

Internal Revenue Service

Department of the Treasury

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November 3, 2000

Legend

Company =
Operating Partnership =
State A =
State B =
a =

Dear :

This letter is in response to a letter dated June 30, 2000, and subsequent correspondence, submitted on behalf of the Company requesting a ruling relating to the Company's status as a real estate investment trust ("REIT") under section 856 of the Internal Revenue Code.

The Company is a State A corporation that has elected to be treated as a REIT under section 856. The Company has an a percent interest in Operating Partnership, a State B limited partnership, which owns commercial rental property (the "Properties") located throughout the United States. Operating Partnership, through a wholly-owned unincorporated subsidiary that will be treated as a disregarded entity for tax purposes, provides its tenants access to an Internet web site. Hereinafter, the Company and Operating Partnership will be referred to collectively as "the Company".

The web site, which only is accessible to tenants, is an electronic commerce business-to-business and business-to-consumer site that will provide tenants with an electronic source for products and services from third party providers, such as a concierge service. The web site will catalog all vendors, products, and services and provide tenants multiple search functions for convenient access to the information they desire. It also will provide tenants with timely information on stock market activity, weather, traffic and community information. In addition, the Company will negotiate discounts for its tenants from vendors and service providers associated with the web site.

The Company intends to include the cost of providing the web site in the tenants' rents. For allowing vendors to place their products and services on the web site, the Company may charge vendors a fixed fee, a fee based on the number of times the tenants access the vendor's web page through the Company's web site, or a fee based upon actual sales completed through the Company's web site.

The Company represents that the amount of income received or accrued directly or indirectly from all sources associated with the web site is less than 150 percent of the direct costs of the Company in furnishing the web site and less than one percent of all amounts received or accrued during the taxable year from the Properties. The Company also represents that the sum of 150 percent of the direct costs of the Company in furnishing the web site and all other impermissible tenant service income is less than one percent of all amounts received or accrued during the taxable year from the Properties.

The web site service will be provided by a taxable REIT subsidiary commencing January 1, 2001.

ANALYSIS AND CONCLUSIONS

Section 856(c)(2) provides that at least 95 percent of a REIT's gross income must be derived from, among other sources, "rents from real property."

Section 856(c)(3) provides that at least 75 percent of a REIT's gross income must be derived from, among other sources, "rents from real property."

Under section 1.856-3(g) of the Income Tax Regulations, a REIT that is a partner in a partnership is deemed to own its proportionate share of each of the assets of the partnership and to be entitled to the income of the partnership attributable to that share. For purposes of section 856, the interest of a partner in the partnership's assets shall be determined in accordance with the partner's capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross income of the partnership shall retain the same character in the hands of the partners for all purposes of section 856.

Section 856(d)(1) provides that "rents from real property" include (subject to exclusions provided in section 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 both the real and personal property leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15 percent of the total rent for the year attributable to both the real and personal property leased under, or in connection with, such 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 the term impermissible tenant service income means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the REIT for services furnished or rendered by the REIT to tenants at the property, or for managing or operating such property.

Section 856(d)(7)(B) provides that if the amount of impermissible tenant service income exceeds one percent of all amounts received or accrued during the tax year directly or indirectly by the REIT with respect to the property, the impermissible tenant service income of the REIT will include all of the amounts received or accrued with respect to the property. Section 856(d)(7)(D) provides that the amounts treated as received by a REIT for any impermissible tenant service shall not be less than 150 percent of the direct cost of the REIT in furnishing or rendering the service.

Rev. Rul. 98-60, 1998-2 C.B. 749, provides that rents received or accrued in a taxable year with respect to a property that are attributable to impermissible tenant services that exceed one percent of the rents derived from that property, rather than from a single tenant of that property, will cause all of the income derived from the property to fail to qualify as "rents from real property".

Section 856(d)(7)(B) allows a REIT to provide a limited amount of impermissible tenant service income with respect to a property without causing all of the income from the property to fail to qualify as rents from real property. In the case of many of the services that Congress intended to cover, it is very difficult to allocate the services to particular tenants. Consistent with this intent, section 856(d)(7)(B) applies on a property-by-property basis.

Since the web site services described above are accessible to all tenants in all Properties without any additional cost or income associated to the Company, it is very difficult to allocate the services to particular Properties. Allocating the services based on aggregate amounts received or accrued with respect to each Property, as that amount relates to the aggregate amount received or accrued by the Company for all Properties is a reasonable manner of allocation in this particular case.

Based on the facts as represented by the Company, we conclude that for purposes of applying the one percent threshold of Section 856(d)(7)(B), 150 percent of the direct costs of the Company in furnishing or rendering the web site described above can be allocated to each Property based on the aggregate amounts received or accrued with respect to each Property, as that amount relates to the aggregate amounts received or accrued by the Company from all Properties.

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. Specifically, no opinion is expressed concerning whether Company otherwise qualifies as a REIT under subchapter M, part II of Chapter 1 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.

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,

Acting Associate Chief Counsel
(Financial Institutions & Products)

By: William E. Coppersmith
William E. Coppersmith