Internal Revenue Service

Index Number: 368.06-00

Department of the Treasury

Washington, DC 20224

199902004

Person to Contact:

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Refer Reply To:
CC:DOM:CORP:5 PLR-115488-98
Date: OCT 7 1998

Acquiring =

Target =

State X =

State Y =

State Z =

State U =

Business A =

a =

Date b =

Date c =

Dear

This letter responds to your July 30, 1998 request for rulings on certain federal

income tax consequences of a proposed transaction. The information submitted is summarized below.

Acquiring, a State X corporation that has elected to be treated as a real estate investment trust ("REIT") under subchapter M of the Internal Revenue Code, is principally engaged in Business A. Acquiring conducts its business through a limited partnership ("Acquiring Limited Partnership") of which Acquiring is the sole general partner. Target, a State Y corporation that has elected to be treated as a REIT under subchapter M of the Code, is principally engaged in Business A. Target operates Business A directly, and operates Business A indirectly through wholly-owned subsidiaries that are classified as Qualified REIT Subsidiaries under § 856(i).

Acquiring seeks to acquire Target, and to have the operating assets of Target in Acquiring Limited Partnership. However, Acquiring seeks to avoid a transfer tax under the laws of State Z that would be incurred if Acquiring made a direct transfer of Target's assets to Acquiring Limited Partnership. Moreover, there are certain of Target's assets that Acquiring does not want to acquire. To accomplish these business objectives, the following transaction is proposed:

(i) Target will form a wholly-owned subsidiary ("Target Distribution Subsidiary") to which Target will transfer the unwanted Target assets in exchange for 100 percent of the common stock and 100 percent of the preferred stock of Target Distribution Subsidiary. Target Distribution Subsidiary will have a value of approximately a percent of the fair market value of Target. Target will distribute the common stock pro rata to Target shareholders ("Target Distribution") in a transaction that Target represents will constitute a distribution under § 301. Acquiring Limited Partnership will purchase all of the preferred shares of Target Distribution Subsidiary in a transaction that Target represents will constitute a exchange under § 1001.

(ii) Subsequent to the Target Distribution, Target will form a wholly-owned subsidiary under the laws of State X ("New Target"), which, in turn, will form a wholly-owned limited liability company under the laws of State U ("Target LLC"). Target represents that both New Target and Target LLC will be classified as disregarded entities for federal income tax purposes. Target will merge with and into Target LLC under the statutory merger provisions of State U and State Y, and the Target common and preferred shareholders will receive common and preferred shares of New Target, respectively (the "F Reorganization Merger").

(iii) Following the F Reorganization Merger, New Target will merge with and into Acquiring under the statutory merger provisions of State X (the "Statutory Merger"). Acquiring will transfer Target LLC to Acquiring Limited Partnership (the "Acquiring Partnership Transaction").

The taxpayers make the following representations in connection with the proposed transaction:

(a) The F Reorganization Merger will qualify as a reorganization under § 368(a)(1)(F), provided that the Target Distribution, the Statutory Merger and the Acquiring Partnership Transaction do not prevent the F Reorganization Merger from so qualifying.

(b) Acquiring and Target plan and intend to consummate the F Reorganization Merger on or about Date b. Target will pay the Target Distribution on or around Date c, a date that precedes Date b.

(c) The Acquiring Partnership Transaction will qualify as a contribution of property to Acquiring Limited Partnership under § 721(a).

Based solely on the information submitted and the representations made, we rule as follows:

> The Target Distribution, the Statutory Merger and the Acquiring Partnership Transaction will have no effect on the qualification of the F Reorganization Merger under § 368(a)(1)(F). See Rev. Rul. 96-29, 1996-1 C.B. 50.

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 ruling. Specifically, no opinion is expressed and none was requested concerning whether Acquiring qualifies as a REIT under § 856 prior to or following the transaction. No opinion is expressed and none was requested concerning the qualification (or the effect of such qualification) of Target's Qualified REIT Subsidiaries under § 856(i) prior to or following the transaction.

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

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

Pursuant to the powers of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,

Assistant Chief Counsel (Corporate)

By: Filiz A. Serbes

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