

**Internal Revenue Service**

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
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PLR-157178-05

Date:  
January 10, 2006

Legend

Taxpayer =

StateA =

Date1 =

Date2 =

Date3 =

Date4 =

\$Y =

\$Z =

Dear :

This letter responds to your letter dated November 8, 2005, as supplemented by your letter dated December 9, 2005, submitted on behalf of Taxpayer, requesting rulings under Internal Revenue Code (the "Code") sections 301 and 305 (the "Ruling Request").

FACTS

Taxpayer is a publicly held StateA 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 uses the accrual method of accounting.

Taxpayer currently intends to make an election to be taxed as a REIT under Code section 856, *et seq.*, effective beginning with its tax year commencing Date1 (the "REIT Election").

In connection with the REIT Election, Taxpayer declared, on Date2 (the "Declaration Date"), a distribution, to be made in the manner described below, to holders of record of its common stock as of Date3 (the "Record Date") (such distribution the "Initial Distribution"). Taxpayer intends to pay the Initial Distribution on or about Date4 (the date such distribution is payable, the "Payment Date").

The Initial Distribution is to be a distribution of approximately \$Y in respect of each share of its common stock outstanding (excluding treasury shares). The aggregate amount distributed in connection with the Initial Distribution, payable as described below and referred to herein as a "Distribution Amount," will be \$Z. The Initial Distribution will be payable either in cash, in shares of common stock of Taxpayer, or in a combination of cash and shares of common stock of Taxpayer, as elected by each holder of shares of common stock, subject to the procedures and limitations described below.

In connection with the Initial Distribution, each record holder of Taxpayer's common stock on the Record Date will have the right to elect to receive cash, stock, or a combination thereof, as follows (an "Election"):

Option A – 100 percent cash;

Option B – 100 percent Taxpayer common stock; or

Option C – a combination of 20 percent cash and 80 percent Taxpayer common stock.

If, in connection with the Initial Distribution, any shareholder does not make a timely election among the three options, Taxpayer will make the distribution to the non-electing shareholder under Option B (the "Default Election"). Taxpayer will have the right to change the Default Election for the Initial Distribution to a different option, at its sole discretion, subject to providing notice to its shareholders.

Although there can be no certainty, Taxpayer reasonably anticipates that, pursuant to the Election process, some shareholders will elect to receive only cash and other shareholders will elect to receive only shares of Taxpayer common stock.

Taxpayer has limited the aggregate maximum amount of cash to be distributed in connection with the Initial Distribution to 20 percent of the aggregate value of the Distribution Amount for all shares of Taxpayer common stock outstanding on the Record Date (such certain amount, the "Applicable Threshold"). Taxpayer will have the right to increase the Applicable Threshold, but not to decrease the Applicable Threshold at any time up to the Payment Date.

If and to the extent that the shareholders of Taxpayer common stock make Elections pursuant to Options A and C to receive cash, in the aggregate, in an amount in excess of the Applicable Threshold, Taxpayer will limit the aggregate amount of cash paid to its shareholders electing Option A in connection with the Initial Distribution to the Applicable Threshold. Any reduction as a result of such limitation of the cash that would otherwise be distributed to Taxpayer's shareholders electing Option A will be made *pro rata*, based on the aggregate amount of cash each such shareholder has elected to receive per such shareholder's Election, subject to the limitation that no such shareholder will receive less than 20 percent of its distribution in cash.

Accordingly, in no event will a shareholder that elects Option A or Option C in connection with the Initial Distribution receive cash equal to less than 20 percent of its entire entitlement under the Initial Distribution. If and to the extent that the cash distributable to the shareholders making elections under Option A is reduced as set forth above, the balance of the portion of the Initial Distribution payable to such shareholders will be paid in shares of Taxpayer common stock. Shareholders that elect Option B in connection with the Initial Distribution, or fail to timely make an Election, will receive solely Taxpayer common stock in the Initial Distribution (unless the Taxpayer exercises its discretion to change the Default Election; however, Taxpayer would not exercise its discretion to change the Default Election if that would result in a reduction in the cash to be paid to shareholders making an election under Option A or Option C to less than the Applicable Threshold).

To the extent that the shareholders elect to receive in connection with the Initial Distribution cash, in the aggregate, that is less than or equal to the Applicable Threshold, each shareholder shall receive the amount of cash provided for by its respective Election, without regard to any further limitation.

Taxpayer currently has outstanding two classes of convertible debentures (the "Convertible Debt") and a single class of warrants to purchase Taxpayer common stock (the "Warrants").

Subject to certain conditions, holders of the Convertible Debt are entitled, upon conversion, to receive shares of Taxpayer common stock. In connection with the Initial Distribution, and pursuant to the respective terms of the Convertible Debt, the conversion rate of the Convertible Debt will be increased (such adjustments the "Convertible Adjustments"). As a result of the Convertible Adjustments, a holder of Convertible Debt could be entitled to receive upon conversion a greater number of

shares of Taxpayer common stock than if the Convertible Adjustments had not been made.

Under the terms of the Warrants, a holder of the Warrants can, upon exercise, acquire from Taxpayer a number of shares of Taxpayer common stock for a stated warrant exercise price. In connection with the Initial Distribution, and pursuant to the terms of the Warrants, the exercise price of the Warrants will be decreased (the "Warrant Adjustment," and collectively with the Convertible Adjustments, the "Adjustments"). As a result of the Warrant Adjustment, a holder of the Warrants will be entitled to receive upon exercise of the Warrants additional value.

## HOLDINGS

1. Any and all of the cash and stock distributed in the Initial Distribution (as described above) by Taxpayer to the holders of its stock shall be treated as a distribution of property with respect to its stock to which section 301 applies. Sections 301 and 305(b)(1). The amount of the distribution of stock shall be the fair market value of such stock on the date of distribution. Section 1.305-1(b)(1).
2. Provided that cash is distributed in the Initial Distribution by Taxpayer to any holders of its stock, then the Adjustments to the Convertible Debt and the Warrants shall constitute a deemed distribution of Taxpayer stock to the holders of the Convertible Debt and the Warrants to which section 301 applies by reason of section 305(b)(2) and (c). See Rev. Rul. 75-513, 1975-2 C.B. 114. The amount of the deemed distribution of stock shall be measured by the fair market value, as of the date of the Adjustments, of the number of shares of Taxpayer stock deemed distributed to the holders of the Convertible Debt and the Warrants. Sections 1.305-1(b)(3) and 1.305-3(e) (Examples (6), (8), (9), and (15)); Rev. Rul. 75-513.

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. In particular, no opinion is expressed with regard to whether Taxpayer will qualify as a REIT under subchapter M of the Code. Furthermore, no opinion is expressed with regard to whether the Initial Distribution constitutes a preferential dividend under section 562(c) of the Code.

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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty 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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Thomas I. Russell*

Thomas I. Russell  
Senior Counsel, Branch 5  
Office of Associate Chief Counsel (Corporate)

cc: