

Property I =

Property J =

Property K =

Property L =

Property M =

City A =

Date 1 =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

K =

L =

M =

N =

Dear _____ :

This letter responds to your letter dated September 30, 2015, requesting a ruling on behalf of Taxpayer that the Facilities (as defined below) will constitute “real property” for purposes of sections 856(c)(2)(C) and (3)(A) and “real estate assets” for purposes of sections 856(c)(4)(A) and (5)(B).

Facts:

Taxpayer is a widely held, publicly traded State A corporation. Taxpayer is an owner, operator and developer of casinos and related hospitality and entertainment facilities. Taxpayer owns A gaming and related hospitality and entertainment facilities. Taxpayer’s real estate assets are comprised of B gaming facilities in C states (collectively the “Real Estate Business Assets”).

Company A is a widely held, publicly traded State B corporation that will elect to be subject to tax as a real estate investment trust (“REIT”) commencing with its taxable year ended Date 1. Company A is in the business of acquiring, financing, and owning real estate property to be leased to gaming operators in triple net lease arrangements. As of Date 1, Company A’s portfolio consisted of D gaming and related facilities, including certain properties that will be held in taxable REIT subsidiaries, the real property associated with E gaming and related facilities operated by Company B and the real property associated with Property A in City A.

Taxpayer has entered into an Agreement and Plan of Merger (“Merger Agreement”) with Company A and Subsidiary, a State A limited liability company and wholly owned subsidiary of Company A, providing for the merger of Subsidiary with and into Taxpayer (the “Merger”) with Subsidiary surviving the Merger as a wholly owned subsidiary of Company A. In connection with the Merger, Taxpayer will separate its operating assets, certain real estate assets, and liabilities into a newly formed subsidiary (“OpCo”) and, immediately prior to the closing of the Merger, Taxpayer will distribute to its stockholders, on a pro rata basis, all of the issued and outstanding shares of common stock of OpCo (such distribution, together with the Merger and related transactions, the “Proposed Transaction”) ¹. At the time of the Proposed Transaction, Company A and its subsidiaries will lease the real property formerly owned by Taxpayer to OpCo and its subsidiaries pursuant to a long-term triple net lease (the “Lease”). Each Real Estate Business Asset, other than Property B, will be leased from

¹ The Proposed Transaction is not structured as a tax-free spinoff and this ruling request was submitted to the Internal Revenue Service prior to December 7, 2015. As a result, the Proposed Transaction is not subject to section 311 of the Protecting Americans from Tax Hikes Act of 2015 (enacted as part of the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (2015)).

Company A and its subsidiaries to OpCo and its subsidiaries under the Lease (the "Leased Properties").

Of the Leased Properties, F of them are entirely land-based and are not the subject of this ruling. The remaining G Leased Properties (the "Facilities") are located on water adjacent to land containing hotels and other buildings related to the Facilities. Each of the Facilities consists of a boat or a barge (or multiple barges welded together). Each Facility is securely and substantially moored, and is unable to be moved from its mooring without the use of tools. In addition, each Facility is connected to land-based utilities such as power, water, sewer, communications, and surveillance. Each Facility has between H and A connections to the land for electricity, water, and sewage and also has hundreds of connections for data and communications. Some of the Facilities maintain propulsion systems solely to comply with state gaming regulations. All references to "Facilities" in this letter exclude such propulsion systems.

Of the Facilities, Property C, Property D, Property E, Property F, Property G, and Property H were built on one or more barges (the "Dockside Casino Barges"), and Property I, Property J, Property K, Property L, and Property M are former riverboats that are now indefinitely moored (the "Moored Riverboats"). All of the Moored Riverboats are considered "permanently moored," and all of the Dockside Casino Barges are considered "substantially land structures" as defined by the U.S. Coast Guard ("USCG") Marine Safety Manual and, consequently, are not subject to inspection as "vessels." Chapter 4, Section I.3.c. of the USCG Marine Safety Manual states that a "Permanently Moored Craft means a craft of design and mooring arrangement such that they do not have a practical capability of being used as transportation on the water." Chapter 4, Section I.4.c. of the USCG Marine Safety Manual states that "a craft that cannot demonstrate its ability to get underway to the satisfaction of the [Officer in Charge, Marine Inspection] will be deemed a land structure and will no longer be inspected for certification by the Coast Guard." The Facilities have been "permanently moored" or attached for periods of years ranging from E years to I years.

Each Dockside Casino Barge consists of a barge or multiple barges (sometimes welded together) upon which a building was constructed to serve as the gaming facility. Once each barge was transported to the final facility site or built on the facility site, concrete was typically poured across the top of the barge(s) to create a level foundation or floor to support the gaming facility building. Since the building was constructed, each gaming facility has resembled a land-based building from the outside and inside even though the facility is capable of floating on water. Construction of each Dockside Casino Barge above the barge deck was subject to local land-based building codes and performed under the direction of a licensed contractor. Each Facility remains subject to local building codes and is classified as real property for insurance purposes. The Facilities were constructed onsite, and have never moved once construction of the building commenced on the barge. Taxpayer never intends to move the Dockside Casino Barges.

Each of the Dockside Casino Barges is located in a cofferdam. A cofferdam provides no access to navigable waters. Though each Dockside Casino Barge must be capable of floating (and thus the cofferdam must generally maintain a certain water level) to comply with gaming regulations, each Dockside Casino Barge is secured to the cofferdam either in a "fixed-level" manner or in a manner that allows limited vertical, but not lateral, movement. A "fixed-level" manner means that the barge is secured to the bottom of the cofferdam with cables. The water level is then maintained at a level that ensures the buoyancy of the barge always keeps tension on the cables and restricts vertical movements. The systems securing the Dockside Casino Barges generally consists of mooring dolphins with mooring cables and collars around vertical pilings to restrict vertical movement. Property C is an exception: it is dry docked and supported on the bottom of a basin. To secure Property C, a concrete structural slab was poured beneath the barge and approximately 180 steel pedestals were then placed to uniformly support the hull. The water was then removed, leaving the barge sitting on the pedestals.

All of the Dockside Casino Barges lack propulsion systems and crews except for Property G and Property H, each of which maintain a propulsion system and a skeletal crew solely to comply with state gaming regulations.

Moving a Dockside Casino Barge would require a determination that movement is at all feasible, and the preparation for movement could take several weeks. Such movement would be costly and time consuming due to the required labor, insurance, demolition of the cofferdams, demolition of portions of the Dockside Casino Barge, and possibly construction of a channel to the river. In addition, the amount of lost revenue from foregone gaming activity resulting from separation from customers' access point and associated land-based businesses would be several times the cost of physically moving the Facility. None of the Dockside Casino Barges have current USCG certificates of inspection, and a special certificate of transport from the USCG and approval from the appropriate state gaming commission would be required to move each of them. Moving any Dockside Casino Barge would require extensive work due to the manner in which each Dockside Casino Barge is affixed to the land. Such work would include dismantling the moorings, cutting the welds where barges are joined together, clearing silt (and digging and flooding channels in the case of the cofferdams), disconnecting all utilities, and, in most cases, arranging for multiple tugboats to provide propulsion. Even after this work took place, it is unclear whether any of the Dockside Casino Barges would in fact be seaworthy for purposes of moving them any substantial distance.

Each Moored Riverboat is affixed to multiple moorings called "dolphins" using wire rope and/or ultrahigh-strength synthetic rope. The dolphins are constructed using steel and concrete, and are permanently affixed to the river bed under the water. The Moored Riverboats are moored in a way that permits no horizontal movement and only

limited vertical movement depending on river conditions. Previously, under applicable gaming regulations, the Moored Riverboats were required to travel on navigable waters to operate their business. Gaming was only permitted on excursions, and the Facilities had to be out on the water a certain amount of time each year. Over 10 years ago, gaming regulations were changed to no longer require such travel. As a result, the Moored Riverboats were indefinitely moored and have not moved for periods ranging from 1 to 1 years.

The Moored Riverboats are not used for transportation or cruises and are not intended to ever move again. The Moored Riverboats have withstood severe weather events, including hurricanes, tornados, extreme floods, and micro bursts. Moving the Moored Riverboats would require detaching the sewer, electric, water, and communications lines and hiring a tugboat or obtaining a certificate from the USCG to allow the Moored Riverboat to move. Movement of a Moored Riverboat could also require destroying the current moorings. Engines, safety equipment, navigation systems, propulsion, lights, generators, and other components would need to be inspected and potentially upgraded or repaired. Some of the propulsion system components on the Moored Riverboats would likely require replacement. For most of the Moored Riverboats, some dredging would be required to channel to navigable water, and, in some instances, sheet pile walls would need to be removed.

Of the Moored Riverboats, K of them can conduct gaming only while the Facility is docked. Under local gaming regulations, the Facilities generally are subject to safety inspection by the American Bureau of Shipping or another inspection very similar to standard land-based building inspections that test compliance with local building codes, fire codes and/or other safety requirements. However, the American Bureau of Shipping and other inspectors generally do not inspect the Facilities for standards that would be relevant to moving any of the Facilities. Repairs, maintenance, upgrades and installation of independent utility resources could be required for each of the Facilities to pass inspection and obtain the approvals necessary for moving the Facility.

Solely to comply with gaming regulations, L of the Moored Riverboats maintain a propulsion system, back-up utilities, and a skeletal crew. Generators for the independent utilities are generally only used in emergencies and could not support a Facility operating at full capacity. Thus, if a Facility were moved, a new source of power might need to be installed. The crew maintains the land-based utilities for the Facility and monitors the Facility's moorings to ensure the Facility remains securely and permanently attached.

Taxpayer represents that unless required by law or loss of other rights, neither Taxpayer presently, nor Company A following the Proposed Transaction, has or will have the intent to move a Facility from its current location prior to the end of its economic useful life. Taxpayer also represents that each Dockside Casino Barge was designed and constructed to remain in place for the entirety of its economic useful life

and that each Moored Riverboat was permanently moored with a design to remain in place for the entirety of its economic useful life. Taxpayer has represented that the economic useful life of the Facilities, assuming normalized ongoing capital expenditures, ranges from M to N years.

Law and Analysis:

Section 856(c)(4)(A) of the Code provides that at the close of each quarter of its tax year, at least 75 percent of the value of a REIT's total assets must be represented by real estate assets, cash and cash items (including receivables), and Government securities.

Section 856(c)(5)(B) of the Code and section 1.856-3(b)(1) of the Income Tax Regulations define the term "real estate assets," in part, to mean real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other qualified REITs.

Section 1.856-3(d) provides that "real property" includes land or improvements thereon, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). In addition, the term "real property" includes interests in real property. Local law definitions will not be controlling for purposes of determining the meaning of "real property" for purposes of section 856 and the regulations thereunder. "Real property" includes, for example, the wiring in a building, plumbing systems, central heating or central air-conditioning machinery, pipes or ducts, elevators or escalators installed in the building, or other items which are structural components of a building or other permanent structure. The term does not include assets accessory to the operation of a business, such as machinery, printing press, transportation equipment which is not a structural component of the building, office equipment, refrigerators, individual air-conditioning units, grocery counters, furnishings of a motel, hotel, or office building, etc. even though such items may be termed fixtures under local law.

Rev. Rul. 71-220, 1971-1 C.B. 210, considers whether certain mobile home units are real property within the meaning of section 856 and section 1.856-3(d). The mobile home units were delivered to the site, set on a foundation of pre-engineered blocks with the wheels and axles removed. The units were then attached to the ground using steel straps. A carport or screened porch was attached to the unit, and the unit was connected to utilities. The revenue ruling holds that these mobile home units are real estate assets under section 856 and section 1.856-3(d).

Rev. Rul. 75-424, 1975-2 C.B. 269, concerns whether various components of a microwave transmission system are real estate assets for purposes of section 856. The system consists of transmitting and receiving towers built upon pilings or foundations, transmitting and receiving antennae affixed to the towers, a building, equipment within

the building, and waveguides. The waveguides are transmission lines from the receivers or transmitters to the antennae, and they are metal pipes permanently bolted or welded to the tower and never removed or replaced unless blown off by weather. The transmitting, multiplex, and receiving equipment is housed in the building. Prewired modular racks are installed in the building to support the equipment that is installed upon them. The racks are completely wired in the factory and then bolted to the floor and ceiling. They are self-supporting and do not depend upon the exterior walls for support. A permanent heating and air conditioning system is also installed in the building. The transmission site is surrounded by chain link fencing. The revenue ruling holds that the building, the heating and air conditioning system, the transmitting and receiving towers, and the fence are real estate assets. The ruling further holds that the antennae, waveguides, transmitting, receiving, and multiplex equipment, and the prewired modular racks are assets accessory to the operation of a business, and they are, therefore, not real estate assets.

Similar to the property or structural components described in Rev. Rul. 71-220 and Rev. Rul. 75-424 that qualify as real property for purposes of section 856, the Facilities are inherently permanent structures. The Facilities have been moored or attached for periods of years ranging from E years to I years. The Facilities are connected to land-based utilities, such as electrical, water, and sewer systems. Taxpayer represents that each Dockside Casino Barge was designed and constructed to remain permanently in place for the entirety of its economic useful life and that each Moored Riverboat was moored with a design to remain in place for the entirety of its economic useful life. Taxpayer represents that it has no plans to ever move any of the Facilities prior to the end of its economic useful life; moving any of the Facilities would be costly, burdensome, and would require significant time and expenditure. Each Facility is constructed and affixed in such a manner that movement ranges from impracticable to impossible without complete destruction of the Facility. Based on an analysis of the foregoing, we conclude that the Facilities are inherently permanent structures. Inherently permanent structures are real property, and the term “real estate assets” includes real property. Accordingly, based on the information submitted and the representations made, we conclude that the Facilities qualify as real property for purposes of sections 856(c)(2)(C) and 856(c)(3)(A). Furthermore, because the Facilities are real property, they constitute real estate assets for purposes of sections 856(c)(4)(A) and 856(c)(5)(B). As explained supra in the Facts section of this letter, the Facilities described in this ruling do not include the propulsion systems present in some of the Dockside Casino Barges and Moored Riverboats.

Conclusion:

We hereby rule that the Facilities qualify as real property for purposes of sections 856(c)(2)(C) and 856(c)(3)(A) and real estate assets for purposes of sections 856(c)(4)(A) and 856(c)(5)(B).

This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. 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. In particular, no opinion is expressed with regard to whether Taxpayer or Company A otherwise qualifies as a REIT under subchapter M of the Code. Additionally, we express no opinion regarding whether amounts received under any leases with respect to the Facilities constitute qualifying income under Section 856(c)(2) or (c)(3).

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 representatives.

Sincerely,

Robert A. Martin
Senior Technician Reviewer, Branch 1
(Financial Institutions & Products)

cc: