

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:FIP:2- PLR-144772-02

Date:
February 4, 2003

TY:

LEGEND:

- Company -
- Operating Partnership -
- State A -
- State B -
- x -

Dear _____ :

This letter is in reply to your August 13, 2002, letter and other correspondence requesting a ruling on behalf of Company that the ownership and operation of RV Parks by TRS will not cause TRS to be a corporation which directly or indirectly operates or manages a lodging facility within the meaning of section 856(l)(3)(A) of the Code.

FACTS

Company is a State B corporation that has elected to be treated as a real estate investment trust ("REIT"). Company owns approximately an x-percent interest in Operating Partnership, a State A limited partnership, which conducts substantially all of Company's operations.

One or more corporations that are intended to qualify as taxable REIT subsidiaries of Company within the meaning of section 856(l) (the “TRS”) will own and manage recreational vehicle (“RV”) parks (“RV Parks”) and will lease RV sites located within the RV Parks (“RV Sites”) to owners of RVs.

The RV Sites are generally improved with concrete parking pads for the placement of RVs and include utility connections. The owner of each RV leases an RV Site from the TRS. In general, RV Sites are rented for terms ranging from one day to twelve months. Tenants are solely responsible for their RV and other goods located on the RV Site, as required by RV Park rules and regulations.

Tenants are responsible for moving their RVs into and out of their rented RV Site and hooking up the RVs to the utility connections, and the TRS does not provide any assistance in this regard other than directing the tenants to the rented RV Sites.

RV Sites may include “Park Model” sites where a Park Model RV is affixed to the property in a manner similar to a manufactured home. Such Park Model RVs can only be removed from the RV Site at significant cost. At other RV Sites, the RV is driven onto the property and can be removed by the tenant at little or no cost.

Except as described below, neither the TRS nor the Operating Partnership will own RVs. The TRS may from time to time own a very small number of Park Model RVs that will be held for sale to customers in the ordinary course of business. These Park Model RVs may be leased on a short-term basis as part of a marketing strategy while they are held for sale. Operating Partnership currently owns cabins that are located in one RV park. The cabins contain no bathroom or kitchen facilities.

LAW AND ANALYSIS:

Section 856(c) provides that to qualify as a REIT, a corporation must: (1) derive at least 95 percent of its gross income (excluding gross income from prohibited transactions) from sources listed therein which include dividends and interest; (ii) derive at least 75 percent of its gross income (excluding gross income from prohibited transactions) from sources listed therein, including rents from real property and interest on obligations secured by mortgages on real property or on interests in real property.

Section 856(c)(4)(A) requires that, at the close of each quarter of the taxable year, at least 75 percent of the value of a REIT's assets is represented by real estate assets, cash, cash items and government securities.

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

Section 856(d)(2)(C) excludes from the definition of "rents from real property" any "impermissible tenant service income" as defined in section 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) provides that, for purposes of section 856(d)(7)(A), services furnished or rendered, or management or operation provided, through a taxable REIT subsidiary of a REIT shall not be treated as furnished, rendered or provided by the REIT.

Section 856(l)(1) provides that the term "taxable REIT subsidiary" means, with respect to a REIT, a corporation (other than a REIT) if the REIT directly or indirectly owns stock in such corporation and the REIT and such corporation jointly elect that such corporation shall be treated as a taxable REIT subsidiary of such REIT.

Section 856(l)(3) excepts from the definition of "taxable REIT subsidiary" any corporation that directly or indirectly operates or manages a lodging facility, as defined under section 856(d)(9)(D)(ii), or a health care facility, or which

directly or indirectly provides to any other person, other than an independent contractor, rights to any brand name under which any lodging facility or health care facility is operated.

Section 856(d)(9)(D)(ii) provides that the term “lodging facility” “means a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis.”

The legislative history of the TRS provisions contained in section 856 indicates that the term “lodging facility” was intended to include only facilities with living accommodations contained within a building or structure.

On April 28, 1999, Representative William Thomas introduced the Real Estate Investment Trust Modernization Act of 1999, H.R. 1616, 106th Cong. § 102 (1999) (the “Thomas Bill”), the text of which is largely the same as the text of the taxable REIT subsidiary provisions enacted by the Tax Relief Extension Act of 1999, P.L. 106-170, 113 Stat. 1860 (1999). See 145 CONG. REC. E795 (1999). The Thomas Bill defined the term “lodging facility” as “an establishment more than one-half of the dwelling units in which are used on a transient basis, and includes customary amenities and facilities.”

Representative Thomas’ technical explanation of the Thomas Bill explains that the use of the term “lodging facility” in the Thomas Bill conforms with former section 167(k)(3)(C), which was removed from the Code by the Revenue Reconciliation Act of 1990, P.L. 101-508, 104 Stat. 1388 (1990) (the “1990 Act”). Former section 167(k)(3)(C), dealing with the depreciation of expenditures made to rehabilitate low-income rental housing, defined the term “dwelling unit” as “a house or an apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, inn, or other establishment more than one-half of the units in which are used on a transient basis.”¹

Representative Thomas’ reference to former section 167(k)(3)(C) indicates that the term “lodging facility” was intended to include a facility with living accommodations contained within a building or structure.

¹This definition of “dwelling unit” currently appears in section 168(e)(2)(A)(ii)(I) dealing with the classification of property as residential or nonresidential for purposes of determining the allowable depreciation of such property.

The TRS-owned RV Parks lease paved open space. They do not contain buildings or structures as contemplated by section 856(d)(9)(D)(ii), and therefore the RV Parks are not “lodging facilities” for purposes of section 856(l)(3)(A).

CONCLUSION

Based on the facts as represented by the Company, we conclude that the ownership and operation of RV Parks by TRS will not cause TRS to be a corporation which directly or indirectly operates or manages a lodging facility within the meaning of section 856(l)(3)(A).

Except as specifically set forth above, no opinion is expressed regarding the federal tax consequences of the transactions described above under any other provision of the Code. Specifically, no opinion is expressed regarding the qualification of the Company as a REIT for federal tax purposes.

A copy of this letter should be attached to the federal income tax returns of Company for the taxable year in which the transactions covered by this ruling are consummated. In accordance with the power of attorney on file, we are sending this letter to Company, and a copy of this letter to Company’s authorized representative.

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.

Temporary or final regulations pertaining to one or more of the issues addressed in this letter ruling have not yet been adopted. Therefore, this letter ruling will be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 12.04 of Rev. Proc. 2003-1, 2003-1 I.R.B. 1, at 44. However, a letter ruling generally is not modified or revoked retroactively if the taxpayer demonstrates that the criteria in section 12.06 of Rev. Proc. 2003-1 are satisfied.

Sincerely,

William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)