Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:7-PLR-104075-03
Date:
April 14, 2003

LEGEND:

Corporation =

State =

Address =

a =

b =

c =

Dear :

We received your letter requesting a ruling under section 216 of the Internal Revenue Code. This letter responds to your request.

The represented facts are as follows. Corporation is a cooperative housing corporation organized under the laws of State. Corporation owns the land and building located at Address, which consists of a basement, a floors, b commercial units and c residential units. Corporation does not have an on-site parking garage for its tenant-stockholders and many tenant-stockholders therefore use an off-site parking garage in the neighborhood.

Corporation proposes to lease parking spaces from an off-site garage. Corporation would then subsequently enter into separate agreements with the tenant-stockholders who desire to park their cars in the off-site garage. The tenant-stockholders would pay for the parking rights to Corporation, and Corporation will make all required payments to the off-site garage. Corporation will not receive any money in excess of what is owed to the off-site garage for providing the parking service. Corporation would bear the economic risk should the payments by the tenant-stockholders be less than the payments due from Corporation to the off-site garage.

You requested a ruling that payments by tenant-stockholders to Corporation for use by them of an off-site garage will be considered as part of the gross income derived from tenant-stockholders for purposes of the 80-percent requirement prescribed by section 216(b)(1)(D) of the Code.

Section 216(a) of the Internal Revenue Code provides that in the case of a tenant-stockholder (as defined in section 216(b)(2)), there will be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to the extent that such amounts represent the tenant-stockholder's proportionate share of -- (1) the real estate taxes allowable as a deduction to the corporation under section 164 which are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses (or building) are situated, or (2) the interest allowable as a deduction to the corporation under section 163 which is paid or incurred by the corporation on its indebtedness contracted -- (A) in the acquisition, construction, alteration, rehabilitation, or maintenance of the house or apartment building, or (B) in the acquisition of the land on which the houses (or apartment building) are situated.

Section 216(b)(1) provides that the term "cooperative housing corporation" means a corporation -- (A) having one and only one class of stock outstanding, (B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation, (C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and (D) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in section 216(a) are paid or incurred is derived from tenant-stockholders.

Section 216(b)(2) provides that the term "tenant stockholder" means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

Rev. Rul. 68-387 provides that the amounts received by a cooperative housing corporation from its tenant-stockholders to defray expenses associated with their occupancy of the corporation's property, including amounts received for maid and secretarial service, garage or parking space, utilities, recreation facilities, cleaning, and related services, will be considered as part of the gross income derived from tenant-stockholders for purposes of the 80- percent requirement prescribed by section 216(b)(1)(D) of the Code. On the other hand, amounts received by a cooperative housing corporation from leases for commercial purposes or from the operation of a trade or business (other than housing) are not considered as part of the gross income derived from tenant-stockholders for purposes of the 80-percent requirement prescribed by section 216(b)(1)(D) of the Code.

Rev. Rul. 79-137 provides that revenue that is generated by a cooperative housing corporation from real estate brokerage services provided to its tenant-stockholders in connection with the transfer of their apartment units and that is applied against recurring expenses for repair and maintenance of the corporation's property is income derived from tenant-stockholders within the meaning of section 216(b)(1)(D) of the Code.

Applying the above standards to the facts and representations submitted and subject to the below limitations, we conclude that payments by tenant-stockholders to Corporation for use by them of an off-site garage will be considered as part of the gross income derived from tenant-stockholders for purposes of the 80-percent requirement prescribed by section 216(b)(1)(D) of the Code.

Except as specifically ruled herein, we neither express nor imply any opinion concerning the federal tax consequences under the cited provisions or any other provision 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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

cc: