

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:3 – PLR-121613-06

Date:

October 26, 2006

Company:

Shareholders:

Property:

a:

b:

c:

d:

e:

f:

g:

h:

i:

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k:m:n:p:

Dear :

This letter responds to a letter from your authorized representatives dated April 3, 2006, submitted on behalf of Company, requesting a ruling that the rental income received by Company from the Property is not passive investment income within the meaning of § 1362(d)(3)(C)(i) of the Internal Revenue Code.

FACTS

Company, incorporated on a, elected under § 1362(a) to be an S corporation effective b. Company has accumulated earnings and profits. It owns, leases, and manages commercial real estate, including office buildings and warehouses.

Company, through its c employees, c shareholders, and approximately d contractors, provides various services in leasing and managing the Property. These services include maintenance and repair of building structural components and systems, including roofs, walls, and floors, as well as electrical, air conditioning, and plumbing systems; maintenance, cleaning, and repair of gutters and downspouts; parking lot maintenance and repair; pressure cleaning of walkways and parking lots; landscaping, weed control, and irrigation system maintenance; maintenance and inspection of fire safety equipment; elevator services; janitorial services; window cleaning; glass and window repair; maintenance and repair of interior and exterior lighting; removal and replacement of wallpaper; interior and exterior painting; graffiti removal; pest control; mail delivery services; emergency lockout services; direct response to tenant calls for minor plumbing repairs; and first response to hurricane damage.

Company received or accrued approximately e in rents and paid or incurred approximately f in relevant expenses for g on the Property. The comparable figures for h are i and k, respectively, and the figures for m are n and p, respectively.

LAW AND ANALYSIS

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Except as provided in § 1362(g), § 1362(a)(1) provides that a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(3)(A)(i) provides that an election under § 1362(a) terminates whenever the corporation (I) has accumulated earnings and profits at the close of each of three consecutive tax years, and (II) has gross receipts for each of such tax years more than 25 percent of which are passive investment income.

Except as otherwise provided in § 1362(d)(3)(C), § 1362(d)(3)(C)(i) provides that the term "passive investment income" means gross receipts derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities.

Section 1.1362-2(c)(5)(ii)(B)(1) of the Income Tax Regulations provides that "rents" means amounts received for the use of, or the right to use, property (whether real or personal) of the corporation.

Section 1.1362-2(c)(5)(ii)(B)(2) provides that "rents" does not include rents derived in the active trade or business of renting property. Rents received by a corporation are derived in an active trade or business of renting property only if, based on all the facts and circumstances, the corporation provides significant services or incurs substantial costs in the rental business. Generally, significant services are not rendered and substantial costs are not incurred in connection with net leases. Whether significant services are performed or substantial costs are incurred in the rental business is determined based upon all the facts and circumstances including the number of persons employed to provide the services and the types and amounts of costs and expenses incurred (other than depreciation).

CONCLUSION

Based solely on the facts and representations submitted, we conclude that the rents Company receives from the Property are not passive investment income under § 1362(d)(3)(C)(i).

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding Company's eligibility to be an S corporation. Further, the passive investment income rules of § 1362 are independent of the passive activity rules of § 469; unless an exception under § 469 applies, the rental activity remains passive for purposes of § 469.

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Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

/s/

MARY BETH COLLINS
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

enclosures: copy for § 6110 purposes

cc: