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August 9, 1999

X = .
EIN:

a =

b =

x =

y =

z =

d1 =

d2 =

Dear

This responds to your letter dated March 26, 1999, submitted on behalf of X, requesting a ruling that rents received by X will not constitute "passive investment income" within the meaning of § 1362(d)(3)(C)(i) of the Internal Revenue Code.

The information submitted states that X filed an election to be an S corporation for its tax year beginning d2. X has accumulated earnings and profits. X owns and operates a manufactured home park. The park has pads available for a manufactured homes. Currently, there are b manufactured homes located in the park. Each owner or resident of a manufactured home pays monthly fees to X pursuant to a rental agreement which X represents is not a net lease.

X represents that X performs significant services and incurs substantial costs in the operation and leasing of the park. X employs six full-time employees and two or three seasonal employees to oversee its operation and maintenance of the park. X provides the following services to its tenants: snow removal from all park roads; street repair and maintenance thereof;

water, sewer and garbage collection four times a week; mailboxes for the residents and maintenance of the mailboxes; individual yard lights and maintenance of the lights; lawn care for common areas; grass seed and fertilizer for all residents; fertilization of lawns on all home sites; maintenance of storm drains, water and sewer systems, fire hydrants, electric meters and underground electrical and telephone wiring; insect and rodent control, animal traps, and spray trees; corrugated cardboard recycling; grass and yard waste removal; repair and replacement of residents' driveways.

For its taxable year ending on d1, X received gross receipts from the residents of the park of \$x and incurred operational costs of \$y, which costs include \$z of depreciation, in connection with its maintenance of the park.

Section 1362(d)(3)(C)(i) provides that, except as otherwise provided in § 1362(d)(3)(C), 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 defines "rent" as 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 the term "rents" does not include rents derived in the active trade or business of renting property. Rents 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 depreciation).

Based solely on the facts and the representations submitted, we conclude that X's receipts from the operation and leasing of its manufactured home park are not passive investment income under § 1362(d)(3)(C)(i).

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code.

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

Pursuant to a power of attorney on file in this office, a copy of this letter will be sent to X.

Sincerely yours,

H. GRACE KIM
Assistant to the Chief
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes

CC: