INTERNAL REVENUE SERVICE
Index Number: 351.00-00
Number: **199947001**
Release Date: 11/26/1999

CC:DOM:CORP:3 PLR-112416-98
December 7,1998

Company A =

Partnerships =

Principal Shareholder =

Manager =

REIT =

State X =

State Y =

a =

b =

c =

d =

e =

f =

g =

h =

This letter is in response to your request for rulings dated June 8, 1998, on the federal income tax consequences of a proposed transaction. You have submitted additional information in letters dated October 1, 1998, November 18, 1998, and December 3, 1998.

The rulings contained in this letter are predicated upon facts and representations that the taxpayer submitted and are accompanied by a penalty of perjury statement executed by the appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as a part of the audit process. The information received has been summarized below.

Company A is a State X limited liability company whose interests ("Shares") are widely held
Company A will be treated as a partnership for federal income tax purposes.

Company A owns an a% general partnership interest in b limited partnerships (the "Partnerships") and in excess of c% of the limited partnership interests of each of the Partnerships. Company A directly and/or through the Partnerships hold a portfolio of approximately d real properties located in e states that are leased to approximately f tenants.

Company A is managed by Manager, a limited liability company that is treated as a partnership for federal income tax purposes. Manager is owned by g corporations, all of which are directly or indirectly owned by Principal Shareholder. Manager and Principal

Shareholder own limited partnership interests in some of the Partnerships as well as Shares of Company A.

Recently, the Partnerships redeemed some of their respective limited partners for cash.

The taxpayer will engage in the following initial transactions:

(A) The corporations that own Manager will contribute their interests in Manager to Company A in exchange for Company A Shares.

(B) The Principal Shareholder will contribute all of his interests in the various Partnerships to Company A or a to be formed limited liability company that will be wholly owned by Company A in exchange for Company A Shares. The limited liability company will be a disregarded entity for federal income tax purposes under §§ 301.7701-3(a) and (b) of the Procedure and Administration Regulations.

(C) All remaining holders of limited partnership interests in the Partnerships (the "Individual Limited Partners") will contribute all of their interests in the Partnerships to Company A or the same limited liability company to which the Principal Shareholder contributed his shares in (B), above, in exchange for Company A Shares.

It is represented that after these initial transactions Company A will own directly and through a wholly owned limited liability company 100 percent of each of the Partnerships and the Partnerships will also be disregarded entities for federal income tax purposes.

After the initial transactions, the taxpayer has proposed the following transactions:

(i) REIT will be organized as a State Y corporation and will elect to be treated as a Real Estate Investment Trust under § 856.

(ii) REIT will organize Company B as a wholly owned limited liability company. It is represented that Company B will be a disregarded entity for federal income tax purposes.

(iii) Company B will merge with and into Company A (the "Merger"). Shareholders who participate in the Merger (each a "Transferor" and together the "Transferors") will exchange their Shares for REIT voting common stock

("Stock"). Shareholders who do not participate in the Merger will retain their Shares; however, at the option of such shareholders, their Shares could be put to REIT in exchange for Stock or cash, to be determined in REIT's sole discretion. However, after the Merger, REIT will own more that h% of Company A.

It has been represented that there is no plan for REIT to issue stock to the public for cash. However, if market conditions are favorable, REIT may sell stock to the public.

The taxpayer has made the following representations in connection with the proposed transaction:

(a) No stock or securities will be issued for services rendered to or for the benefit of REIT in connection with the proposed transaction. No stock or securities will be issued for indebtedness of REIT that is not evidenced by a security or for interest on indebtedness of REIT which accrued on or after the beginning of the holding period of the Transferors for the debt.

(b) The transfer is not the result of the solicitation by a promoter, broker, or investment house.

(c) The Transferors will not retain any rights in the property transferred to REIT.

(d) The adjusted basis and the fair market value of the Shares to be transferred by the Transferors to REIT will, in each instance, be equal to or exceed the sum of the liabilities deemed to be assumed by REIT under § 752 plus any liabilities to which the transferred Shares are subject, except to the extent the adjusted basis of the Shares transferred by Transferors may be less than the amount of liabilities allocated to the Transferors and deemed to be assumed by REIT under § 752, gain will result to any such Transferors pursuant to § 357(c).

(e) The liabilities of Company A and the Partnerships that are allocated to the Transferors and deemed to be assumed by REIT under § 752 were incurred in the ordinary course of business and are associated with the Shares to be transferred.

(f) There is no indebtedness between REIT and the Transferors and there will be no indebtedness created in favor of the Transferors as a result of the proposed transaction.

(g) The transfers and exchanges will occur under a plan agreed

upon before the transaction in which the rights of the parties are defined.

(h) All exchanges will occur on approximately the same date.

(i) There is no plan or intention on REIT's part to redeem or otherwise reacquire any Stock or indebtedness to be issued in the proposed transaction.

(j) Taking into account any issuance of additional shares of REIT Stock; any issuance of stock for services; the exercise of any REIT Stock rights, warrants, or subscriptions; a public offering of REIT stock; and the sale, exchange, transfer by gift, or other disposition of any of the REIT stock to be received in the exchange, the Transferors will be in "control" of REIT after the Merger within the meaning of § 368(c).

(k) Each Transferor will receive Stock approximately equal to the fair market value of the Shares transferred to REIT.

(l) REIT will remain in existence and retain and use the Shares transferred to it in a trade or business.

(m) There is no plan or intention by REIT to dispose of the Shares other than in the normal course of business.

(n) Each of the parties to the transaction will pay its or his/her own expenses, if any, incurred in connection with the proposed transaction.

(o) To the best of Company A's knowledge, the Transferors are not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the Stock received in the exchange will not be used to satisfy the indebtedness of such debtors. Neither Principal Shareholder nor any of the entities that own Manager are under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the Stock received in the exchange will not be used to satisfy the indebtedness of such debtors.

(p) REIT will not be a "personal service corporation" within the meaning of § 269A of the Code.

(q) If the contributions of the various Partnership interests by Principal Shareholder and the Individual Limited Partners in steps (B) and (C) of the initial transactions are viewed as a contribution of such interests by such persons to REIT in exchange for Stock at the time of the Merger followed by a

contribution by REIT of such interests to Company A, the sum of (i) any increase in value (expressed in dollars) of the indirect ownership interests in the Partnerships to be contributed by each Individual Limited Partner and of the indirect ownership in the various Partnerships to be contributed by Principal Shareholder to Company A or a limited liability company wholly owned by Company A of all Transferors as compared to immediately prior to the deemed contributions and (ii) any increase in value (expressed in dollars) of each Individual Limited Partner's and Principal Shareholder's indirect interest, respectfully, in all of Company A's assets as compared to immediately prior to the deemed contributions will not be greater than 5% of the total value of all the assets transferred to REIT in the Merger.

(r) Company A has more than 100 Shareholders and will make an election under § 775 to be treated as an electing large partnership.

(s) Company A will make an election to adjust the basis of partnership property under § 754.

(t) No other assets other than the Shares will be transferred to REIT in the Merger and REIT has no current plan to acquire assets other than the Shares for its stock.

(u) REIT will not assume any debt of any Transferor.

(v) The contribution of the interests in Manager to Company A is a transaction that has been considered independently of the Merger. The contribution of the interests in Manager to Company A is not dependent on the consummation of the Merger. If for any reason the Merger is not consummated, subject to the approval of the Shareholders of Company A, Company A still will become the owner of Manager.

Based on the information submitted, and the representations set forth above, and provided that (i) Company A is taxed as a partnership for federal income tax purposes and (ii) REIT makes a valid election to be taxable as a real estate investment trust under § 856 for the taxable year, it is held as follows:

(1) For Federal income tax purposes, the Merger will be treated as a contribution by the Transferors of their Shares to REIT in exchange for Stock (see Rev. Rul. 67-448, 1967-2 C.B. 144).

(2) The deemed transfer of Shares in connection with the Merger will not be considered a transfer to an "investment company"

under § 351(e) (§ 1.351-1(c)(5) & (7) Example 1). The Merger will constitute an exchange within the meaning of § 351, and no gain or loss will be recognized by a Transferor upon the deemed transfer of its Shares to REIT in exchange for Stock, except to the extent that the sum of the liabilities allocated to the Transferor under § 752 immediately before the Merger exceeds the Transferor's adjusted basis in the deemed transferred Shares (§§ 351(a) and 357, see also Rev. Rul. 80-323, 1980-2 C.B. 124, and Rev. Rul. 84-111, 1984-2 C.B. 88 Situation 3).

(3) Each Transferor's basis of the Stock received in the Merger will equal the basis of the Shares transferred in exchange therefor, decreased by the Transferor's share of Company A's liabilities deemed assumed by REIT, and increased by the amount of gain recognized by the Transferor in the Merger (§ 358(a)(1) & (d)).

(4) Under § 1223(1), each Transferor's holding period for Stock received in the Merger includes the holding period of the Shares exchanged by the Transferor for the Stock (1) provided that the Shares were capital assets or property described in § 1231, and (2) except to the extent that the Shares transferred are attributable to the Transferor's interest in § 751 assets of Company A, including the assets of the Partnerships that are disregarded entities. The holding period of the Stock that is received by a Transferor in exchange for its interest in Company A's § 751 assets (including the assets of the Partnerships that are disregarded entities) that are neither capital assets nor § 1231 property begins on the day following the exchange (see Rev. Rul. 84-111).

(5) No Transferor will recognize ordinary income or loss under § 751(a), except to the extent that gain is otherwise recognized by the Transferor under § 357(c) because the Transferor's share of Company A's liabilities deemed assumed by REIT exceed the Transferor's basis in the transferred Shares.

(6) REIT will recognize no gain or loss upon its receipt of Shares from the Transferors in exchange for its Stock (§ 1032(a)).

(7) REIT's basis for the Shares received from the Transferors will equal the basis of such Shares in the hands of the Transferors immediately before the Merger, plus any gain recognized in the Merger (§ 362(a)).

(8) If Company A makes an election under § 754, Company A's

basis in its assets, including the assets of the Partnerships that are disregarded entities for federal income tax purposes, will be adjusted under § 743(b) as a result of the transaction. The adjustment under § 743(b) will be an adjustment to the basis of Company A's property for REIT only.

(9) REIT's holding period for the Shares received from the Transferors will include the period during which the Transferors held the Shares (§ 1223(2)).

(10) As a result of the application of the aggregate approach of § 1.856-3(g) to REIT's interests in Company A, the REIT will be deemed to own its proportionate share of the assets of Company A, as determined under the regulations, and will be deemed to be entitled to the income or deductions attributable to that share. Items which, but for the deemed transfer, would have resulted in income or deductions to the Shareholders in a period subsequent to the transfer, will constitute items or deduction to the REIT through its interest in Company A as provided in § 1.856-3(g), and the items will retain the character that they had at the partnership level for purposes of determining the taxable income of REIT.

(11) The Transferors will not recognize depreciation recapture as a result of the contribution by the Transferors of the Shares to REIT (§§ 1245(b)(3) and 1250(d)(3)), unless (1) gain is recognized by any Transferor under § 357(c) to the extent that liabilities allocated to the Transferor exceed the Transferor's basis in the Shares prior to the Merger and (2) there is gain taken into account by the Transferor under § 1245(a)(1) or § 1250(a). Thus, where gain is recognized by a Transferor under § 357(c) to the extent that liabilities allocated to the Transferor exceed the Transferor's basis in the Shares prior to the Merger and there is gain taken into account by the Transferor under § 1245(a)(1) or § 1250(a), the Transferor will recognize depreciation recapture as a result of the contribution by the Transferor of the Shares to REIT.

(12) If Company A elects to be treated as an electing large partnership under § 775 for the taxable year in which the Merger occurs, Company A will not be treated as terminated under § 708(b)(1)(B) and its taxable year will not end under § 706 as a result of the transaction.

No opinion is expressed as to the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time

of, or effects resulting from, the transaction that are not specifically covered by the above rulings. Specifically, no opinion is expressed about the tax treatment of (1) steps (A), (B), and (C) of the initial transactions, (2) steps (i) and (ii) of the transaction, (3) the shareholders that do not participate in the Merger or the consequences of the exercise of the put option to the holders, REIT, or Company A, and (4) whether REIT qualifies as a real estate investment trust under § 856(a).

Furthermore, this ruling is null and void to the extent that it is determined on audit that there is a plan or intention for REIT to issue additional stock for cash or assets.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax return of the taxpayers involved for the taxable year in which the transaction covered by this letter is consummated.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By Victor Penico
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