

Internal Revenue Service

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Date:

October 29, 2003

LEGEND

Taxpayer =

Date1 =

Date2 =

Exchange =

Dear :

This ruling responds to your letter dated July 2, 2003, submitted on behalf of Taxpayer, requesting a ruling under sections 301 and 305 of the Internal Revenue Code (“the Code”). Additional information was received in subsequent letters submitted by mail and facsimile.

FACTS

Taxpayer is a publicly traded U.S. corporation that is the common parent of an affiliated group of corporations that files a consolidated federal income tax return on a calendar year basis. Taxpayer has one class of stock outstanding, common stock.

Taxpayer intends to make a real estate investment trust (“REIT”) election pursuant to section 856(c) of the Code, effective Date1.

On or prior to Date2, Taxpayer will make a distribution to its shareholders of an amount sufficient to eliminate all of its estimated earnings and profits (“E&P”) as of Date2 (the “Distribution”). Taxpayer will declare the Distribution as a distribution of an

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appropriate number of shares of Taxpayer common stock (the "Maximum Share Distribution"), but the declaration will also provide that, at the election of each shareholder, a shareholder instead may receive cash in lieu of some or all of the shares to which it otherwise would be entitled. In the event of an election, the cash received will have a value approximately equal to the value of the foregone shares of stock. Shareholders who fail to make an election will automatically receive only stock. Taxpayer anticipates that some shareholders will elect to receive only cash and other shareholders will receive only shares of common stock. To the extent necessary in the Distribution, Taxpayer will issue cash in lieu of an issuance of fractional shares of Taxpayer stock.

While each shareholder will have the option to elect to receive cash in lieu of stock for all or any portion of the shareholder's entire entitlement under the Distribution, Taxpayer currently intends to limit the amount of cash to be distributed in the aggregate to an amount not less than 20 percent of the Distribution. The computation of the amount of cash to be distributed to electing shareholders in the Distribution will occur as follows: (1) Taxpayer's shareholders will be given a specified period of time after the declaration to elect to receive cash in lieu of shares of stock; (2) at the end of such period (the "Determination Date"), the amount of cash to be distributed in lieu of a share of stock will be determined on the basis of the average trading price of a share of Taxpayer stock on the Exchange as of the close of trading during the three previous trading days (the "Cash Distribution Price"), and (3) the amount of cash to be distributed in lieu of shares of stock will equal the Cash Distribution Price multiplied by the number of shares for which a cash election has been made, subject to the limitation that the total amount of cash to be distributed to all shareholders will be limited to an amount not less than 20 percent of the product of the Cash Distribution Price multiplied by the Maximum Share Distribution.

Taxpayer intends to distribute its stock and the cash in the Distribution as soon as possible following the Determination Date. Taxpayer does not anticipate there being any significant change in the value of a share of Taxpayer stock immediately following the Determination Date, including the expected short period between that date and the dates shareholders will receive the Distribution. The trading price of Taxpayer stock has not been particularly volatile on a historic basis absent a disclosure of a significant corporate event or transaction, and Taxpayer has no reason to believe that its stock price will change immediately following the Determination Date.

The following representations have been made in connection with the Distribution:

1. The amount of cash to be distributed in lieu of a share of stock will equal the average value of a share of stock at the close of trading during the three-day period

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ending immediately prior to the final date on which an election can be made (the "Determination Date"). That date will precede the actual distribution of stock and any cash by a few days.

2. In the event that the shareholders in the aggregate elect to receive cash in lieu of shares in an amount equal to or in excess of 20 percent of the value of the Maximum Share Distribution (as determined as of the Determination Date), then the total amount of cash distributed shall equal at least 20 percent of the value of the Maximum Share Distribution (as determined as of the Determination Date).

3. In the event that the shareholders in the aggregate elect to receive cash in lieu of shares in an amount less than 20 percent of the value of the Maximum Share Distribution (as determined as of the Determination Date), then each shareholder electing to receive cash shall receive cash equal to the value of the shares so elected (as determined as of the Determination Date).

4. In no event will a shareholder that elects to receive cash in lieu of shares equal to 20 percent or more of its entire entitlement under the Distribution receive cash equal to less than 20 percent of its entire entitlement under the Distribution.

LAW AND ANALYSIS

Section 301(a) of the Code generally provides that a distribution of property (as defined in section 317(a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in subsection (c). Section 301(c)(1) provides that in the case of a distribution to which section 301(a) applies, that portion of the distribution which is a dividend (as defined in section 316) shall be included in gross income.

Section 305(a) provides in general that, except as otherwise provided in section 305, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

Section 305(b)(1) provides that section 305(a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which section 301 applies, if the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either in its stock, or in property.

Section 1.305-2(a) of the Income Tax Regulations provides in general that under section 305(b)(1), if any shareholder has the right to an election or option with respect to whether a distribution shall be made either in money or any other property, or in stock or

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rights to acquire stock of the distributing corporation, then, with respect to all shareholders, the distribution of stock or rights to acquire stock is treated as a distribution of property to which section 301 applies regardless of (1) whether the distribution is actually made in whole or in part in stock or in stock rights; (2) whether the election or option is exercised or exercisable before or after the declaration of the distribution; (3) whether the declaration of the distribution provides that the distribution will be made in one medium unless the shareholder specifically requests payment in the other; (4) whether the election governing the nature of the distribution is provided in the declaration of the distribution or in the corporate charter or arises from the circumstances of the distribution; or (5) whether all or part of the shareholders have the election.

HOLDING

Based on the facts and representations submitted, we rule as follows:

Any and all of the cash and stock distributed in the Distribution (as described above) by Taxpayer shall be treated as a distribution of property with respect to its stock to which section 301 applies. Sections 301 and 305(b)(1).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with the Power of Attorney on file with this office, the original of this letter is being sent to the Taxpayer's authorized representative and a copy of this letter is being sent to the Taxpayer.

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The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

T. Ian Russell

T. Ian Russell
Assistant to Branch Chief, Branch 5
Office of Associate Chief Counsel

(Corporate)