

## Internal Revenue Service

## Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:B05 - PLR-120598-00

Date:

May 30, 2001

Corporation =

Date x =

Date a =

Date b =

Date c =

Date d =

Date e =

Date f =

This letter responds to your October 4, 2000, request for rulings concerning the federal income tax consequences of a proposed transaction. The information submitted for consideration is summarized below.

Corporation was formed as a C corporation in Date x and operated as such through its taxable year ending Date a. Effective for its taxable year beginning Date b, an election was made for Corporation to be an S corporation, as defined in § 1361 of the Internal Revenue Code. At that time, there was "net unrealized built in gain", as defined in § 1374(d)(1), in Corporation's assets. On Date c, all of Corporation's stock was purchased by shareholders who did not qualify as S corporation shareholders. As a result, Corporation's S corporation tax year ended at the close of the day on Date d. Corporation elected to be a REIT under § 856 for the taxable year beginning on Date e, the day after Date d, and ending on Date f. Corporation also elected pursuant to § 1.337(d)-5T of the temporary Income Tax Regulations for the rules of § 1374 to apply

to the net unrealized built-in-gain.

Based solely on the information submitted, and provided that Corporation enters into a closing agreement with the Service agreeing, among other things, that Corporation will be subject to the provisions of § 1374 as a REIT to the same extent it was subject to § 1374 as an S corporation, we rule as follows:

- (1) The 10-year recognition period described in § 1374(d)(7) for Corporation will continue to be treated as commencing on Date b, the effective date of Corporation's election to be an S corporation.
- (2) The net unrealized built-in-gain of Corporation under § 1374(d)(1) will continue to be calculated based on the fair market value and adjusted basis of Corporation's assets as of Date a.

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code and its regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings.

This ruling is addressed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. It is important that a copy of this letter be attached to the federal income tax returns of the taxpayers involved for the taxable years in which the transaction covered by this letter is consummated.

Pursuant to a power of attorney on file in this office, a copy of this letter has been sent to the taxpayer.

Sincerely yours,  
Associate Chief Counsel (Corporate)

By Debra Carlisle  
Chief, Branch 5