

Internal Revenue Service

Department of the Treasury

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LEGEND

Taxpayer =

Date1 =

Date2 =

Date3 =

Month1 =

Month2 =

Month3 =

Year1 =

\$a =

\$b =

Dear :

This ruling responds to your letter dated February 21, 2003, as supplemented by letters dated April 21, 2003, May 7, 2003, June 5, 2003, July 25, 2003, August 5, 2003, and August 25, 2003, submitted on behalf of Taxpayer, requesting a ruling under sections 301 and 305.

FACTS

Taxpayer, a U.S. Corporation, is the common parent of an affiliated group that files a U.S. consolidated income tax return. Taxpayer's consolidated group files its tax return on a calendar year basis.

Taxpayer intends to make a real estate investment trust ("REIT") election pursuant to section 856(c), effective Date1.¹

Taxpayer intends to distribute all of its earnings and profits accumulated in non-REIT years before the end of its first taxable year as a REIT (i.e., Date2). In Month1 or Month2 of Year1 ("Declaration Date"), Taxpayer intends to take action that will result in the distribution of a combination of stock and cash having an approximate value of \$a ("Proposed Distribution"). The amount of the Proposed Distribution is intended to equal or exceed the Taxpayer's earnings and profits as of Date3, and the amount of the Proposed Distribution may be increased or decreased accordingly. Taxpayer expects to pay the Proposed Distribution on a date in Month3 of Year1 (the "Distribution Date"); however, the distribution will be made to shareholders of record as of a date in Month1 or Month2 of Year1 (the "Record Date").

As part of the Proposed Distribution, Taxpayer's shareholders as of the Record Date will receive a right entitling them to elect to receive stock, cash, or a combination of stock and cash. Specifically, each shareholder will be entitled to elect one of the following three options:

- A) 100 percent cash ("Option A");
- B) 100 percent Taxpayer common stock ("Option B"); or
- C) A fixed percentage of cash with the remaining percentage to be paid in Taxpayer common stock ("Option C"). The fixed percentage will be determined at a later date and will be at least 20 percent of the total distribution to the shareholder.

If any shareholder does not make a timely election among the above alternatives, Taxpayer has the right to make the distribution to the shareholder under Option B (the "Default Election"). Furthermore, Taxpayer will have the right to change the Default Election to a different option at its sole discretion.

Each shareholder will have until a date in Month2 or Month3 of Year1 (the "Election Date") to elect one of the three options above. Cash will be distributed in lieu

¹ A successor to Taxpayer through a reorganization described in section 368(a)(1)(F) may instead make the REIT election. In this case, the term "Taxpayer" would refer to the successor corporation.

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of fractional shares.

Taxpayer intends to limit the total amount of cash distributed to the greater of approximately \$b or at least 20 percent of the value of the Proposed Distribution. Given this limitation, depending upon the number of shareholders who elect to receive cash via Options A and C, Taxpayer may need to reduce the percentage of cash distributed to such electing shareholders (but in no event will any shareholder electing Option A or Option C receive less than 20 percent cash). In this case, the shareholders that elect Options A and C will receive the cash distributions pro rata to their requested cash amounts. If the pro-rata allocation would result in shareholders who elect Option C receiving less than 20% of their distribution in cash, then the allocation will be adjusted such that shareholders electing Option C will receive 20% in cash and shareholders electing Option A will receive less than their pro rata share in cash (but in no event less than 20%). After all the cash is distributed, any remaining unpaid balance will be paid in Taxpayer common stock. If, however, a sufficient number of shareholders elect to receive Taxpayer stock pursuant to Option B, or are deemed to elect Option B pursuant to the Default Election, Taxpayer would fully fund the cash component of the Proposed Distribution and the shareholders that elect Option A would receive 100 percent cash.

LAW AND ANALYSIS

Section 301(a) of the Code generally provides that a distribution of property (as defined in section 317(a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in subsection (c). Section 301(c)(1) provides that in the case of a distribution to which section 301(a) applies, that portion of the distribution which is a dividend (as defined in section 316) shall be included in gross income.

Section 305(a) provides in general that, except as otherwise provided in section 305, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

Section 305(b)(1) provides that section 305(a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which section 301 applies, if the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either in its stock, or in property.

Section 1.305-2(a) of the Income Tax Regulations provides in general that under section 305(b)(1), if any shareholder has the right to an election or option with respect to whether a distribution shall be made either in money or any other property, or in stock or rights to acquire stock of the distributing corporation, then, with respect to all shareholders, the distribution of stock or rights to acquire stock is treated as a distribution of property to which section 301 applies regardless of (1) whether the distribution is actually made in whole or in part in stock or in stock rights; (2) whether the election or option is exercised or exercisable before or after the declaration of the distribution; (3) whether the declaration of the distribution provides that the distribution

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will be made in one medium unless the shareholder specifically requests payment in the other; (4) whether the election governing the nature of the distribution is provided in the declaration of the distribution or in the corporate charter or arises from the circumstances of the distribution; or (5) whether all or part of the shareholders have the election.

HOLDING

Based on the facts represented, we rule as follows:

Any and all of the cash and stock distributed in the Proposed Distribution (as described above) by Taxpayer shall be treated as a distribution of property with respect to its stock to which section 301 applies. Sections 301 and 305(b)(1).

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.

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.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties 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.

Sincerely,

T. Ian Russell

T. Ian Russell
Assistant to Branch Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)