

Internal Revenue Service

Department of the Treasury

Index Number: 1362.02-03

Washington, DC 20224

Number: **199917055**
Release Date: 4/30/1999

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:3 PLR-116369-98

Date:

February 2, 1999

Company:

Shareholders:

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Properties:

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State:

a:

b:

c:

d:

e:

f:

g:

h:

Dear

This letter responds to a letter from your authorized representative dated August 17, 1998, as well as subsequent correspondence, submitted on behalf of Company, requesting a ruling that the rental income received by Company from the Properties is not passive investment income within the meaning of § 1362(d)(3)(C)(i). Company represents the following facts.

Company was incorporated on a and elected under § 1362(a) to be an S corporation effective b. It has C corporation earnings and profits.

Company develops, leases, manages, and maintains commercial and industrial real estate in State. Company's undeveloped land and outdoor signs are not covered by this ruling.

Company's employees are involved in all aspects of Company's real estate leasing and management business. Through these employees, Company provides various services to the Properties (though the same services are not necessarily provided to all properties). These services include regular property inspection; roof and building structure maintenance and repair; space maintenance and repair assistance (both physical and financial);

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space design, modification, and renovation assistance; landscaping; maintenance and repair of parking areas; utilities; custodial services; cooperative security patrol support; assistance with tenant subleasing and business sales; provision of temporary storage and other short-term alternate space; assistance with code and contract compliance; and facilitation and coordination of contractor services. In addition to the services provided to tenants, Company handles the usual leasing and administrative functions involved in managing real estate.

Company received or accrued c in rents and paid or incurred d in relevant expenses on the Properties for e. The comparable figures for f are g and h.

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 subparagraph (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, but not limited to, the number of persons employed to provide the services and the types and amounts of costs and expenses incurred (other than

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depreciation).

After applying the applicable law and regulations to the facts as presented in this ruling request, we conclude that the rents Company receives from the Properties are not passive investment income under § 1362(d)(3)(C)(i).

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

In accordance with the 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,

JEFF ERICKSON
Assistant to the Chief,
Branch 3
Office of Assistant
Chief Counsel
(Passthroughs and
Special Industries)

encl: copy for § 6110 purposes