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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B03
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Date:
July 12, 2017

LEGEND:

Taxpayer	=
a	=
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Dear

This ruling responds to a letter dated December 2, 2016, and subsequent correspondence, submitted on behalf of Taxpayer. Taxpayer requested a ruling that, subject to § 856(d)(1)(C), amounts received by Taxpayer from wireless telecommunication carriers for the use of certain distributed antenna system ("DAS") assets and related property interests qualify as "rents from real property" under § 856(d)(1).

FACTS

Taxpayer is a corporation for federal income tax purposes. Taxpayer intends to elect to be taxed as a real estate investment trust ("REIT") under § 856 through § 859 of

the Internal Revenue Code beginning with its taxable year ending on Date 1. Taxpayer owns land and cellular communications towers and has acquired interests in DAS assets, as described below.

DAS Components

A DAS is a system for the transmission of telecommunication signals through fiber optic and coaxial cables. Wireless carriers supplement their cell tower antennas with DASs to improve capacity and signal strength in densely populated areas (e.g., college campus, sports stadium, or convention center) and hard-to-reach areas (e.g., underground transportation system). A DAS may be located outdoors ("Outdoor DAS") or inside a structure ("Indoor DAS").

The main components of both Indoor DASs and Outdoor DASs are fiber optic and coaxial cables and related conduit piping (collectively, "DAS Cables"). Taxpayer typically owns the DAS Cables in both Outdoor DASs and Indoor DASs. In certain circumstances, however, Taxpayer does not own the fiber optic cable and related conduit piping in an Outdoor DAS. Taxpayer would instead own an exclusive right to use certain strands of fiber optic cables (and related conduit) that are owned by third parties. In an Outdoor DAS, fiber optic cables are buried in the ground within conduit piping or strung between telephone poles. In an Indoor DAS, fiber optic and coaxial cables and related conduit piping are embedded in, or affixed to, walls or ceilings of a building or other structure such as an underground transportation system. For purposes of this ruling, Taxpayer represents that the DAS Cables are "real property" for purposes of § 856.

Outdoor DAS and Indoor DAS also consist of antennas, optical converters, amplifiers, and equipment cabinets (collectively, "DAS Equipment"). Taxpayer owns the DAS Equipment in both Outdoor DASs and Indoor DASs. The wireless telecommunications carriers own base stations, which are placed in equipment cabinets owned by Taxpayer. For purposes of this ruling, Taxpayer represents that the DAS Equipment will be treated as personal property for purposes of § 856(d)(1). Taxpayer represents that rent attributable to personal property leased under, or in connection with, leasing of a DAS will not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with the lease as provided in section 856(d)(1)(C).

DAS Property Interests

Taxpayer generally does not own the poles or other structures to which DAS Cables and DAS Equipment are affixed, the land in which the fiber optic cables are buried, and the buildings or other structures in which Indoor DAS are located. Instead, Taxpayer holds interests that generally take the form of leasehold or license interests, easements, rights-of-way, permits, rights of use, "attachment rights," or other similar

rights or interests to occupy the land or structures to which the DAS Cables and DAS Equipment are affixed, as well as, in limited circumstances, exclusive and indefeasible right to use for certain strands of fiber optic cable (and related conduit) that are owned by third parties (collectively, the "DAS Property Interests").

Taxpayer intends to construct DASs with respect to the DAS Property Interests. Taxpayer will lease, license, or otherwise grant to wireless telecommunications carriers the right to use the DAS pursuant to the DAS Agreements described below. For purposes of this ruling, Taxpayer represents that the DAS Property Interests qualify as "interests in real property" under § 856(c)(5)(C).

DAS Agreements

Taxpayer will enter into agreements with a wireless telecommunication carrier ("User"), pursuant to which Taxpayer grants the User the right to use a DAS to transport User's telecommunications signals through the DAS Cables ("DAS Agreement"). A single DAS may be leased to more than one User (typically, there are multiple Users at each DAS site). Thus, signals of more than one User may be transported by a single strand (or pathway) of fiber optic cable. Each User, however, will have an exclusive use of a dedicated frequency within a single fiber optic pathway. Each User's dedicated frequency will be specified in its DAS Agreement.

The DAS Agreements typically have terms of a years, with renewal options. Under the DAS Agreements, a User generally pays Taxpayer an initial capital contribution fee representing the cost of constructing the DAS, plus a markup amount above the total cost of the DAS. This markup amount represents the cost of coordinating and supervising the construction of the DAS at a particular site. The User also pays Taxpayer a fixed, recurring amount for the ongoing use of the DAS during the term of its DAS Agreement with Taxpayer. The recurring amounts are typically paid monthly and are subject to escalation. Taxpayer represents that it will not receive any amounts based on a percentage of the User's, or any other person's, income or profits with respect to a DAS.

DAS User Services and Activities

Under the DAS Agreement, Taxpayer is generally obligated to furnish certain services provided in connection with leasing a DAS. The services performed by Taxpayer include certain services in (1) designing the DAS ("design services" discussed below); (2) constructing the DAS; (3) installing the components of the DAS including antennas, fiber optic and coaxial cables, amplifiers, optical converters, and other equipment; (4) providing the User access to electrical power or submetering electricity to power DAS components that require electricity; (5) providing ongoing monitoring of the functioning of the DAS to ensure that components of the system owned by Taxpayer are operational, safe, and secure, as opposed to maximizing the quality of the system's

performance; (6) inspecting the DAS periodically to identify problems that cause the system to stop working such as breaks in the fiber optic cable and weather damage, or that present safety or security risks; and (7) limited maintenance and minor repair work to ensure the DAS functions in a safe and secure manner. In addition, Taxpayer will supervise the activities with respect to a DAS, which will be provided by an independent contractor, as defined in section 856(d)(3), from whom Taxpayer derives no income ("Independent Contractor") or by a taxable REIT subsidiary, as defined in section 856(l) ("TRS"), of Taxpayer. Taxpayer may supervise or perform monitoring, inspections, and limited maintenance and minor repair work on the DAS (collectively with the services described in the previous paragraph, "DAS User Services and Activities"). Major repairs will be performed by an Independent Contractor or TRS. Each User is responsible for the repair and maintenance of its own base station and related equipment. Taxpayer represents that the DAS User Services and Activities are usually and customarily provided in connection with the lease of a DAS.

Charges for certain of the DAS User Services and Activities are included as part of the initial capital contribution fee (as discussed above) or as part of the recurring maintenance fee. The recurring maintenance fee only covers certain of the DAS User Services and Activities. Taxpayer represents that electricity costs are passed through to the User or the User may pay the recurring electricity charges directly to the utility company.

Taxpayer represents that the design services are not unique to any particular User and that a DAS is typically designed to be used by up to b Users. The design services are offered to all Users at a site primarily to determine where to place the DAS to provide sufficient capacity and performance for all Users and their customers, and for optimal efficiency and functionality of the DAS. This determination includes the location of the antennas, the optimal pathway of the fiber optic and coaxial cables, and the amount of fiber optic cable needed to ensure adequate cabling for current and future Users. The design process also considers the type of equipment and wireless frequencies Users will use, as well as outside influences that may have an effect on the network. Taxpayer represents that the design process is necessary to ensure that a DAS operates properly and reliably for the system's intended purpose for which it is constructed and leased. That is, to allow existing and future Users to lease space that is adequate to provide the desired level of coverage to their customers.

In situations where a charge is for an additional service, the charge may be separately stated, and the amount of the charge will generally equal the cost of the service (e.g., the fee paid by Taxpayer to the Independent Contractor). Taxpayer will charge as compensation for its supervisory role taken in connection with the provision of the design and construction services.

LAW AND ANALYSIS

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) provides that "rents from real property" include (subject to exclusions provided in § 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 taxable year attributable to both the real and personal property leased under, or in connection with, the lease.

Section 856(d)(2)(C) provides that any impermissible tenant service income is excluded from the definition of "rents from real property." Section 856(d)(7)(A) defines "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 at the property, or for managing or operating the property.

Section 856(d)(7)(C) provides certain exceptions from impermissible tenant service income. Section 856(d)(7)(C) provides that for purposes of § 856(d)(7)(A), 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 through a taxable REIT subsidiary of the REIT shall not be treated as furnished, rendered, or provided by the REIT, and there shall not be taken into account any amount which would be excluded from unrelated business taxable income under § 512(b)(3) if received by an organization described in § 511(a)(2).

Section 512(b)(3) provides, in part, that there shall be excluded from the computation of unrelated business taxable income all rents from real property and all rents from personal property leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

Section 1.512(b)-1(c)(5) provides that payments for the use or occupancy of rooms and other space where services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses, or apartment houses furnishing hotel services, or in tourist camps or tourist homes, motor courts or motels, or for the use or occupancy of space in parking lots, warehouses, or

storage garages, do not constitute rent 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 rooms or other 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, and the collection of trash are not considered as services rendered to the occupant.

Section 1.856-4(a) defines the term "rents from real property" generally as 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 the term "rents from real property" includes charges for services customarily furnished or rendered in connection with the rental of real property, whether or not the charges are separately stated. Services furnished to tenants of a particular building will be considered as customary if, in the geographic market in which the building is located, tenants in buildings of similar class are customarily provided with the service. Where it is customary, in a particular geographic marketing area, to furnish electricity or other utilities to tenants in buildings of a particular class, the submetering of utilities to tenants in such buildings will be considered a customary service.

Section 1.856-4(b)(5)(ii) provides that the trustees or directors of a trust are not required to delegate or contract out their fiduciary duty to manage the trust itself, as distinguished from rendering or furnishing services to the tenants of its property or managing or operating the property. Thus, the trustees or directors may do all those things necessary, in their fiduciary capacities, to manage and conduct the affairs of the trust itself. For example, the trustees or directors may establish rental terms, choose tenants, enter into and renew leases, and deal with taxes, interest, and insurance relating to the trust's property. The trustees may also make capital expenditures with respect to the trust's property (as defined in section 263) and may make decisions as to repairs of the trust's property (of the type that would be deductible under section 162), the cost of which may be borne by the trust.

Under each DAS Agreement, a User has a right to use a DAS. Each DAS Agreement typically has a term of a years with a fixed, recurring amount for the use of the DAS during the term of the DAS Agreement. Taxpayer represents that the DAS Cables and the related DAS Property Interests qualify as real property under § 856 and that any personal property leased in connection with the DAS Cables and related DAS Property satisfy the requirements of §856(d)(1)(C). Therefore, amounts received by Taxpayer for use of the DAS Cables and the related DAS Property Interests qualify as "rents from interests in real property" under § 856(d)(1)(A). Based upon the information submitted and representations made, the DAS User Services and Activities are usually and customarily provided in connection with the rental of telecommunications infrastructure similar to the DASs, or represent an exercise of the fiduciary duties of the Taxpayer's directors in accordance with § 1.856-4(b)(5)(ii) that are not services

rendered to the User in connection with the rental of real property. Accordingly, the provision by Taxpayer of the DAS User Services and Activities does not give rise to impermissible tenant service income, and will not cause any portion of the rents received by Taxpayer from Users for use of the DAS Cables and related DAS Property Interests to fail to qualify as "rents from real property" under § 856(d).

CONCLUSION

Based on the facts and representations submitted by Taxpayer, we rule that amounts received by Taxpayer under the DAS Agreements for the use of the DAS Cables and the related DAS Property Interests qualify as "rents from interests in real property" under § 856(d)(1)(A). The provision by Taxpayer of the DAS User Services and Activities does not give rise to impermissible tenant service income, and will not cause any portion of the rents received by Taxpayer from Users for use of the DAS Cables and related DAS Property Interests to fail to qualify as "rents from real property" under § 856(d).

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 the DAS Cables qualify as "real property" or whether the related DAS Property Interests qualify as "interests in real property" for purposes of § 856. No opinion is expressed concerning any other services or activities performed by Taxpayer or a TRS. No opinion is expressed concerning whether Taxpayer otherwise qualifies as a REIT under subchapter M, part II of Chapter 1 of the Code.

Furthermore, the ruling herein related to whether income from services and activities performed by Taxpayer 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 § 856(d) differs in scope and structure from the definition of rents from real property under § 512(b)(3), which applies to exempt organizations described in § 511(a)(2). Therefore, an exempt organization providing the same services may have unrelated business taxable income because the income may not be excluded under § 512(b)(3) as rents from real property.

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,

_____

K. Scott Brown
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosure:
Copy for § 6110 purposes

cc: