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Date:
November 18, 2016

LEGEND:

Taxpayer =

Advisor =

Company =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Date 13 =

Date 14 =

Date 15 =

Date 16 =

Date 17 =

Year 1 =

Year 2 =

Year 3 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

Dear :

This ruling responds to a letter dated July 5, 2016 and a supplemental submission dated September 26, 2016, submitted on behalf of Taxpayer. Taxpayer requests a ruling that sales of its real estate assets pursuant to a plan of liquidation under the circumstances described below will not constitute prohibited transactions within the meaning of section 857(b)(6) of the Internal Revenue Code ("Code").

FACTS

Taxpayer was organized as a State corporation on Date 1. Taxpayer represents that it elected to be taxed as a real estate investment trust ("REIT") commencing with the taxable year ended Date 2. Taxpayer was organized with the investment objectives of realizing growth in the value of its real estate assets, preserving, protecting and returning its stockholders' invested capital, investing in a diversified portfolio of real estate assets, and exploring liquidity options in the future, including the sale of either Taxpayer or its assets, potential merger opportunities, or the listing of its common shares on a national exchange.

On Date 3, Taxpayer entered into an advisory agreement with Advisor. Advisor provides advisory services relating to substantially all aspects of Taxpayer's investments and operations, including real estate transactions, locating, analyzing, and selecting potential investments, and asset management and other operational matters.

Taxpayer's acquisitions were underwritten with a development period of up to a months with the expectation of reaching expected occupancy stabilization within a months of completion, and properties becoming partially operational and collecting rent as buildings within the projects are completed and certificates of occupancy ("Certificates") are obtained.

As of Date 4, Taxpayer owned an interest in b multifamily properties (the "Properties"). In Date 5, Taxpayer sold its interests in c Properties. In Date 6, Taxpayer sold its interest in d Property. Therefore, as of Date 7, Taxpayer owned an interest in e Properties. Of these b Properties, f were owned or are owned through partnerships, and d Property is wholly owned by Taxpayer. As of Date 7, development on all of the Properties was substantially complete and the Properties are anticipated to reach expected occupancy stabilization by Date 8.

Taxpayer's initial stock offering ("Initial Offering ") closed on Date 9. Taxpayer's second stock offering ("Follow-On Offering") closed on Date 10. Although Taxpayer maintained the flexibility to invest in a variety of real estate sectors in domestic and international markets, in connection with the Follow-On Offering Taxpayer's investment

strategy was revised to focus primarily on multifamily development projects in certain regions of the United States.

The amount of capital raised by Taxpayer through its Initial Offering and Follow- was significantly less than the capital Taxpayer anticipated raising when Taxpayer was launched in Year 1. Taxpayer believed that this lack of capital would make Taxpayer likely too small to effectively list on a public exchange in accordance with its investment objectives. Accordingly, Advisor began to explore strategic alternatives for providing liquidity to Taxpayer's investors. On Date 11, the Board appointed a special committee comprised of Taxpayer's independent directors (the "Special Committee") to oversee the process of exploring and evaluating liquidity options and engaged Company to advise and assist the Advisor and the Special Committee with this process.

Moreover, most of the outstanding loans on the Properties will be at or near maturity within the next d to c years, and repayment or refinancing of the loans will be required because Taxpayer does not have sufficient capital to meet the current loan obligations. Additionally, because Taxpayer owns the Properties through joint ventures, there is a risk the joint venture partners may be unwilling to cooperate in the event of a refinancing.

Of the e Properties' partnership agreements, g contain a provision that limits a partner's ability to buy the other partner's entire interest or sell its entire interest in a property until a months after the completion of the development of a property ("Buy-Sell Option"). To the extent a partner chooses to exercise its option to sell its entire interest, the other partner is permitted to (1) agree to the terms of the proposed sale, or (2) elect to purchase its entire interest in the property at a price determined under the terms of the agreement. Taxpayer's intention when entering into a partnership agreement with a Buy-Sell Option was to elect to purchase the entire interest in the Property, should the partner exercise its option to sell under the terms of the agreement. The Advisor currently anticipates that it is likely that all of the joint venture partners will exercise the Buy-Sell Option at the end of the a-month period. To the extent a joint venture partner does exercise the Buy-Sell Option, Taxpayer will not have sufficient capital to buy out the partner and it is likely Taxpayer would be forced to sell the property under the terms of the Buy-Sell Option at a price that may not maximize value to its shareholders.

Another item considered by the Board, Special Committee, Advisor, and Company is the costs associated with maintaining a non-traded public REIT. As a result of Taxpayer raising significantly less capital than anticipated in its Initial Offering and Follow-On Offering, Taxpayer has a small asset base in relation to the costs associated with maintaining a public company. Because Taxpayer is forced to sell assets due to debt maturities and joint venture partners exercising the Buy-Sell Options present within Taxpayer's partnership agreements, the remaining assets would carry a higher level of fixed costs with a shrinking asset base.

Based on these considerations, Advisor and Company recommended, and the Board and the Special Committee agreed, that a plan of dissolution of Taxpayer and sale of the Properties through multiple transactions would be in the best interest of Taxpayer's shareholders.

In Date 12, Taxpayer began the process of moving forward with a formal plan of complete liquidation and dissolution pursuant to section 331 of the Code (the "Plan"). Taxpayer filed the Plan with the SEC on Date 13, and filed the definitive proxy with the SEC on Date 14. The Plan became effective on Date 15. Taxpayer will take the actions and perform the activities required for winding up its affairs, preserving the value of its assets, and distributing its assets to its shareholders in accordance with the Plan. In anticipation of and simultaneous with the Plan, Taxpayer intends to strategically sell each of the Properties to maximize shareholder value as recommended by Advisor, the Board, the Special Committee and Company. The proceeds from the sales will be distributed to the shareholders through one or more distributions. The first liquidating distribution was paid on Date 16.

Taxpayer estimates that h more of the Properties will be sold before Date 17. Accordingly, i properties will have been sold during Year 2. Taxpayer anticipates that the remaining j properties will be sold by Date 8. All of the Properties will be sold through one or more third-party brokers.

After the sale of its final Property, Taxpayer represents that it will distribute any remaining assets to its shareholders in a single distribution in accordance with the Plan and file the final income tax returns and all other tax returns, certificates, documents, and information required to be filed by reason of the complete liquidation and dissolution of Taxpayer.

Taxpayer makes the following additional representations:

1. Taxpayer acquired the Properties with the intent to hold the properties for a long-term period and to derive its profits from rental income and capital appreciation, consistent with its operation as a REIT.

2. Taxpayer does not intend to reinvest the sales proceeds from the Properties in other real estate interests.

3. Taxpayer will take the actions and perform the activities required for winding up its affairs, preserving the value of its assets, and distributing its assets to its shareholders in accordance with the Plan after all of the Properties have been sold, which Taxpayer anticipates to occur in Year 3.

LAW AND ANALYSIS

Section 857(b)(6)(A) imposes a 100 percent tax on a REIT's net income from prohibited transactions. Section 857(b)(6)(B)(iii) defines the term “prohibited transaction” as the sale or other disposition of property described in section 1221(a)(1) that is not foreclosure property. Section 1221 (a)(1) property, in turn, consists of property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. Section 857(b)(6)(B)(ii) provides that losses attributable to prohibited transactions are not taken into account in determining the amount of net income derived from prohibited transactions.

Section 857(b)(6)(C) excludes certain sales from the definition of a prohibited transaction. Under section 857(b)(6)(C), the term “prohibited transaction” does not include the sale of property which is a real estate asset (as defined in section 856(c)(5)(B) and which is described in section 1221(a)(1)) if –

(i) the REIT has held the property for not less than 2 years;

(ii) the aggregate expenditures made by the REIT, or any partner of the REIT, during the 2-year period preceding the date of sale which are includible in the basis of the property do not exceed 30 percent of the net selling price of the property;

(iii) (I) during the taxable year the REIT does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or (II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases of all the assets of the REIT as of the beginning of the taxable year, or (III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all the assets of the REIT as of the beginning of the taxable year or (IV) the REIT satisfies the requirements of subclause (II) applied by substituting “20 percent” for “10 percent” and the 3-year average adjusted bases percentage for the taxable year (as defined in section 857(b)(6)(G)) does not exceed 10 percent, or (V) the REIT satisfies the requirements of subclause (III) applied by substituting “20 percent” for “10 percent” and the 3-year average fair market value percentage for the taxable year (as defined in section 857(b)(6)(H)) does not exceed 10 percent;

(iv) in the case of property, which consists of land or improvements, not acquired through foreclosure (or deed in lieu of foreclosure), or lease termination, the

REIT has held the property for not less than 2 years for production of rental income; and

(v) if the requirement of clause (iii)(I) is not satisfied, substantially all of the marketing and development expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the REIT itself does not derive or receive any income.

The legislative history underlying section 857(b)(6), which was added to the Code by the Tax Reform Act of 1976, indicates that the purpose of that section was to "prevent a REIT from retaining any profit from ordinary retailing activities such as sales to customers of condominium units or subdivided lots in a development project." S. Rep. No. 938, 84th Cong., 2d Sess. 470 (1976, 1976-3 (Vol. 4) C.B. 508).

To determine whether a taxpayer holds property "primarily for sale to customers in the ordinary course of its trade or business", the Tax Court has held that several factors must be considered, none of which is dispositive. Among those factors are: (1) the nature and purpose of the acquisition of the property and the duration of the ownership; (2) the extent and nature of the taxpayer's efforts to sell the property; (3) the number, extent, continuity, and substantiality of the sales; (4) the extent of subdividing, developing, and advertising to increase sales; and (5) the time and effort the taxpayer habitually devoted to the sales. Generally, it is the purpose for which property is held at the time of the sale that is determinative, although earlier events may be considered to decide the taxpayer's purpose at the time of the sale. See Cottle v. Commissioner 89 T.C. 467, 487 (1987).

Taxpayer has represented that it acquired the Properties with the intent to hold the Properties for a long-term period and to derive its profits from rental income and capital appreciation. Taxpayer is only selling the Properties because it is undergoing a complete liquidation of all of its assets and a corporate dissolution. Prior to this liquidation, Taxpayer did not make numerous, extensive, continuous, or substantial sales of properties. Taxpayer has sold and will continue to sell all of the Properties through third-party brokers and will not use the proceeds of the Property sale to invest in additional real estate assets.

CONCLUSION

Based on the facts presented and representations made by Taxpayer, we conclude that the sale of Taxpayer's Properties pursuant to the plan of liquidation as described above will not constitute prohibited transactions within the meaning of section 857(b)(6).[1]

[1] Section 4 of Revenue Procedure 2016-3, 2016-1 I.R.B. 126, 133, sets forth those areas in which rulings or determination letters will not ordinarily be issued by the Service. "Not ordinarily" means that unique and

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 concerning whether Taxpayer otherwise qualifies as a REIT under subchapter M, part II of Chapter 1 of the Code.

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,

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Julanne Allen
Assistant to the Branch Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

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compelling reasons must be demonstrated to justify the issuance of a ruling or determination letter. See Rev. Proc. 2016-3, section 2.01. Section 4.02(5) of Rev. Proc. 2016-3 provides that one of the areas in which rulings or determination letters will not ordinarily be issued is any matter dealing with the question of whether property is held primarily for sale to customers in the ordinary course of a trade or business. In this case, Taxpayer has demonstrated unique and compelling reasons to justify issuance of the ruling.