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Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply to:

CC:FIP:3/PLR-108865-00

Date:

September 30, 2000

LEGEND:

- Trust =
- Company =
- State X =
- State Y =
- Individual A =
- Apartment Complex A =
- Apartment Complex B =
- University A =
- University B =
- Date 1 =
- Date 2 =
- a =
- b =
- c =
- d =
- e =
- f =

Dear :

This ruling responds to a letter dated April 12, 2000, and subsequent correspondence submitted on behalf of Trust, requesting rulings under § 856 of the Internal Revenue Code.

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FACTS

Trust was organized as a State X corporation on or about Date 1. Trust intends to elect to be treated as a real estate investment trust (REIT) for its taxable year ending Date 2. Trust is engaged in the development, ownership, and management of quality off-campus student apartments located near certain colleges and universities in the United States. Trust currently owns (through wholly owned entities) a student housing properties in b states (the Properties).

Trust owns approximately c percent of Company, a State Y limited liability company classified as a partnership for federal income tax purposes. Company was formed to provide telecommunications, cable television, internet, and security services to Trust's properties. Individual A, Trust's chief executive officer and president, owns approximately d percent of Company. Investors and Company's management own the remaining e percent interest in Company.

A standard apartment in a complex owned by Trust features an individual lease, a private bedroom with bathroom, the option of a furnished (bed and desk) bedroom suite, a keyless lock system, air conditioning, and 24-hour monitored security alarm with a "panic button" feature in common areas and bedrooms. Trust's standard lease term is one year, typically beginning in August, the beginning of the academic year. Although the Properties are generally tailored to meet the demands of today's college students, non-students may also be and are tenants in these buildings. Basic telephone and cable television service are included in a tenant's monthly rent. Common amenities include a swimming pool with deck, lighted tennis courts, lighted basketball courts, an unattended fitness center (e.g., cardiovascular equipment and free weights), an entrance gate with video screening from each apartment, a common study area, and a computer study room with computers equipped with internet connectivity, reference materials, printers, a fax machine, and a copy machine. Trust has represented that the facilities, services, and amenities offered to tenants of the Properties are comparable to those offered by similar rental apartment complexes in the relevant geographic markets where the Properties are located. Specifically, Trust will provide either directly, through Company, or third parties the following services:

Internet Access: Company acts as a reseller of internet access to certain tenants. In instances where Company provides these services, it contracts with internet service providers on a flat fee basis for the entire

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project, and resells the service to individual tenants on a flat fee basis. Trust also represents that: (i) internet access services provided to Trust's tenants are not customized or tailored to fit the specific needs of any particular tenant; and (ii) internet access services are usual and customary in similar residential rental buildings in the relevant geographic markets where the Properties are located.

Telecommunication Services: Company is certified with the public utility commissions of the various states in which it operates as a competitive local exchange carrier (CLEC). As a CLEC, Company is authorized to and does provide switched local telephone service to each of the Properties. This local telephone service includes making available to tenants many common features that regional bell operating companies (RBOCs) offer, such as call waiting, caller I.D., and voice mail. Basic local telephone service is provided to each apartment without a separate charge. In addition, each tenant may obtain a private telephone line for his or her own individual use. Long distance and additional features are billed separately by third party providers. Company charges Trust a fixed fee for the provision of basic local telephone service.

Generally, Company operates as a facilities based CLEC. This means that Company owns its own telephone switching equipment (generally PBX switches) for each apartment complex. This switching equipment is generally connected to the RBOC's system through transport facilities leased from the RBOCs or other local phone company. Generally, Company is allocated a block of 1,000 to 2,000 phone numbers which it can issue to tenants. In certain instances, Company does not own any switching equipment and merely operates as a reseller of services for a RBOC or other local phone company (and acts as a reseller-based CLEC as opposed to a facilities-based CLEC). In all cases, Company serves as a reseller of long distance service, generally purchasing service from a large national company for a set rate and charging a higher rate to the tenants. Trust makes the following representations in connection with these services: (1) actual telecommunication services provided to Trust's tenants by Company are not customized to fit the specific needs of a particular tenant; (2) the agreements with tenants are usual and customary in similar residential rental buildings in the relevant geographic markets where the Properties are located; and (3) Trust's tenants are offered a menu of services that are generally offered by telecommunications providers to tenants of similar residential rental buildings in the geographic markets where such services are provided.

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Cable Television Services: Company arranges for basic cable television service to be provided by a local provider to the tenants of the Properties for a fixed fee paid by Trust (which is approximately f percent in excess of the amount paid by Company to the actual local provider). Neither Trust nor Company separately bill tenants for basic cable television service, but rather provide it as part of the basic rental charge. However, in certain limited instances (e.g., U.S. Navy residents where rent is paid by the U.S. Navy) cable television is billed to tenants separately. If a tenant desires to obtain any premium cable television channels, the tenant must contract for those services directly with the local cable television service provider. Trust represents that: (i) cable services provided to Trust's tenants are not customized or tailored to fit the specific needs of any particular tenant; and (ii) cable television services are usual and customary in similar residential rental buildings in the relevant geographic markets where the Properties are located.

Computer Room: Students pay an additional charge for the use of an unattended computer study room. The fee is either a flat fee for unlimited use, or a fee based upon usage. There are no services provided to the tenants in the computer study room, other than generalized maintenance and repairs on the equipment. Trust represents that the provision of basic office equipment and computers to tenants in this fashion is usual and customary in similar residential rental buildings in the relevant geographic markets where the Properties are located.

Security: Company arranges for alarm monitoring services to be provided by a local provider to tenants of individual units. Trust pays Company a fixed fee (which is in excess of the amount paid to the actual provider). In addition, the Properties contain keycard lock systems, a "panic button" feature (i.e., ability to trigger an alarm in emergency situations), and gated entrances with video screening capability. At certain of the Properties, Trust contracts with a third party to provide a security guard at the entrance of the particular Property. In addition to the protection of its tenants, these security measures also benefit Trust since the provision of these security measures reduces Trust's exposure to property damage, vandalism, and potential liability. Trust represents that the provision of these security services to tenants is usual and customary in similar residential rental buildings in the relevant geographic markets where the Properties are located.

Shuttle Bus Transportation: In the case of two of the Properties, Apartment Complex A and Apartment Complex B, Trust arranges for the private shuttle bus transportation of tenants between Apartment Complex A and Apartment Complex B and University A and University B, respectively. This

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private shuttle bus service is provided because there is no comparable local city bus service available. Trust has lobbied and will continue to lobby the local governmental transportation authorities to add additional stops on their city bus route systems to provide comparable bus service for its tenants. In the case of Apartment Complex A, Trust contracts with a local transportation company to provide shuttle bus service to and from campus. This bus runs five days a week from 7:30 a.m. to 5:30 p.m. In the case of Apartment Complex B, Trust contracts with a local transportation company to provide shuttle bus service to and from campus. This bus runs five days a week from 7:30 a.m. to 11:45 p.m.

Trust represents that the provision of local shuttle bus service between Apartment Complex A and University A and Apartment Complex B and University B to tenants is usual and customary in similar residential rental buildings in the relevant geographic markets where Apartment Complex A and Apartment Complex B are located for each property where comparable local city bus service is unavailable. Moreover, Trust represents that it arranges for the shuttle bus services through an entity which is an independent contractor within the meaning of § 856(d)(3) and from whom Trust does not derive or receive any income (Independent Contractor). The Independent Contractor separately bills Trust for the cost of these transportation services, and the charge when paid by Trust is retained by the independent contractor. Trust factors this separate charge into the rent charged to each tenant of these two Properties; however, a separate transportation charge is not set forth for each tenant in the tenant's lease nor is rent broken down between rental charges and transportation charges in any billings.

Trust will derive income in connection with the delivery by Company of certain of the services described above because of Trust's proportionate ownership of Company. Trust and/or Company may undertake basic activities in connection with the marketing of the services described above, including the distribution of marketing materials to tenants and encouraging tenants to subscribe to these services. Trust, however, will not engage in significant promotional activities and is under no obligation to engage in any marketing or promotional activities.

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, among other sources, "rents from real property."

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Section 856(d)(1) of the Code provides that "rents from real property" include (subject to the exclusions in § 856(d)(2)): (i) rents from interests in real property, (ii) charges for services customarily furnished or rendered in connection with the rental of real property (whether or not such charges are separately stated), and (iii) 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 such personal property for the taxable year does not exceed 15 percent of the total rent for the year attributable to both the real and personal property leased under, or in connection with the lease.

Section 1.856-4(b)(1) of the regulations provides that, for purposes of §§ 856(c)(2) and 856(c)(3) of the Code, 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. Section 1.856-4(b)(1) provides that services rendered to tenants of a particular building will be considered customary if, in the geographic area in which the building is located, tenants in buildings of a similar class (such as luxury apartment buildings) are customarily provided with the service.

Section 856(d)(2)(C) of the Code excludes from the definition of "rents from real property" any "impermissible tenant service income" as defined in § 856(d)(7). Section 856(d)(7)(A) provides that "impermissible tenant service income" means, with respect to any real or personal property, any amount received or accrued directly or indirectly by a REIT for furnishing or rendering services 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 with respect to a property for any taxable year exceeds one percent of all amounts received or accrued directly or indirectly by the REIT with respect to such property, the impermissible tenant service income of the REIT with respect to the property shall include all such amounts.

Section 856(d)(7)(C)(i) of the Code excludes from the definition of impermissible tenant service income amounts received for services furnished or rendered, or management or operation provided, through an independent contractor within the meaning of § 856(d)(3) from whom the REIT itself does not derive or receive any income. Additionally, § 856(d)(7)(C)(ii) 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 received by an organization described in § 511(a)(2).

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Section 1.512(b)-1(c)(5) of the 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, constitutes such 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 any office building, are generally treated as rent from real property.

Trust has represented that the internet, telephone, cable television, security, and private shuttle bus (only regarding Apartment Complex A and Apartment Complex B) services, and computer room facilities that Trust is providing its tenants are customarily provided to tenants by owners of rental properties of a similar class and located in the same geographic areas as the Properties within the meaning of § 856(d)(1)(B). In the case of private shuttle bus service for Apartment Complex A and Apartment Complex B, Trust arranges for these services to be provided by an Independent Contractor. Accordingly, we conclude that the provision of internet, telephone, cable television, and security services, and computer room facilities as described above fall within the exception to impermissible tenant service income contained in § 856(d)(7)(C)(ii). The provision of private shuttle bus services for tenants of Apartment Complex A and Apartment Complex B, falls within the exception contained in § 856(d)(7)(C)(i).

Therefore, we conclude that amounts Trust receives or accrues, directly or indirectly through Company, from providing those services, if otherwise qualifying, will constitute "rents from real property" within the meaning of § 856(d)(1). Moreover, the provision of the services described above, and the computer room facilities, will not prevent Trust's share of otherwise qualifying amounts derived from the Properties (directly or indirectly through Company) from qualifying as "rents from real property" under § 856(d)(1).

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HOLDING

Accordingly, based on the facts submitted and representations made, we rule that amounts Trust receives or accrues, directly or indirectly through Company, from the provision of internet, telephone, cable television, security, and private shuttle bus (only regarding Apartment Complex A and Apartment Complex B) services as described above, if otherwise qualifying, will constitute "rents from real property" within the meaning of § 856(d)(1)(B) of the Code.

Furthermore, the provision to the tenants of the Properties of the services described above, and the computer room facilities, will not cause otherwise qualifying income received by Trust from the Properties to be excluded from the term "rents from real property" within the meaning of § 856(d)(1) of the Code.

Except as specifically ruled upon above, no opinion is expressed or implied regarding the consequences of this transaction under any other provision of the Code. In particular, no opinion is expressed whether Trust qualifies as a REIT under § 856 of the Code.

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

Sincerely yours,
Acting Associate Chief Counsel
(Financial Institutions and Products)
By: Alice M. Bennett
Chief, Branch 3

Enclosures:
Copy of this letter
Copy for section 6110 purposes