Internal Revenue Service

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Department of the Treasury

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This replies to a ruling request dated January 29, 1999, you filed on behalf of the Company. The rulings requested concern the treatment under section 856 of the Internal Revenue Code of income the Company proposes to receive from the provision of telecommunication services to tenants of properties the Company owns.

Facts:

The Company is a publicly traded organization that has elected to be treated as a real estate investment trust ("REIT") under section 856(c)(1) of the Code. Substantially all of the Company's assets are held by an operating partnership in which the Company is the sole managing partner. These assets include office properties (collectively "Properties") that the Company owns, manages, leases, and operates.

The Company has entered into an agreement with an independent telecommunication service provider to provide certain telecommunication services to the Properties' tenants (collectively "Tenants"). The Company may enter into additional agreements with other independent telecommunication service providers (collectively "Providers") to provide telecommunication services to Tenants. Telecommunication services include: the installation, servicing, repair, and upgrade of, and access to, communication lines to obtain telecommunication services; telephone access; Internet access; computer networking; electronic mail; voice mail; teleconferencing; business news and electronic clipping; security and safety alarms; and access to environmental control systems.

The Company currently derives no income from the provision of telecommunication services. Upon receiving a favorable ruling, the Company plans in the future to furnish telecommunication services to Tenants by either contracting, or entering into a partnership, with a Provider.

If the Company enters into a contract with a Provider, rather than a partnership, the Company will derive income by either charging a flat fee to Tenants and paying an agreed upon charge to the Provider or by collecting from the Provider a flat fee or percentage fee based on the Provider's gross revenues from the services. If the Company owns an equity interest in an entity that is treated as a partnership for Federal income tax purposes, the Company may derive income in connection with the provision of telecommunication services by reason of the Company's proportionate share of charges the entity receives from Tenants and Providers in connection with the provision of telecommunications services to Tenants.

The Company represents that a partnership in which the Company is a partner will not be a Tenant of the Properties. The Company also represents that: (1) The telecommunication services described above are those that are customarily offered to tenants in a similar class of buildings in the geographic location in which the Properties are located, (2) No Provider will offer services to Tenants that it does not offer to non-Tenants, and (3) No Provider will create a unique program of services tailored to suit the demands of any particular Tenant.

Law and Analysis:

Section 856(c)(2) of the Code provides that at least 95 percent of a REIT's gross income must be derived from, among other passive 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 with a real estate nexus, rents from real property.

Section 856(d)(1) defines the term "rents from real property" to include (subject to the exclusions in section 856(d)(2)): (i) rents from interests in real property, (ii) charges for services customarily furnished or rendered in connection with the rental of real property (whether or not such charges are separately stated), and (iii) rent attributable to personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15 percent of the total rent for the year attributable to both the real and personal property leased under, or in connection with, the lease.

Section 1.856-4(b)(1) of the Income Tax Regulations provides that, for purposes of sections 856(c)(2) and 856(c)(3) of the Code, 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 rendered to tenants of a particular building will be considered customary if, in the geographic area in which the building is located, tenants in buildings of a similar class are customarily provided with the service. In particular geographic areas where it is customary to furnish electricity or other utilities to tenants

in buildings of a particular class, the submetering of such utilities to tenants will be considered a customary service.

Section 856(d)(2)(C) of the Code excludes from the definition of "rents from real property" any "impermissible tenant service income" as defined in section 856(d)(7). Section 856(d)(7)(A) provides that "impermissible tenant service income" means, with respect to any real or personal property, any amount received or accrued directly or indirectly by a REIT for furnishing or rendering services to the tenants of such property or managing or operating such property. Section 856(d)(7)(B) provides that if the amount of impermissible tenant service income with respect to a property for any taxable year exceeds one percent of all amounts received or accrued directly or indirectly by the REIT with respect to such property, the impermissible tenant service income of the REIT with respect to the property shall include all such amounts.

Section 856(d)(7)(C)(i) of the Code excludes from the definition of impermissible tenant service income amounts received for services furnished or rendered, or management or operation provided, through an independent contractor from whom the REIT itself does not derive or receive any income. Additionally, section 856(d)(7)(C)(ii) excludes from the definition of impermissible tenant service income any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

Section 1.512(b)-1(c)(5) of the Regulations 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 his 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. Payments for the use or occupancy of entire private residences or living quarters in duplex or multiple housing units, or offices in any office building, are generally treated as rent from real property.

One of the principal purposes for the income restrictions imposed by sections 856(c) and 856(d) of the Code is to ensure that the bulk of the REIT's income is from passive sources and not from the active conduct of a trade or business. See H.R. Rep. No. 2020, 86th Cong., 2d Sess., 6 (1960), 1960-2 C.B. 819, 822-823.

The provision of telecommunication services is similar to the provision of services by public utilities and has become an essential means of communicating business information and data. The Company's ability to provide telecommunication services to Tenants will allow the

Company to offer services similar to those being offered to tenants of similar classes of office buildings in the same geographic markets where the Properties are located.

Accordingly, the telecommunication services the Company offers to Tenants will not be considered to be rendered primarily for the convenience of the tenants under §1.512(b)-1(c)(5) of the regulations. As a result, the services will fall within the exception contained in section 856(d)(7)(C)(ii) of the Code, and the provision of telecommunication services will not prevent the Company's share of amounts derived from the Properties from qualifying as "rents from real property" under section 856(d)(1) of the Code. Moreover, based on the Company's representation that the telecommunication services are of the type usually and customarily offered or provided to tenants of similar office properties located in the same geographic markets where the Properties are located, amounts the Company receives or accrues for providing those services, if otherwise qualifying, will constitute "rents from real property" within the meaning of section 856(d)(1)(B) of the Code.

This ruling is directed only to the taxpayer who requested it. No opinion is expressed as to the federal income tax consequences of this transaction under any other provision of the Code. In particular, no opinion is expressed whether Company otherwise qualifies as a REIT under section 856 of the Code. 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, we are sending a copy of this letter to one additional authorized representative and to the Company.

Sincerely yours,

Assistant Chief Counsel
(Financial Institutions &
Products)

Alice M. Bennett

By: Alice M. Bennett
Chief, Branch 3

Enclosure:
Copy for section 6110 purposes

356