

Internal Revenue Service

Number: **201939001**

Release Date: 9/27/2019

Index Number: 856.00-00, 856.01-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-107856-18

Date:

June 27, 2019

LEGEND:

Taxpayer =

Date A =

Government Entity =

Partnership A =

Partnership B =

Partnership C =

Partnership D =

Partnership E =

Partnership F =

Partnership G =

Partnership H =

Partnership I =

Partnership J =

State A =

Dear :

This letter responds to your letter, dated March 7, 2018, and supplemental correspondence, requesting certain rulings on behalf of Taxpayer under section 856(c) of the Internal Revenue Code ("Code"). Specifically, Taxpayer requests the following rulings:

1. For purposes of section 1.856-3(g) of the Income Tax Regulations ("Regulations"), Taxpayer's capital interest in each Partnership (defined below) will be determined by (A) deeming the Partnership to have made a liquidating distribution in an amount equal to the fair market value of the partnership assets, net of the partnership liabilities, and (B) computing the percentage of the deemed distribution to which Taxpayer would be entitled under the terms of the partnership agreement.
2. For purposes of section 856(c)(2) and (3) of the Code, Taxpayer's share of each item of gross income of a Partnership will equal the product of (A) the amount of such item of gross income and (B) the percentage determined for the Partnership under the first requested ruling.
3. For purposes of section 856(c)(4) of the Code, Taxpayer's share of each asset of a Partnership will equal the product of (A) the value of the asset and (B) the percentage determined for the Partnership under the first requested ruling.

FACTS

Taxpayer, a State A limited liability company, intends to elect to be a real estate investment trust ("REIT") under section 856 for its taxable year ending Date A. Government Entity and one or more non-governmental partners formed, and made capital contributions to, Partnerships A, B, C, D, E, F, G, H, I, and J (the "Partnerships"), each of which is classified as a partnership for federal income tax purposes. The Partnerships lease and operate certain rental properties in the United States.

Taxpayer intends to acquire, or to be assigned the economic rights to, certain partnership interests in each Partnership from a non-governmental partner in exchange for cash equal to the fair market value of the particular interest.

Taxpayer represents that Partnerships H, I, and J do not maintain capital accounts in accordance with section 1.704-1(b). Partnerships A, B, C, D, E, F, and G maintain separate capital accounts for partners in accordance with section 1.704-1(b)(2)(iv). Taxpayer represents, however, that Taxpayer's capital accounts in

Partnerships A, B, C, D, E, F, and G do not fairly reflect what Taxpayer would receive upon a liquidation of the Partnership or Taxpayer's interest in the assets of the Partnership.

For purposes of section 856(c), Taxpayer intends to determine its capital interest for a Partnership on a given date by: (1) deeming the Partnership to have made a distribution in complete liquidation of all of the partners' interests in an amount equal to the fair market value of the partnership assets on that date less the partnership liabilities as of that date, and (2) computing the percentage of that deemed distribution to which Taxpayer would be entitled ("Percentage Share").

LAW AND ANALYSIS

Section 856(c)(2) provides that, in order for a corporation to qualify as a REIT, at least 95 percent of the corporation's gross income (excluding gross income from prohibited transactions) must be derived from specified sources, including dividends; interest; rents from real property; gain from the sale or other disposition of stock, securities, and real property (other than section 1221(a)(1) property); abatements and refunds of taxes on real property; income and gain from certain foreclosure property; fees described in section 856(c)(2)(G); and gain from certain sales or other dispositions of real estate assets.

Section 856(c)(3) provides that, in order for a corporation to qualify as a REIT, at least 75 percent of the corporation's gross income (excluding gross income from prohibited transactions) must be derived from rents from real property; interest on obligations secured by mortgages on real property or interests in real property; gain from the sale or other disposition of real property (other than section 1221(a)(1) property); dividends from REIT stock and gain from the sale of REIT stock; abatements and refunds of taxes on real property; income and gain derived from certain foreclosure property; fees described in section 856(c)(3)(G); gain from certain sales or other dispositions of real estate assets; and qualified temporary investment income.

Section 856(c)(4) provides that, in order for a corporation to qualify as a REIT, (A) at the close of each quarter of its taxable year, at least 75 percent of the value of its total assets must be represented by real estate assets, cash and cash items (including receivables), and Government securities; and (B) at the close of each quarter of its taxable year (i) not more than 25 percent of the value of its total assets may be represented by securities (other than those includible under section 856(c)(4)(A)); (ii) not more than 20 percent of the value of its total assets may be represented by securities of one or more taxable REIT subsidiaries (TRSs); (iii) not more than 25 percent of the value of its total assets may be represented by nonqualified publicly offered REIT debt instruments; and (iv) except with respect to TRSs and securities includible under section 856(c)(4)(A): (I) not more than 5 percent of the value of its total assets may be represented by securities of any one issuer; (II) the REIT may not hold

securities possessing more than 10 percent of the total voting power of the outstanding securities of any one issuer; and (III) the REIT may not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any one issuer.

Section 1.856-2(c)(1) provides that, for purposes of computing the percentage requirements of section 856(c)(2) and (3), the term “gross income” has the same meaning as the term has under section 61 and the Regulations thereunder.

Section 1.856-3(g) provides that, in the case of a REIT that is a partner in a partnership, the REIT will be deemed to own its proportionate share of each of the assets of the partnership and will be deemed to be entitled to the income of the partnership attributable to such share. For purposes of section 856, the interest of a partner in a partnership’s assets shall be 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 shall retain the same character in the hands of the partners for all purposes of section 856.

Under section 1.856-3(g), Taxpayer will be deemed to own its proportionate share of each of the assets of each of the Partnerships and will be deemed to be entitled to the income of each Partnership attributable to such share. Taxpayer’s proportionate share in each Partnership is determined according to its capital interest in the Partnership. Section 1.856-3(g) does not define the term capital interest. Because Taxpayer has determined that none of the Partnerships maintains a capital account that accurately reflects Taxpayer’s interest in the assets of the Partnership, Taxpayer will determine the Percentage Share for each Partnership, which is described above.

CONCLUSIONS

1. Solely for purposes of section 856(c), Taxpayer’s capital interest in each Partnership, within the meaning of section 1.856-3(g), will equal its Percentage Share for that Partnership.
2. Solely for purposes of section 856(c)(2) and (3), Taxpayer’s share of each item of gross income of each Partnership will equal the product of the amount of that item and the Percentage Share determined for that Partnership.
3. Solely for purposes of section 856(c)(4), Taxpayer’s share of each asset of a Partnership will equal the product of the value of that asset and the Percentage Share determined for that Partnership.

Except as specifically ruled upon above, no opinion is expressed or implied concerning any federal income tax consequences related to the facts herein under any other provisions of the Code. Specifically, no opinion is expressed or implied regarding the federal income tax consequences, under section 704 and the Regulations

thereunder, attributable to maintaining, or distributing based on, the net positive capital account balances of the particular partnership. Nor is any opinion expressed or implied with respect to whether Taxpayer otherwise qualifies as a REIT under subchapter M of chapter 1 of the Code, or whether any of the Partnerships are properly classified as partnerships for federal income tax purposes.

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 it may not be used or cited as precedent. The ruling contained in this letter is based upon information and representations submitted by the Taxpayer under a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this ruling request, it is subject to verification on examination.

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

Sincerely,

Steven Harrison
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: