

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply to:

CC:FIP:3/PLR-112175-00

Date:

October 17, 2000

LEGEND:

Trust =

State X =

Year 1 =

Dear :

This ruling responds to a letter dated June 14, 2000, and subsequent correspondence, submitted on behalf of Trust, requesting a ruling under § 856(d)(1) of the Internal Revenue Code.

FACTS

Trust was organized under State X law in Year 1. Trust is a publicly traded corporation that has elected to be treated as a real estate investment trust ("REIT") under section 856(c)(1) of the Code. Trust holds all of its assets either directly or through subsidiaries. Trust's assets include multi-family apartment properties that Trust owns, manages, leases, and operates (the Properties).

Trust intends to enter into an agreement with an independent telecommunication service provider to provide certain telecommunication services to the tenants of the Properties (Tenants). Trust may enter into additional agreements with other independent telecommunication service providers (Providers) to provide telecommunication services to Tenants. Telecommunication services include the following: the installation, servicing, repair, and upgrade of, and access to, communication lines to obtain telecommunication services; Internet access; high-speed data services; computer networking; electronic mail; voice mail; teleconferencing; business news and electronic clipping; security and safety alarms; and access to environmental control systems.

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Trust currently derives no income from the provision of telecommunication services. Upon receiving a favorable ruling, Trust plans in the future to furnish telecommunication services to Tenants by contracting with Providers. If Trust enters into a contract with a Provider, Trust will derive income by either charging a flat fee to Tenants and paying an agreed upon charge to the Provider or collecting from the Provider a flat fee or percentage fee based on the Provider's gross revenues from the services.

Trust makes the following representations: (1) The telecommunication services described above are customarily offered or provided to tenants in a similar class of buildings in the relevant geographic markets in which the Properties are located; (2) No Provider will offer services to Tenants that it does not offer to non-Tenants; and (3) No Provider will create a unique menu or package of services tailored to suit the demands of any particular Tenant.

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."

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

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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 (Independent Contractor). 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).

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

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housing units, or offices in any office building, are generally treated as rent from real property.

One of the principal purposes for the income restrictions imposed by sections 856(c) and 856(d) of the Code is to ensure that the 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), 1960-2 C.B. 819, 822-823.

The provision of telecommunication services is similar to the provision of services by public utilities and has become an essential means of communicating information and data. Trust's ability to provide telecommunication services to Tenants will allow Trust to offer services similar to those being offered to tenants of similar classes of residential properties in the same geographic markets where the Properties are located.

Accordingly, the telecommunication services Trust offers or provides to Tenants will not be considered to be rendered primarily for the convenience of the tenants under section 1.512(b)-1(c)(5) of the regulations. As a result, the services will fall within the exception contained in section 856(d)(7)(C)(ii) of the Code, and the provision of telecommunication services will not prevent Trust's share of amounts derived from the Properties from qualifying as "rents from real property" under section 856(d)(1) of the Code. Moreover, based on Trust's representation that the telecommunication services are of the type usually and customarily offered or provided to tenants of similar rental properties located in the same geographic markets where the Properties are located, amounts Trust receives or accrues for providing those services, if otherwise qualifying, will constitute "rents from real property" within the meaning of section 856(d)(1)(B) of the Code.

HOLDING

Accordingly, based on the facts submitted and representations made, we rule that the provision of the telecommunication services described above to the Tenants of the Properties 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. Furthermore, we rule that amounts Trust receives or accrues from the provision of telecommunication services, if otherwise qualifying, will

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constitute "rents from real property" within the meaning of § 856(d)(1)(B).

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

cc:

DD:
Attn: Chief, Examination Division