Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:FIP:1-PLR-143785-02
Date:
January 5, 2003

Legend:

Trust =

Partnership =

x = 80

City A =

Dear :

This is in reply to a letter dated August 5, 2002, requesting a ruling on behalf of Trust. The requested ruling is that the performance of certain cleaning services by property-owning entities in which Trust has an ownership interest will not cause the rental income generated by the properties at which the services are performed to be treated as other than "rents from real property" under § 856(d) of the Internal Revenue Code.

Facts:

Trust is a domestic corporation that has elected to be treated as a real estate investment trust (REIT) under subchapter M of Chapter 1 of the Code. Trust owns approximately x percent of Partnership and is its managing general partner. Partnership owns and operates Class A office buildings in City A and several other major metropolitan areas (the Properties) through separate limited liability companies or partnerships (the Property-Owning Entities).

Under the terms of the leases of office space in the Properties, certain interior cleaning services are required to be performed. Those services include basic routine dusting, emptying of wastepaper baskets, cleaning of floors or floor coverings (e.g., vacuuming), cleaning of lavatories, washing windows, and rendering certain other janitorial services (the Services). Trust represents that the Services are customarily furnished, rendered, or arranged for by landlords in connection with the leasing of space in Class A office buildings located in City A and the other major metropolitan areas in which the Properties are located. The Services are part of the total package offered to tenants in return for the rent paid by tenants and are an integral part of the rental of the space.

The Services are currently performed for each of the Property-Owning Entities by independent contractors from whom Trust does not derive or receive any income or through a taxable REIT subsidiary of Trust, as provided in § 856(d)(7)(C)(i). For business reasons, Trust now desires to have the aforementioned cleaning services performed directly by employees of the Property-Owning Entities.

Law and Analysis:

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 § 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 § 856, the interest of a partner in the partnership's assets is 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 retain the same character in the hands of the partners for all purposes of § 856.

Section 856(d)(1) provides that "rents from real property" include (subject to exclusions provided in § 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 personal property leased under, or in connection with, a lease of real property, but only if the rent attributable to the personal property for the taxable year does not exceed 15 percent of the total rent for the tax year attributable to both the real and personal property leased under, or in connection with, the lease.

Section 1.856-4(b)(1) provides that, for purposes of § 856(c)(2) and (c)(3), the term "rents from real property" includes charges for services customarily furnished or rendered in connection with the rental of real property, whether or not the charges are separately stated. Services rendered to tenants of a particular building will be considered customary if, in the geographic market in which the building is located, tenants in buildings of a similar class are customarily provided with the service. The furnishing of water, heat, light, and air-conditioning, the cleaning of windows, public entrances, exits, and lobbies, the performance of general maintenance and of janitorial and cleaning services, the collection of trash, and the furnishing of elevator services, telephone answering services, incidental storage space, laundry equipment, watchman or guard services, parking facilities, and swimming pool facilities are examples of services that are customarily furnished to the tenants of a particular class of buildings in many geographic marketing areas.

Section 856(d)(2)(C) provides that any “impermissible tenant service income” is excluded from the definition of "rents from real property." Section 856(d)(7)(A) defines "impermissible tenant service income" to mean, 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 of the property, or for managing or operating the property. However, § 856(d)(7)(C)(ii) provides that for purposes of § 856(d)(7)(A), there shall not be taken into account any amount that would be excluded from unrelated business taxable income under § 512(b)(3) if received by an organization described in § 511(a)(2).

Section 512(b)(3) provides, in part, that there shall be excluded from the computation of unrelated business taxable income all rents from real property.

Section 1.512(b)-1(c)(5) provides that payments for the use or occupancy of rooms and other space where services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses, or apartment houses furnishing hotel services, or in tourist camps or tourist homes, motor courts or motels, or for the use or occupancy of space in parking lots, warehouses, or storage garages, do not constitute rent from real property. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The supplying of maid service, for example, constitutes such service; whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways, and lobbies, the collection of trash, etc. are not considered as services rendered to the occupant. Payments for the use or occupancy of entire private residences or living quarters in duplex or multiple housing units, of offices in any office building, etc., are generally rent from real property.

Rev. Rul. 69-178, 1969-1 C.B. 158, holds that amounts received by an exempt organization for the occasional use by others of its meeting hall are "rents from real

property" within the meaning of §§ 512(b)(3)(A)(i) and 1.512(b)-1(c)(5). The ruling concludes that since the charges were made for the use and occupancy of space in real property and only utilities and janitorial services were provided, the receipts constitute rental income.

On the other hand, Rev. Rul. 69-69, 1969-1 C.B. 159, holds that income from an exempt organization's leasing of studio apartments and the operation of a dining hall for tenants does not qualify as rents within the meaning of § 1.512(b)-1(c)(5) because substantial services were rendered to the tenants. In addition to the dining services, the exempt organization provided maid services like that provided to occupants of rooms in hotels. Similarly, Rev. Rul. 80-298, 1980-2 C.B. 197, holds that income from the lease of a football stadium by an exempt university to a professional football team does not qualify as rents under § 1.512(b)-1(c)(5) because the university provided substantial services for the convenience of the team "that go beyond those usually rendered in connection with the rental of space for occupancy only."

In this case, Trust (through Partnership and the Property-Owning Entities) owns and leases space in Class A office buildings in major metropolitan areas and will be providing the Services under the terms of those leases. Trust represents that the Services are services customarily furnished, rendered, or arranged for by landlords in connection with the leasing of space in Class A office buildings in those major metropolitan areas. The Services are limited office cleaning services of a janitorial nature and are not considered to be services rendered to the occupant under the standards of § 1.512(b)-1(c)(5). Therefore, the Services do not affect the rental character of Trust's income from the office buildings where the Services are provided.

Conclusion:

Based on the information and representations submitted, we conclude that the Services will not cause income from tenants at properties in which the Services are provided by Trust through the Property-Owning Entities to be treated as other than rents from real property under § 856(d).

Other Information:

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of the transaction discussed in this letter. For example, no opinion is expressed concerning whether Trust qualifies as a REIT under § 856 or concerning the tax status of any other entity described herein.

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.

Pursuant to a Power of Attorney on file with this office, a copy of this letter will be sent to the authorized representative named therein.

Sincerely yours,

Sharon Galm
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for 6110 purposes