

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:7-PLR-143422-01

Date:

LEGEND:

Corporation:

State:

Date 1:

Date 2:

Date 3:

Date 4:

a:

b:

c:

d:

Dear

This is in reply to your letter, dated Date 4, requesting a ruling regarding the application of § 216(b) of the Internal Revenue Code to Corporation.

The represented facts are as follows. Corporation was formed on Date 1 under the laws of State for the purpose of acquiring and operating on a cooperative basis an apartment building (the building). The building consists of a residential apartments, a superintendent's apartment, b retail stores, and a basement rental area. Corporation's leases with c retail stores expire in Date 2, and its leases with d retail stores expire in Date 3.

Corporation proposes to create b units in the commercial space and to convert those units to cooperative ownership by selling to a purchaser additional shares of stock attributable to each unit. Corporation represents that the shares to be issued with respect to each unit will be fully paid up in an amount bearing a reasonable relationship to the portion of the value of Corporation's equity in the building and land that is attributable to each unit.

The proprietary lease will entitle the purchaser of the additional shares attributable to the commercial unit to occupy the unit either for retail purposes or as a residential apartment. The owner of the unit will at all times have the right, as against Corporation, to occupy the unit for dwelling purposes.

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Corporation represents that the local zoning law and building regulations currently permit modification of the commercial units to residential use as a matter of right. Corporation submits facts and representations to show that it would be reasonable to convert the commercial units to residential use. The size and location of the commercial units are such that, with certain modifications, they could be converted into residential apartments.

You have specifically requested two rulings:

1) Provided Corporation satisfies the requirements of § 216(b)(1)(A), (C) and (D), neither the issuance of stock by Corporation to be allocated to a unit nor the possible nonresidential use of a unit will prevent Corporation from qualifying as a cooperative housing corporation within the meaning of § 216(b)(1).

2) A person who purchases the stock of Corporation attributable to a unit for the commercial use of such space will qualify as a "tenant-stockholder" for purposes of § 216(b)(2), provided such stock is fully paid up in an amount which bears a reasonable relationship to the portion of the value of Corporation's equity in the building and land which is attributable to the apartment which the purchaser is entitled to occupy.

Section 216(b)(1) provides that the term "cooperative housing corporation" means a corporation - (A) having one and only one class of stock outstanding, (B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by the corporation, (C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and (D) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in § 216(a) are paid or incurred is derived from tenant-stockholders.

Section 216(b)(2) provides that the term "tenant-stockholder" means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the house or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

Rev. Rul. 74-241, 1974-1 C.B. 68, holds that, for purposes of § 216(b)(1)(B), the term "apartment in a building" means an independent housekeeping unit consisting of one or more rooms containing facilities for cooking, sleeping, and sanitation normally found in a principal residence.

Rev. Rul. 90-35, 1990-2 C.B. 48, provides that Rev. Rul. 74-241 does not require that a unit presently contain all the facilities normally found in a principal residence in order to constitute an apartment in a building for purposes of § 216(b)(1)(B). A unit will

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be treated as meeting that definition if (1) the stockholder is entitled to convert the unit to an apartment, as defined in Rev. Rul. 74-241, solely by reason of ownership of stock in the cooperative housing corporation; (2) the conversion of the unit would be reasonable under all the facts and circumstances, including structural feasibility and cost; and (3) the applicable local zoning, building, and fire codes permit both the conversion and residential use of the unit as a matter of right.

Applying the above standards to the facts and representations submitted and subject to the limitation below, we conclude that provided Corporation meets the requirements of § 216(b)(1)(A), (C), and (D), neither the issuance of stock by Corporation to be allocated to the commercial units nor the possible nonresidential use of the commercial units will prevent Corporation from qualifying as a cooperative housing corporation within the meaning of § 216(b)(1).

We also conclude that the person who purchases the stock of Corporation attributable to the commercial unit for the commercial or residential use of the space will qualify as a “tenant-stockholder” for purposes of § 216(b)(2), provided the stock is fully paid up in an amount which bears a reasonable relationship to the portion of the value of Corporation’s equity in the apartment building and land which is attributable to the apartment which the purchaser is entitled to occupy.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion whether Corporation otherwise meets the requirements of § 216(b).

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.

A copy of this ruling should be attached to the taxpayer’s tax return filed for the year in which the transaction referred to in this ruling is completed.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely yours,
Brenda M. Stewart
Assistant to the Branch Chief, Branch 7
Office of Assistant Chief Counsel
(Passthroughs and Special Industries)