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Date: December 17, 2019

Legend:

Taxpayer =

Operating Partnership =

State A =

State B =

Date 1 =

Date 2 =

a =

b =

c =

Dear :

This is in reply to a letter dated April 25, 2017, and supplemental correspondence, requesting rulings on behalf of Taxpayer.

Facts:

Operating Partnership is a State A limited liability company formed on Date 1. Taxpayer, formed on Date 2 and incorporated under the laws of State B, intends to make an election to be taxed as a real estate investment trust ("REIT"). Taxpayer will

raise capital through a public offering or other sale of Taxpayer stock. The proceeds will be contributed by Taxpayer, either directly or indirectly to Operating Partnership in exchange for an interest in Operating Partnership or to pay transaction expenses. In connection with the offering, existing members of Operating Partnership may contribute all or a portion of their interests in Operating Partnership to Taxpayer in exchange for Taxpayer stock ("Contribution"). After the Contribution, Taxpayer will be a REIT that conducts substantially all of its business and holds substantially all of its assets through Operating Partnership.

The primary business of Taxpayer, together with Operating Partnership and their subsidiaries ("Company Group") is to acquire, purchase, develop, build, and lease warehouses ("Warehouses"). Company Group provides unrelated manufacturers, distributors, and retailers ("Customers") with storage space as well as handling and other supply chain services. Additionally, Company Group manages storage facilities for other companies pursuant to management contracts.

Company Group may rent to a Customer an entire Warehouse ("Warehouse Lease"), a set amount of reserved space in a Warehouse for a set term that is generally one year ("Warehouse Agreement"), or non-exclusive space in a Warehouse ("Storage Agreement"). For Customers using Storage Agreements, space is measured by the cubic feet occupied by a pallet of goods (a "Unit"). Company Group sets an amount of revenue it wishes to receive each year for each Unit of space in each of its Warehouses. To receive this amount of revenue per Unit, Company Group enters into a long-term Storage Agreement with each Storage Agreement Customer that contains the terms and obligations of both parties when the Customer presents a pallet of goods for storage in one of Company Group's Warehouses.

Each Storage Agreement contains a profile that projects the type, size, and number of pallets the Customer expects to store over a period of time within a specified Warehouse ("Customer Profile"). The Customer Profile also indicates the length of time each pallet is expected to remain in the Warehouse. The Company Group uses the Customer Profile and the desired amount of revenue per Unit in the Warehouse to determine the specified storage rate the Customer will be charged per pallet under that Storage Agreement.[1] The specified storage rate is based on a set storage interval (generally a days) and is charged on a recurring basis if the pallet remains in the Warehouse beyond that interval. Across Company Group's Warehouses, pallets remain in a Warehouse for an average of b days. Customers of Warehouses require storage fees to be on a per-pallet basis so they may calculate their cost of goods sold and this is the customary rate practice in the industry. Company Group is able to achieve the desired amount of revenue per Unit by setting the per-pallet storage fee and

[1] Taxpayer represents that most charges are based upon the size of each pallet, but charges are occasionally based upon the weight of each pallet. In these cases, the weight designation is for the convenience of the Customer and the standardization of product weight within the pallet ultimately translates to the amount of space the pallet will occupy in the Warehouse.

interval for each Customer using the Customer Profile provided in the Storage Agreement. To ensure Company Group receives the desired amount of revenue per Unit, a Customer's Storage Agreement will be renegotiated if Customer's actual storage data differs significantly from its Customer Profile projections.

Company Group formally guarantees space in a Warehouse for those Customers under Warehouse Leases and Warehouse Agreements. Additionally, a Customer's Storage Agreement may present a fixed minimum storage commitment and such space is guaranteed for those Customers as well. Although space is not formally guaranteed for other Customers under their Storage Agreements, Company Group's provision of space in a Warehouse is based on the Customer's Profile and Company Group carefully plans its storage capacity in each Warehouse to ensure it will have available space for all of its Customers. Using the Customer Profiles, its space planning protocols, and the historical data from its long-term relationships with its Customers, Company Group targets a c percent occupancy rate in each Warehouse to ensure it can accept products for storage that fall outside a Customer's profile at any given time. Therefore, Company Group effectively reserves space for all its Customers based on the Customer Profile regardless of whether the Storage Agreement guarantees the space.

Storage Agreements also provide for any involved with a Customer's pallets. In warehouses, Company Group offers room to Customers. Room involves placing the Customer's pallet in a . involves placing the Customer's pallet in a . is achieved through the . Rooms and areas within Warehouses are set at and are not for each Customer. Products in the more quickly than those placed in a room and after days, pallets are moved to a area. The for and are integrated into the building's ceilings and walls. Charges for and are attributable to the Company Group's equipment cost and the cost of power required to maintain the in each room or area. includes an additional handling charge not required by . Taxpayer represents that both room and are customarily provided by storage facilities in the geographic markets in which Company Group's Warehouses are located. Taxpayer further represents that is a usual or customary service that is rendered in connection

with the operation or maintenance of the Warehouses and is not rendered primarily for the convenience of Customers.

For safety and liability reasons, Customers generally do not have unrestricted access to the inside of the storage facilities with the exception of some Warehouses that are dedicated to a single Customer for a particular use. Therefore, Storage Agreements provide for handling services. Handling services include loading, unloading, and moving Customers' pallets into, out of, and around the facilities. Taxpayer represents that handling is customarily provided to Customers of warehouses in the geographic market in which each Company Group Warehouse is located.

Charges for handling and services are generally calculated to include a profit component and are computed according to the labor and equipment used as well as the fuel and electricity needed to provide the service. Company Group also offers transportation services with third party carriers and other supply chain services and value added services ("Other Services") to its Customers for additional fees.

Company Group desires to restructure its current operations by forming one or more taxable REIT subsidiaries (each, a "TRS") under section 856(l) of the Internal Revenue Code ("Code") to provide services to its Customers. Customers will be notified that Taxpayer or the Operating Partnership will provide the storage space and . Other than the usual and customary service of through the provision of power and electricity, Taxpayer and the Operating Partnership will not provide any services in connection with the lease of space in its Warehouses. Customers will also be notified that a TRS or an independent contractor from whom Taxpayer will not derive or receive any income will perform all product handling as well as any Other Services offered by Company Group. Company Group will receive separately stated amounts for providing storage space, , handling, and any Other Services offered by Company Group.

The portion of any Storage Agreement that provides for Other Services generally will be assigned to a TRS, which will receive separately stated, arm's-length amounts for providing Other Services. However, Taxpayer or the Operating Partnership may collect and receive all or any portion of the amounts payable by Customers for services provided by a TRS as agent for and on behalf of that TRS and, if so, will notify Customers of the agency arrangement in writing. Alternatively, a TRS may collect and receive all or any portion of the amounts payable by Customers with respect to storage space, freezing, and handling as agent for and on behalf of Taxpayer or the Operating Partnership and, if so, will notify Customers of the agency arrangement in writing. It is also possible that a TRS may separately contract with and bill Customers for providing Other Services. Taxpayer will not receive any income from the provision of Other Services to Customers of Warehouses.

In connection with the provision of handling and Other Services, a TRS may lease from Taxpayer or the Operating Partnership space at Warehouses and other facilities owned by Taxpayer or the Operating Partnership. Taxpayer represents that either (1) at least 90 percent of the total space leased at each Warehouse or other facility will be leased to persons other than a TRS and persons who are related tenants with respect to Taxpayer and the Operating Partnership, or (2) any rents paid by a TRS for space in that Warehouse or other facility will be treated as nonqualifying income for purposes of section 856(c)(2) and (3). Payments made by a TRS to a member of Company Group for the lease of space at a Warehouse or other facility will be arm's length and will be substantially comparable to rents paid by unrelated tenants for comparable space at the Warehouse or facility or, where no such comparable space exists at the Warehouse or facility, to rents paid for comparable space leased by unrelated tenants at other, similar warehouses or facilities in the same geographic area. In some instances, there are no similar warehouses or facilities in the immediate geographic area and, therefore, the payments made by a TRS to a member of Company Group for the lease of space in a Warehouse or other facility will be substantially comparable to rents paid for comparable space leased by unrelated tenants at other, similar warehouses or facilities in the surrounding geographic area.

Certain employees of Taxpayer, the Operating Partnership, and a TRS may perform activities for Taxpayer, the Operating Partnership, and the TRS, and thus may be treated as shared employees. Activities that may be engaged in by these shared employees include negotiating contracts with Customers, account maintenance, and general administrative duties. For example, the shared employees may solicit prospective Customers, perform background and credit checks of prospective Customers, and negotiate Storage Agreements. Account maintenance and general administrative activities may include accounting (including preparing financial statements), billing, and bookkeeping activities, and collecting rent, handling, and Other Service fee income.

Taxpayer, the Operating Partnership, and a TRS plan to enter into a cost-sharing arrangement whereby the TRS will generally advance funds for Taxpayer's and the Operating Partnership's shares of the shared employees' expenses as well as Taxpayer's and the Operating Partnership's allocable shares of general and administrative overhead expenses. General and administrative expenses may include property taxes, utilities, and firm management and administrative expenses (including human resources, finance, legal, accounting, administrative support, and marketing). Occasionally, however, Taxpayer or the Operating Partnership may advance funds for a TRS's allocable share of expenses. In each of these cases, the entity advancing funds will be reimbursed by the other entity (or entities) for its fair allocation of expenses. Taxpayer represents that the expenses of the shared employees will be determined on an arm's-length basis based on the amount of time spent carrying out the various activities. Likewise, the allocation of general and administrative overhead expenses will be on an arm's-length basis and will be equitable. Taxpayer also represents that under a cost-sharing arrangement Taxpayer, the Operating Partnership, and the TRS are not

in the business of providing the services for which the TRS may reimburse Taxpayer or the Operating Partnership.

Currently, Company Group manages and warehouses for third parties pursuant to management contracts. Company Group intends to either assign its obligations under existing management contracts to a TRS or to treat the income derived from these contracts as nonqualifying income for purposes of section 856(c)(2) and (3).

Law & Analysis:

Ruling Request 1: Payments from Customers under the Storage Agreements for providing space, , and handling will qualify as "rents from real property" under section 856(d)

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.

Section 856(d)(1) defines "rents from real property" as (subject to exclusions provided in section 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, such lease..

Section 1.856-4(a) provides that the term "rents from real property" means, generally, the gross amounts received for the use of, or the right to use, real property of the REIT.

Section 1.856-4(b)(1) provides that services furnished 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. Examples of services which are customarily furnished to tenants of a particular class of buildings in many geographic marketing areas include water, heat, light, and air-conditioning. To qualify as a service customarily furnished, the service must be furnished or rendered to the tenants of the REIT or, primarily for the convenience or benefit of the tenants, to the guests, customers, or subtenants of the tenants.

Section 856(d)(2)(C), however, excludes impermissible tenant service income from the definition of rents from real property. Section 856(d)(7)(A) defines the term

"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 such property. Section 856(d)(7)(B) provides that if the amount of impermissible tenant service income exceeds a de minimis amount, which is one percent or less of all amounts received or accrued, directly or indirectly, by the REIT with respect to a particular property during the taxable year, the impermissible tenant service income of the REIT with respect to such property shall include all amounts received or accrued, directly or indirectly, by the REIT with respect to such property.

Section 856(d)(7)(C)(i) excludes from the definition of impermissible tenant service income amounts received for services furnished or rendered, or management or operation provided, through an independent contractor from whom the REIT does not derive or receive any income or a TRS of the REIT. In addition, section 856(d)(7)(C)(ii) excludes from the definition of impermissible tenant service income amounts that would be excluded from unrelated business taxable income (UBTI) under section 512(b)(3) if received by an organization described in section 511(a)(2).

Section 512(b)(3) provides, in relevant part, that rents from real property are excluded from the computation of UBTI. Section 1.512(b)-1(c)(5) provides that payments for the occupancy of space where services are also rendered to the occupant are not rents from real property. Generally, services are considered rendered to the occupant if they are primarily for the occupant's convenience and are other than those usually or customarily rendered in connection with the rental of 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.

Storage Agreements represent an agreement for the storage of pallets in Company Group Warehouses as they are received from Customers. Due to the industry needs of Customers, pallets of goods are entering and exiting Company Group Warehouses at varying intervals on a revolving basis, with each pallet remaining in a Warehouse for an average of every b days. A storage fee is collected for each pallet of goods entering a Warehouse. The storage fees under each of the Storage Agreements are calculated so that Company Group receives a set amount of revenue for each Unit of space in each of its Warehouses over the course of a year. Specifically, using the Customer Profile within the Storage Agreement and the desired amount of revenue for each Unit within each Warehouse, a storage fee is set for each pallet of goods stored by each Customer. Thus, the aggregate storage fees collected by Company Group for the storage of a Customer's pallets in a Warehouse are ultimately based on the amount of space that the Customer occupies over a year-long period.

Heat is an example in a non-exhaustive list of services not considered rendered to the occupant under section 512. Similar to the provision of heat, Taxpayer and the

Operating Partnership provide by setting a room or area's temperature control system to consistently maintain a within a room or specified area. In this instance, is achieved through the provision of power, or electricity, to operate the temperature control system used to the spaces within each Warehouse. Taxpayer represents that the provision of , including the provision of power or electricity to run the temperature control system, is a service that is usually and customarily rendered in connection with the rental of space in storage facilities and is not primarily for the convenience of Customers. The income from the provision of is similar to the income from the provision of heat and is also the provision of the utility of power, or electricity, and, therefore, for purposes of determining whether the income is qualifying income for REIT qualification purposes, is income that would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

Company Group's Customers generally do not have direct access to stored pallets, nor do the Storage Agreement Customers have exclusive use of defined space. Rather, the pallets must be handled upon receipt and again to make them available to the Customers upon exiting the Warehouses. Handling, which will be provided to Customers by a TRS or an independent contractor from whom Taxpayer does not derive or receive any income, is customarily rendered in connection with comparable facilities in the same geographic markets.

Accordingly, based on the information submitted and representations made, we conclude that amounts received by Company Group under the Storage Agreements for providing space and , and for handling services performed by a TRS or an independent contractor from whom Taxpayer does not derive or receive any income, will qualify as rents from real property within the meaning of section 856(d).

Ruling Request 2: Rents received by Company Group from a TRS for the leasing of space in a facility (where at least 90 percent of the leased space at the facility is leased to persons other than a TRS or a related person described in section 856(d)(2)(B)) will be treated as rents from real property under section 856(d) through the application of section 856(d)(8)(A).

Section 856(d)(2)(B) provides, in part, that except as provided in section 856(d)(8), the term rents from real property does not include any amount received or accrued directly or indirectly from any person if the REIT owns, directly or indirectly: (i) in the case of any person that is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of such person; or (ii) in the case of any person that is not a corporation, an interest of 10 percent or more in the assets or net profits of such person.

Section 856(d)(8) provides that rent received by a REIT from its TRS will not be excluded from rents from real property under section 856(d)(2)(B) if the terms of the limited rental exception of section 856(d)(8)(A) are met. The requirements of section 856(d)(8)(A) are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than TRSs of such REIT and other than related parties described in section 856(d)(2)(B), but only to the extent that the amounts paid to the REIT by the TRS as rents from real property (without regard to section 856(d)(2)(B)) are substantially comparable to such rents paid by the other tenants of the REIT's property for comparable space.

Taxpayer has represented that either at least 90 percent of the leased space of each Warehouse or other facility will be leased to persons other than a TRS and other related parties described in section 856(d)(2)(B), or any rents paid by a TRS with respect to that Warehouse or other facility will be treated as nonqualifying income for purposes of section 856(c)(2) and (3).

To meet the limited rental exception of section 856(d)(8)(A), amounts paid to a REIT by a TRS must be substantially comparable to rents paid by other tenants. Certain space rented within a Warehouse or other facility by a TRS, for example, in the performance of certain Other Services, is not fitted for use in the same way as the space that is used by Company Group's Customers in that Warehouse or facility and, thus, the space rented by a TRS may not be comparable to the other leased space within the Warehouse or facility. Taxpayer has represented that payments made by a TRS to a member of Company Group for the lease of space in a Warehouse or other facility will be arm's length and will be substantially comparable to rents paid by unrelated tenants for comparable space at the Warehouse or facility or, where no such comparable space exists at the Warehouse or facility, to rents paid by unrelated tenants at other, similar warehouses or facilities in the same geographic area. Where there is no such comparable space at other properties in the same geographic area, the payments will be substantially comparable to rents paid by unrelated tenants for comparable space located in the surrounding geographic area.

Accordingly, based on Taxpayer’s representations, and provided at least 90 percent of the leased space in a Warehouse or facility is leased to persons other than TRSs or related parties described in section 856(d)(2)(B), rents received by Taxpayer or the Operating Partnership from a TRS for the leasing of space in a Warehouse or other facility will be treated as rents from real property under section 856(d) through the application of section 856(d)(8)(A).

Ruling Request 3: Any amounts received by a member of Company Group as reimbursements under a cost-sharing arrangement with other members of Company Group will not be included in the receiving member's gross income, including for purposes of section 856(c)(2) and (3).

Section 1.856-2(c)(1) provides that the term "gross income" has the same meaning as that term has under section 61 and the regulations thereunder.

Section 61(a) defines gross income as all income from whatever source derived. Thus, payments are includible in gross income unless specifically excluded. In General Management Corporation v. Commissioner, 46 B.T.A. 738 (1942), aff'd on other grounds, 135 F.2d 882 (7th Cir.1943), cert. denied, 320 U.S. 757 (1943), the Board of Tax Appeals stated that mere advancements partake of the nature of loans and amounts received in reimbursement therefore are not includible in gross income. In Jergens Co. v. Commissioner, 40 B.T.A. 868 (1939), certain cost-sharing reimbursements were held to be includible in the recipient's gross income because the recipient was in the business of rendering the type of services which were reimbursed by a related corporation.

Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

In Rev. Rul. 84-138, 1984-2 C.B. 123, a regulated investment company ("RIC") and its wholly owned subsidiary shared facilities and some personnel. It was agreed that the RIC would pay all the expenses for general and administrative overhead, including personnel costs, and the subsidiary would reimburse the RIC for its pro rata share of the expenses on an arm's-length basis. The ruling, in distinguishing Jergens Co. v. Commissioner, states that the RIC was not engaged in the business of receiving compensation for services of the type that were reimbursed. Instead, reimbursements to the RIC from the subsidiary were merely repayments of advances made on behalf of the subsidiary. Accordingly, the ruling holds that the reimbursements were not included in the RIC's gross income under section 61, and, therefore, were not subject to the gross income requirement of section 851(b)(2).

In a situation analogous to that described in Rev. Rul. 84-138, Taxpayer and the Operating Partnership will bear shared employees' expenses as well as a TRS's allocable share of general and administrative overhead expenses on behalf of the TRS, and a TRS will bear shared employees' expenses as well as Taxpayer's and the Operating Partnership's allocable share of general and administrative overhead expenses on behalf of Taxpayer and the Operating Partnership. Taxpayer, the Operating Partnership, and the TRS will reimburse each other for their pro rata shares of these expenses as determined on an arm's-length basis. Taxpayer has represented that Taxpayer, the Operating Partnership, and a TRS are not now in and will not be in the business of providing services of the type that will be covered by these reimbursement arrangements. Additionally, Taxpayer, the Operating Partnership, and a

TRS will not profit under any cost-sharing arrangement. Based on the holding in Rev. Rul. 84-138, the reimbursement of expenses by a TRS is a repayment of amounts advanced by Taxpayer or the Operating Partnership. Accordingly, we rule that the reimbursement payments to be made by a TRS to a member of the Company Group for shared employees' expenses and shared general and administrative overhead expenses are not includible in Taxpayer's or the Operating Partnership's gross income under section 61, including for purposes of section 856(c)(2) or (3). Consistent with this treatment, Company Group will not be entitled to capitalize or deduct a TRS's share of the shared employee expenses or a TRS's allocable share of general and administrative overhead expenses.

Ruling Request 4: The Contribution by certain members of the Operating Partnership of all or a portion of their interests in the Operating Partnership to Taxpayer in exchange for Taxpayer stock will not be treated as a transfer to an investment company within the meaning of section 351(e).

Section 351(a) provides that no gain or loss will be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation and immediately after the exchange the transferors are in control (as defined in section 368(c)) of the corporation.

Section 351(e)(1) provides that section 351 will not apply to transfers of property to an investment company.

We rule that the Contribution by certain members of the Operating Partnership of all or a portion of their interests in the Operating Partnership to Taxpayer in exchange for Taxpayer stock will not be treated as a transfer to an investment company within the meaning of section 351(e).

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

Furthermore, the ruling herein related to whether income from services performed by Company Group is impermissible tenant service income is specifically limited to whether the income is qualifying income for REIT qualification purposes. The definition of rents from real property under section 856(d) differs in scope and structure from the definition of rents from real property under section 512(b)(3), which applies to exempt organizations described in section 511(a)(2). Therefore, an exempt organization providing the same service may have unrelated business taxable income because the income may not be excluded under section 512(b)(3) as rents from real property.

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) provides that this ruling 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,

_____
Andrea M. Hoffenson
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes