

**Internal Revenue Service**

Number: **200624063**

Release Date: 6/16/2006

Index Number: 856.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B02

PLR-165184-04

Date: March 6, 2006

Legend:

Operating Partnership =

TRS =

Trust =

Dear :

This is in reply to your letter dated December 16, 2004, and subsequent correspondence, requesting a ruling that amounts paid to Trust by Operating Partnership or TRS as reimbursements for their respective shares of personnel and administrative overhead expenses pursuant to certain reimbursement arrangements will not constitute gross income to Trust for purposes of section 856 of the Internal Revenue Code.

FACTS:

Trust is a domestic corporation that has elected to be taxed as a real estate investment trust (REIT) under subchapter M of Chapter 1 of the Code. The sole purpose of Trust is to serve as the general partner and to own units of Operating Partnership. Trust conducts substantially all of its operations through Operating Partnership.

Operating Partnership owns and provides real estate housing to college and university students residing off-campus, and to members of the U.S. military and their families.

The student housing properties owned by Trust are generally leased for 12 month intervals. Operating Partnership also owns 100 percent of the stock of TRS, a corporation that has jointly elected with Trust to be taxed as a taxable REIT subsidiary of Trust under section 856 (l) of the Code.

In addition to properties owned by Operating Partnership, an affiliate of Operating Partnership currently manages five student housing properties owned by third parties including colleges, universities and other private owners which will be contributed to Operating Partnership. Operating Partnership intends to contribute these five student housing management contracts to TRS, which may continue to manage properties for third party owners in the future. These student housing properties are leased to students during the school year for 9 month intervals. During the summer, the properties are leased to camp operators for varying rental periods that are generally less than 30 days and typically run from periods of 3 days to 2 weeks. There will be no cleaning or food services provided at these properties. TRS will earn a management fee for its property management services under the property management contracts with third parties. The TRS will also engage in development, construction, renovation and management services for military housing privatization projects.

As a part of the structuring of the various entities, certain executive officers and other employees of Trust who had been employed by Operating Partnership are now employed by Trust. Moreover, certain executive officers and other employees who had been employed by TRS are now employed by Trust. Trust will enter into one or more reimbursement arrangements with Operating Partnership and TRS pursuant to which Trust will agree to share executives and other employees with Operating Partnership and TRS.

With respect to Operating Partnership, Trust will pay the expenses associated with the executives and other employees that are attributable to time spent by those individuals working on behalf of Operating Partnership, including salaries, benefit plans, and fringe benefits. Pursuant to Operating Partnership's Partnership Agreement, the salaries and other costs related to the executives that are attributable to time spent by those executives in connection with the operation of Operating Partnership will be reimbursed by Operating Partnership. The Partnership Agreement provides that all such reimbursements are treated for federal income tax purposes as expenses of Operating Partnership incurred on its behalf and not as expenses of Trust.

Additionally, Trust will pay the expenses associated with the executives' and other employees' time spent working on behalf of TRS, including salaries, benefit plans, and fringe benefits. TRS will agree to reimburse Trust for its proportionate share of the expenses associated with these individuals. TRS will deduct as expenses its proportionate share of the expenses associated with the executives' time spent working on behalf of TRS.

Pursuant to the reimbursement arrangements, the amount of costs to be reimbursed will be determined on an arm's length basis and will include a proportionate share of the costs reasonably related to the performance of services by the executives and other employees, including a proportionate share of their salaries and benefit plans. The proportionate share of costs will be determined on the basis of the relative amount of time such executives and other employees spend performing services for Operating Partnership or TRS, as applicable.

Trust represents that (i) it is not in the business of providing to third parties services of the type that will be covered by the reimbursement arrangements and (ii) it will not derive any profit from the reimbursement arrangements.

#### LAW AND ANALYSIS:

Section 856(c) provides that to qualify as a REIT, a corporation must: (1) derive at least 95 percent of its gross income (excluding gross income from prohibited transactions) from sources listed in section 856(c)(2), which includes dividends, interest, rents from real property, and certain other items; and (2) derive at least 75 percent of its gross income (excluding gross income from prohibited transactions) from sources listed in section 856(c)(3), which includes rents from real property and certain other items.

Under section 1.856-3(g) of the Income Tax Regulations, a REIT that is a partner in a partnership is deemed (1) to own its proportionate share of each of the assets of the partnership, and (2) to be entitled to the income of the partnership attributable to that share. For purposes of section 856, the partner's interest in the partnership's assets is determined in accordance with the partner's capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross income of the partnership retain the same character in the hands of the partners for all purposes of section 856.

In Rev. Rul. 84-138, 1984-2 C.B. 123, a regulated investment company (RIC) and its wholly-owned subsidiary shared facilities and some personnel. It was agreed that the RIC would pay all the expenses for general and administrative overhead, including personnel costs, and the subsidiary would reimburse the RIC for its pro rata share of the expenses on an arm's length basis. The ruling, in distinguishing Jergens Co. v. Commissioner, 40 B.T.A. 868 (1939), states that the RIC was not engaged in the business of receiving compensation for services of the type that were reimbursed. Instead, reimbursements to the RIC from the subsidiary were merely repayments of advances made on behalf of the subsidiary. Accordingly, the ruling holds that the reimbursements were not included in the RIC's gross income under section 61 of the Code, and, therefore, were not subject to the gross income requirement of section 851(b)(2).

Rev. Rul. 57-104, 1957-1 C.B. 166, considers whether the amount paid by a taxpayer to an independent contractor as reimbursement for the costs of a union negotiated qualified pension plan for the contractor's employees will be deductible to the taxpayer and included in the income of the contractor. The taxpayer, a ship owner, contracted with a stevedore contractor to handle its cargoes. Pursuant to their contract, the taxpayer reimbursed the contractor for the amount required to be contributed by the contractor to the pension trust. The ruling holds that the amount paid by the taxpayer as a reimbursement is part of the cost of the services rendered by the independent contractor to the taxpayer, and, as such, is a deductible expense to the taxpayer under section 162 of the Code. The ruling also holds that the reimbursement of amounts contributed to the trust on behalf of its employees is includible in gross income by the contractor under section 61 of the Code.

Based on the information provided and the representations made by Trust, we conclude as follows:

The amounts paid to Trust by Operating Partnership and TRS as reimbursements for their allocable share of personnel and administrative overhead expenses pursuant to the reimbursement arrangements, as described above, will not be considered gross income to the Trust. Consistent with this conclusion, Trust will not be entitled to a deduction for the reimbursed expenses.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Trust qualifies as a REIT under subchapter M of the Code. Additionally, no opinion is expressed whether TRS qualifies as a taxable REIT Subsidiary of Trust under section 856(l) of the Code.

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

In accordance with the terms of a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William E. Coppersmith  
William E. Coppersmith  
Chief, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)