Internal Revenue Service

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Date:
April 03, 2013

Taxpayer =

State A =

Year 1 =

Advisor =

a =

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Dear :

This is in reply to a letter dated October 23, 2012, requesting rulings on behalf of Taxpayer. You have requested rulings that (1) the issuance of two classes of shares of common stock with different fee and class-specific fee allocations (as described below) will not cause dividends paid by Taxpayer on its shares to be treated as preferential dividends within the meaning of section 562(c) of the Internal Revenue Code ("Code"), and (2) the issuance of the two classes of common stock with different fee and class-specific fee allocations (as described below) will not affect the qualification of Taxpayer as a real estate investment trust ("REIT") under section 856.

FACTS

Taxpayer is a corporation organized under the laws of State A. Taxpayer intends to elect to qualify as a REIT in Year 1. Taxpayer will be advised by Advisor.

Taxpayer expects to commence an initial public offering ("IPO") in Year 1 after receiving regulatory authority clearance. Taxpayer does not intend to list its stock on a securities exchange. Instead, Taxpayer intends to be a public, non-traded REIT. Pursuant to its Charter, Taxpayer is authorized to issue two classes of common stock, Class A Shares and Class C Shares, which Taxpayer expects to issue in its IPO. Taxpayer intends to use the net proceeds to acquire, through its operating partnership, a diversified portfolio of income-producing real estate assets generally comprised of commercial properties leased to tenants on a long-term, net-lease basis.

Taxpayer intends to file a Registration Statement on Form S-11 ("Prospectus") to register the IPO through a dealer manager ("Dealer Manager"), an affiliate of the Advisor and a registered broker-dealer. The Dealer Manager will engage other participating broker-dealers to offer and sell the shares to the public. The price paid for Class A Shares and Class C Shares in the proposed offering will include applicable selling commissions and dealer manager fees, as described below.

Taxpayer's Charter directly, or through incorporation by reference to the Prospectus or the Advisory Agreement, provides a description of the various terms and rights of the Class A Shares and Class C Shares in accordance with State A law. Class A Shares and Class C Shares will vote together as a single class and each share will be entitled to one vote. Taxpayer's redemption plan generally allows shareholders of Class A Shares and Class C Shares to redeem shares base on the net asset value ("NAV") per share (less a surrender charge).

According to the Prospectus, as incorporated into the Charter, in Taxpayer's proposed IPO, Taxpayer will pay the Dealer Manager a selling commission of up to a%

of the offering price for each Class A Share sold and up to b% of the offering price for each Class C Share sold ("Selling Commission"). The Selling Commission will be re-allowed by the Dealer Manager to the participating broker-dealers.

Taxpayer will pay the Dealer Manager a dealer manager fee of c% of the offering price for each Class A Share sold and d% of the offering price for each Class C Share sold ("Dealer Manager Fee"). The Dealer Manager may retain or re-allow a portion of the Dealer Manager Fee to participating broker-dealers.

In addition, for the Class C Shares only, Taxpayer will pay the Dealer Manager an annual distribution fee that accrues daily and is paid quarterly in an amount equal to e of f % of the offering price of each Class C Share sold ("Distribution Fee"). The Dealer Manager may, in its discretion, re-allow the Distribution Fee to participating broker-dealers.

Pursuant to the Advisory Agreement, as incorporated into the Charter, Taxpayer will also pay an ongoing fee to Advisor for implementing Taxpayer's investment strategy and managing Taxpayer's day-to-day operations equal to b% of the overall value of Taxpayer's investments in readily marketable real estate securities purchased on the secondary market, and g% of the overall value of all other investments ("Advisory Fee"). The Advisory Fee will be charged to Class A Shares and Class C Shares based on how the NAV applicable to each class relates to the overall NAV of Taxpayer.

For investments other than investments in readily marketable real estate securities purchased on the secondary market, Taxpayer will also pay Advisor certain transaction-based fees: acquisition fees of h% of the total investment cost of the asset, subordinated acquisition fees of i% of the total investment cost of the asset, and disposition fees in an amount equal to the lesser of (1) j% of the competitive real estate commission (if applicable) and (2) c% of the contract sales price of the asset ("Transaction-based Fees"). Class A Shares and Class C Shares pay the same Transaction-based Fees.

Taxpayer will allocate class-specific fees—Selling Commission, Dealer Manager Fee, and Distribution Fee—to each applicable class of stock and reduce the distributions payable on each class accordingly. The allocation of class-specific fees will cause investors' returns on the Class A Shares and Class C Shares to vary.

LAW AND ANALYSIS

Section 857(a)(1) of the Code requires, in part, that a REIT's deduction for dividends paid for a tax year (as defined in section 561, but determined without regard to capital gains dividends) equal or exceed 90% of its REIT taxable income for the tax year (determined without regard to the deduction for dividends paid and by excluding any net capital gain).

Section 561(a) defines the deduction for dividends paid, for purposes of section 857, to include dividends paid during the taxable year.

Section 561(b) applies the rules of section 562 for determining which dividends are eligible for the deduction for dividends paid under section 561(a).

Section 562(c) provides that the amount of any distribution will not be considered as a dividend for purposes of computing the dividends paid deduction under section 561 unless the distribution is pro rata. The distribution must not prefer any shares of stock of a class over other shares of stock of that same class. The distribution must not prefer one class of stock over another class except to the extent that one class is entitled (without reference to waivers of their rights by stockholders) to that preference.

Section 1.562-2 of the Income Tax Regulations provides that a corporation will not be entitled to a deduction for dividends paid with respect to any distribution upon a class of stock if there is distributed to any shareholder of such class (in proportion to the number of shares held by him) more or less than his pro rata part of the distribution as compared with the distribution made to any other shareholder of the same class. Nor will a corporation be entitled to a deduction for dividends paid in the case of any distribution upon a class of stock if there is distributed upon such class of stock more or less than the amount to which it is entitled as compared with any other class of stock. A preference exists if any rights to preference inherent in any class of stock are violated. The disallowance, where any preference in fact exists, extends to the entire amount of the distribution and not merely to a part of such distribution.

Accordingly, based on the above facts and circumstances, we conclude that the issuance of two classes of shares of common stock with different fee and class-specific fee allocations (as described above) will not cause dividends paid by Taxpayer on its shares to be treated as preferential dividends within the meaning of section 562(c) of the Code. Furthermore, the issuance of the two classes of common stock with different fee and class-specific fee allocations (as described above) will not affect the qualification of Taxpayer as a REIT.

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, no opinion is expressed concerning the accuracy of the NAV of Taxpayer's stock for purposes of subchapter M.

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) of the Code 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,

K. Scott Brown
Branch Chief, Branch 3
(Financial Institutions & Products)