

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:FIP:2 PLR-101071-03

Date:  
September 30, 2003

TY:

Legend:

Trust =  
State =  
Operating Partnership =  
Joint Venture =  
Developer =  
Site =  
City =  
a =  
b =  
c =  
d =  
e =  
f =  
g =  
h =  
i =  
j =  
k =  
Date A =  
Date B =  
Date C =

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Date D =

Dear \_\_\_\_\_ :

This letter is in reply to a letter, dated December 30, 2002, and other correspondence submitted on behalf of Trust in which you requested a ruling regarding whether funds received from City will be treated as income described in section 856(c)(2) of the Internal Revenue Code.

### FACTS

Trust is a business trust formed under the laws of State and has elected to be treated as a real estate investment trust (REIT) under section 856 of the Code. Trust owns an a percent interest in Operating Partnership. The Operating Partnership owns a c percent interest in Joint Venture, which owns a b interest in Developer. Joint Venture and Developer are treated as a partnership and a disregarded entity, respectively, for federal income tax purposes.

Developer is constructing a building at Site in City. Site is located within a designated redevelopment area. To induce Developer to construct the building within this area, City and Developer entered into a d arrangement. Under the arrangement, City agreed to provide funds for the building's development costs provided Developer and the building meet certain requirements. These requirements include, among others, that the funds could only be used to reimburse Developer for certain City-approved costs, and the construction must be complete by Date D.

Under the arrangement, the maximum amount of d funds is the lesser of: \$e or f percent of actual costs. Developer anticipates that the actual amount of d funds will be less than the maximum, ranging approximately \$h to \$i. The initial amount of d funds is established at Date A with annual adjustments.

Payments are due to Developer under the arrangement each Date C after the completion of the building until the earlier of: Date B, payment under the arrangement has been made in full, or cancellation of the arrangement. In addition, payments are limited to specified taxes. For this purpose, "specified taxes" is k percent of the incremental real property tax in excess of \$j assessed against Site.

### 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, "abatements and refunds of taxes on real property."

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Based on the facts and circumstances, the arrangement represents a refund by City to Developer for certain specified taxes assessed against Site. It is a device to supplement Developer's operating income from Site. Because the funds are designed to supplement Developer's operating income, the payments are fully includible in gross income. Texas & Pacific RY. Co. v. United States, 286 U.S. 285 (1932), XI-1 C.B. 263. Thus, the funds should be considered as income described in section 856(c)(2).

#### CONCLUSION

Income allocated to Trust under the arrangement will be treated as qualifying income under section 856(c)(2).

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.

This ruling is directed only to the taxpayer(s) 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 representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William E. Coppersmith  
Chief, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions and Products)

Enclosure (1)