be treated as being managed and operated on behalf of Hotel TRS (a member of Hotel Lessee LLC) by an eligible independent contractor, so that the requirements of section 856(d)(8)(B) will be met. As a result, under section 856(d)(8), rent paid by Hotel Lessee LLC to LLC 3 will not be excluded from "rents from real property" by reason of section 856(d)(2)(B).

Conclusion

Accordingly, based on the facts and representations submitted by Taxpayer, we conclude that under the circumstances described above:

1. Manager will be treated as an "eligible independent contractor" with respect to the management and operation of Hotel for purposes of section 856(d)(9)(A).
2. Manager will be treated as managing and operating Hotel on behalf of Hotel TRS for purposes of section 856(d)(8)(B) and, with respect to Hotel, Hotel TRS will not be treated as operating or managing a lodging facility in violation of section 856(l)(3)(A).
3. Rent paid by Hotel Lessee LLC to LLC 3 will be qualifying income to Taxpayer for purposes of the REIT gross income tests under sections 856(c)(2) and (c)(3).

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 otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code, and we do not rule whether the requirement under section 856(d)(8)(A)(ii) that rents must be substantially comparable has been met.

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.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Alice Bennett Coppersmith
Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes