

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B01 – PLR-127839-03

Date:
October 01, 2003

Legend:

Taxpayer =

Year 1 =

Date 1 =

a =

b =

c =

d =

e =

f =

Entity A =

Entity B =

Entity C =

Entity D

Dear _____ :

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This is in reply to a letter dated April 28, 2003, requesting a ruling on behalf of Taxpayer. You have requested a ruling that for purposes of section 856(a)(6) and (h)(1)(A) of the Internal Revenue Code, stock held by certain tax-exempt organizations is not treated as stock held by an individual under section 542(a)(2).

Facts:

Taxpayer is a domestic corporation formed in Year 1. Taxpayer makes mortgage loans and acquires indebtedness secured by mortgages issued by churches, colleges, schools, and other nonprofit organizations. Taxpayer intends to qualify and operate as a real estate investment trust (REIT) under Part II of subchapter M of Chapter 1 of the Code.

As of Date 1, Taxpayer's capital structure consisted of a shares of common stock, no par value, of which b shares are currently issued and outstanding, and c shares of Class I preferred stock, d shares of which are currently issued and outstanding. Taxpayer represents that its common and preferred stock is freely transferable and that all of the common stock is beneficially owned by more than 100 persons.

Taxpayer represents that Entities A, B, C and D are tax-exempt entities under section 501(c)(3). Taxpayer further represents that Entities A, B, C, and D are neither employee benefit trusts described in section 401(a); trusts forming part of a plan or payment of supplemental unemployment benefits described in section 501(c)(17); private foundations described in section 509(a); nor a portion of a trust permanently set aside or to be used exclusively for the charitable purposes described in section 642(c). Entities A, B, C, and D each own f percent of Taxpayer's outstanding shares, and own, in the aggregate, e percent of Taxpayer's outstanding shares. The remainder of Taxpayer's outstanding stock is held by over 100 shareholders.

Law and Analysis:

Section 856(a)(6) provides that a corporation may qualify to be taxed as a REIT only if it is not closely held. Section 856(h)(1)(A) provides that a corporation is closely held if it meets the stock ownership requirement of section 542(a)(2). A corporation meets the stock ownership requirement of section 542(a)(2) if, at any time in the last half of the taxable year, more than 50 percent in value of the corporation's outstanding stock is owned, directly or indirectly, by or for not more than five individuals. For purposes of section 542(a)(2), an organization described in section 401(a), 501(c)(17), or 509(a), or a portion of a trust permanently set aside or to be used exclusively for purposes described in section 642(c) or a corresponding provision of a prior income tax law shall be considered an individual.

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Section 401(a) describes, generally, qualified pension, profit sharing and stock bonus plans that are trusts created or organized in the United States by an employer for the exclusive benefit of its employees.

Section 501(c)(17) describes, generally, the qualifications needed by trusts formed as part of a plan to provide payment of supplemental unemployment compensation benefits to be eligible for tax-exempt status.

Section 509(a) defines the term “private foundation” as a domestic or foreign organization described in section 501(c)(3) other than the organizations described in section 509(a)(1), (2), (3) or (4). Section 501(c)(3), in part, exempts from tax, generally, organizations organized and operated exclusively for one of various enumerated charitable or public purposes, no part of the net earnings of which inures to the benefit of any private individual.

Section 642(c) allows, generally, in the case of an estate or trust which is not exempt from tax, a deduction for amounts paid for a purpose specified in section 170(c) (generally payments made to a governmental entity exclusively for public purposes or payments made to an organization described in section 501(c)(3) to be used for its exempt purpose).

Taxpayer has represented that Entities A, B, C and D are organizations described in section 501(c)(3) and are neither organizations described in sections 401(a), 501(c)(17) or 509(a), nor trusts described in section 642(c). Accordingly, the entities will not be treated as individuals for purposes of section 542(a)(2).

Based on the information submitted and representations made, we conclude that for purposes of sections 856(a)(6) and (h)(1)(A), Taxpayer’s stock held by either Entity A, B, C or D will not be treated as stock held by an individual under section 542(a)(2).

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether Taxpayer will otherwise qualify as a REIT under part II of subchapter M of Chapter 1 of the Code. Also, no opinion is expressed concerning whether Entities A, B, C and D qualify as tax-exempt organizations under section 501(c)(3).

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This ruling is directed only to the taxpayer requesting it. Taxpayer should attach a copy of this ruling to each tax return to which it applies. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Sincerely,

Elizabeth A. Handler
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions and Products)

Enclosures:

Copy of this letter

Copy for § 6110 purposes