

Internal Revenue Service

Department of the Treasury

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January 29, 1999

Legend:

The Trust	=
Corporation A	=
Food Service Provider	=
A	=
Year B	=
Z	=
Y	=

This letter responds to your request dated March 18, 1998, as supplemented by your subsequent correspondence dated August 10, 1998, August 25, 1998, September 22, 1998, October 6, 1998, November 30, 1998, and December 10, 1998.

FACTS

The Trust was organized as a corporation under the laws of the State A. The Trust made an election to be taxed as a Real Estate Investment Trust (REIT) effective for its taxable year ending December 31, Year B and subsequent years thereafter and has not revoked that election. The Trust currently owns directly and indirectly interests in Z properties.

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Corporation A

Corporation A has two classes of common stock. One class has all of the voting rights and represents five percent of the equity in Corporation A, and the other class has no voting rights and represents the remaining 95 percent of the equity. The Trust owns none of the voting stock and 100 percent of the nonvoting stock.

Corporation A operates executive-office and travel businesses. Its executive-office business consists of leasing ready-to-use executive office suite space to tenants on a short-term basis and providing its tenants office furnishings, office equipment, and office personnel. The typical lease covers a period of approximately 12 to 18 months. In addition, it provides various services at market rates, on an as-needed basis, to other tenants in a building even if they were not otherwise tenants of its sites. These services include: copying work, word processing jobs, and use of Corporation A's conference room space and/or video conference equipment. Corporation A provides travel services through Y, a subsidiary of Corporation A. Typically, Y locates a full service travel agency on Corporation A's property. The travel services are available to both tenants and non-tenants of Corporation A.

The Trust anticipates that many of Corporation A's customers will also be tenants of the Trust unrelated to Corporation A's property. The Trust anticipates that it will lease space to Corporation A at market rates and that the leases will be negotiated in an arms-length manner and will be on commercially reasonable terms. If Corporation A were to lease space from the Trust, Corporation A will offer its services in the ordinary course of its business at market rates to the Trust's other tenants.

The Trust and Corporation A currently operate and will continue to operate as separate independent businesses. Both have their own employees. Although each of Corporation A's departments receives some level of support services from the analogous department at the Trust, Corporation A compensates the Trust for any such services it receives at an arm's length rate.

Telecommunications Services

The Trust has entered into agreements with "Telecommunication Providers" to furnish "Telecommunication Services" to the Trust's tenants (Trust's Agreements). "Telecommunications Providers" or "Providers" are enterprises that provide "Telecommunication Services" (defined below). "Telecommunication Services" include one or more of the following: telephone communications, video communications service, 800-number service, telephone credit or debt card service, audio conferencing, paging, voice mail and message centers, access to network computer-based communications, and provision for telephone, video communication and other telecommunication equipment.

Each of the Trust's properties is wired for Telecommunication Services. In

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addition, the properties may be wired with "smart wiring," which permits the relay of information at much higher speeds than have been available in the past. Either the Trust or the Telecommunications Providers may own the smart wiring.

The Trust will derive income (Charges) in connection with the provision of Telecommunication Services as follows. In exchange for allowing the Telecommunications Providers to furnish such services to its tenants, the Trust will receive either a fixed dollar amount, a percentage of gross sales generated, or a credit. In addition, the Trust may receive an annual signing bonus from the Telecommunications Providers. The Trust will undertake certain efforts in connection with the delivery of Telecommunication Services within the Properties, including distributing promotional materials to the tenants and encouraging tenants to subscribe to those services.

The Trust makes the following representations: (1) All services provided to the Trust's tenants by Telecommunication Providers are also available to those tenants from other telecommunication providers of their choice; (2) no Telecommunication Provider provides any services to the Trust's tenants that it does not also provide to its other customers who are not tenants of the Trust; (3) actual Telecommunication Services provided to the Trust's tenants by the Telecommunication Providers are not customized to fit the specific needs of a particular tenant; (4) the Trust's Agreements are customary in the commercial office markets where the Trust owns properties; (5) the Trust's tenants are offered a menu of services that are generally available to other customers of Telecommunication Providers; and (6) the Telecommunications Services are customarily rendered to tenants of commercial office properties in the area where such services will be provided.

Food Service Activities

A number of the Properties owned or being developed by the Trust are suburban properties that are comprised of a cluster of office buildings (hereinafter referred to as "Office Parks").

The Trust anticipates that it will lease space in the Office Parks to a "Food Service Provider" for a lower per-square-foot rental amount than that paid by the Trust's other tenants. The Food Service Provider will operate the food service facilities during the breakfast and lunch hours, will employ all employees associated with the food service, and will collect the revenues directly from the customers. In addition, the Food Service Provider may offer catering services to the Trust's tenants in the Office Parks. The tenants of Trust and their employees will not receive discounts on the food or catering services that are not offered to nontenants.

The Trust represents that: (1) there is an insufficient number of commercial eating establishments within a reasonable proximity to the Office Parks to support the needs of the tenants' employees; (2) the location of its Office Parks are in mature

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markets, in which new food-service options are unlikely to be developed in the foreseeable future; and (3) the amount of rent paid by the Food Service Provider is negotiated at arm's length.

REQUESTED RULINGS

The Trust requests the following rulings:

1. The activities conducted by Corporation A will not cause rents received by the Trust from its tenants that are also tenants of Corporation A--either at one of the Trust's properties where Corporation A leases space or at a separate location of Corporation A--to be considered other than "rents from real property" under § 856(d) of the Internal Revenue Code;
2. The receipt of income from the Trust's provision of telecommunication services will not cause the rental payments received from tenants at such properties not to qualify as "rents from real property" under §856(d)(1)(A);
3. The receipt of income from the Trust's provision of telecommunication services will qualify as "rents from real property" under §856(d)(1)(B); and
4. The payment of a lower per-square-foot rental amount by the Food Service Provider than that paid by other tenants at the Trust's properties will not cause rents received by the Trust to be considered other than "rents from real property" under §856(d).

LAW AND ANALYSIS

Section 856(c)(2) of the Code provides that at least 95 percent of a REIT's gross income must be derived from, inter alia, "rents from real property." Section 856(c)(3) provides that at least 75 percent of a REIT's gross income must be derived from, inter alia, "rents from real property."

Section 856(d)(1) of the Code provides that the term "rents from real property" includes (subject to the exclusions in §856(d)(2)) -- (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 that 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, that lease.

Section 856(d)(2)(C) of the Code excludes from the definition of "rents from real

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property" any "impermissible tenant service income" as defined in §856(d)(7). Section 856(d)(7)(A) provides that the phrase "impermissible tenant service income" means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the REIT for services furnished or rendered by the REIT to the tenants of such property, or managing or operating such property.

Section 856(d)(7)(B) provides that if the amount of impermissible tenant service income exceeds 1 percent of all amounts derived during the tax year directly or indirectly by the REIT with respect to the property, the impermissible tenant service income of the REIT will include all of the amounts derived with respect to the property.

Section 856(d)(7)(C)(i) provides that for purposes of §856(d)(7)(A), services furnished or rendered, or management or operation provided, through an independent contractor from whom the REIT does not derive or receive any income shall not be treated as furnished, rendered, or provided by the REIT. Section 856(d)(7)(C)(ii) also excludes from the definition of impermissible tenant service income any amount which would be excluded from unrelated business taxable income under §512(b)(3) if it were received by an organization described in §511(a)(2).

Section 512(b)(3) provides, in pertinent part, that there shall be excluded from the computation of unrelated business taxable income all rents from real property and all rents from personal property leased with that real property, if the rents attributable to such personal property are an incidental amount of the total rents derived under the lease, determined at the time the personal property is placed in service.

Section 1.512(b)-1(c)(5) of the Income Tax Regulations provides that payments for the use or occupancy of rooms and other space where services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses or apartment houses furnishing hotel services, or in tourist camps or tourist homes, motor courts or motels, or for the use or occupancy of space in parking lots, warehouses or storage garages, do not constitute rent from real property. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The supplying of maid service, for example, is an impermissible occupant service; whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways and lobbies, and the collection of trash are not considered as services rendered to the occupant. Payments for the use or occupancy of entire private residences or living quarters in duplex or multiple housing units or offices in an office building are generally treated as rents from real property.

One of the principal purposes for the income restrictions imposed by §§856(c) and 856(d) is to ensure that the vast bulk of the REIT's income is from passive sources and not from the active conduct of a trade or business. See H.R. Rep. No. 2020, 86th Cong., 2d Sess., 6 (1960), reprinted at 1960-2 C.B. 822-23.

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Section 1.856-4(b)(1) of the Regulations. provides that, for purposes of §§856(c)(2) and (3), the term "rents from real property" includes charges for services customarily furnished or rendered in connection with the rental of real property, whether or not the charges are separately stated. Services rendered to tenants of a particular building will be considered customary if, in the geographic market in which the building is located, tenants in buildings of a similar class are customarily provided with the service. In particular geographic areas where it is customary to furnish electricity or other utilities to tenants in buildings of a particular class, the submetering of those utilities to tenants in the buildings will be considered a customary service.

Corporation A offers its services to both tenants of the Trust and the general public. The tenants are not given any preference in terms of accessibility to Corporation A's services or in cost of those services, and separate fees are to be charged. The Trust and Corporation A operate and will continue to operate as separate, independent businesses. Because amounts received by the Trust from Corporation A do not qualify as "rents from real property" under §856(d), the Trust will treat these amounts as non-qualifying income for purposes of §§856(c)(2) and (3). The activities, described above, engaged in by Corporation A, however, will not cause otherwise qualifying income from the rental of the properties to be characterized as other than "rents from real property" for purposes of §856(d).

The Telecommunication Services to be made available to the tenants of the properties through the Trust's Agreements will not be considered to be rendered primarily for the convenience of the tenants for purposes of §1.512(b)-1(c)(5) of the Regulations. Accordingly, the Telecommunication Services satisfy the exception, set forth in §856(d)(7)(C)(ii), to the definition of impermissible tenant services and do not cause rental payments received from tenants at such properties not to qualify as "rents from rental property" under §856(d)(1)(A). Furthermore, Charges derived by the Trust, if otherwise qualifying, constitute "rents from real property" within the meaning of §856(d)(1)(B).

The Food Service Provider provides all of the food services, whether to the tenants of the Office Parks or to the general public. The tenants are not given any preference in terms of accessibility to the food services or in cost of those services, and separate fees are to be charged. The Trust and the Food Service Provider will operate as separate, independent businesses. Accordingly, based on the facts as represented by the Trust, we conclude that the amounts received by the Trust from a Food Service Provider will not cause otherwise qualified amounts received from the Trust's tenants to be excluded from the definition of "rents from real property" contained in §856(d).

Except as specifically ruled upon above, no opinion is expressed or implied regarding: (1) whether the Trust otherwise qualifies as a REIT under §856; (2) the tax treatment or characterization of any amount received by the Trust from Corporation A; (3) the consequences of this transaction under any other provision of the Code; or (4) whether the Trust meets the 10 percent voting securities requirement of §856(c)(4)(B)

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through its interest in the non-REIT subsidiary.

This 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 Federal income tax return of the Trust for the taxable year in which the transactions covered by this ruling are consummated.

Sincerely,

Assistant Chief Counsel
(Financial Institutions & Products)

By: _____
William E. Coppersmith
Chief, Branch 2