



ARTICLE

IRS Releases PLR 202013006 & 202013007 on Treatment of Parking Revenue

Executive Summary: On March 27, 2020, the Internal Revenue Service (“IRS”) released two substantially similar Private Letter Rulings (“PLR”) concluding that the share of parking revenue a Real Estate Investment Trust (“REIT”) receives will qualify as rents from real property under Internal Revenue Code (“IRC”) §856(d).



REIT A and REIT B are engaged in a mixed-use development project consisting of Parcel 1 and Parcel 2.

Background

In order for an entity to qualify REIT, at least 75% of a REIT’s gross income must be derived from sources that include rents from real property, gain from the sale or other disposition of real property, dividends from REIT stock, and/or abatements and refunds on taxes on real property. At least 95% of its gross income must be derived from sources that include qualifying income from the 75% test, plus dividends, interest, and gain on sale or other disposition of stock and securities¹.

PLR 202013006 & PLR 202013007 appear to address the same facts for both REITs.

Facts

REIT A and REIT B (together, “Companies”) are engaged in a mixed-use development project consisting of Parcel 1 and Parcel 2.

¹ §856(c)(2) and §856(c)(3)

- Parcel 1 is intended to have an office condo (owned by REIT A) and a retail condo unit (owned by REIT B). Additionally, Parcel 1 will have an underground parking garage that is used by REIT A; however, REIT A is required to leave a certain amount of parking spaces available for public parking (included to be used by retail tenants of REIT B and their customers). Further, REIT A represents that the garage is expected to be used predominantly by the office condo unit's tenants and their guests, subtenants, and customers and will be built for this purpose.
- Parcel 2 contains a residential condo unit (owned by unrelated party), a retail condo unit (owned by REIT B) and a subsurface three-level parking garage. Certain lower levels of the parking garage are dedicated for the condo residents with a separate gated entry. REIT B is entitled to use the remaining parking garage and represents that the number of spaces in its portion of the parking garage is appropriate in size for its tenants and their guests, subtenants, and customers and is expected to be used predominantly by them.

The parking garages mentioned above are required by the land-use and environmental permits to be physically interconnected, and thus it will be possible for cars entering on one entrance of the parking garage to park in the other parking garage. Thus, it will be impractical to determine in which parking garage any individual car has been parked.

The Companies decided to operate their garages, through an independent contractor (“IK”), as if they were one parking garage and share parking revenue and expenses in a manner replicating as closely as possible what each REIT would have if the parking garages were operated separately, rather than jointly.

The IK will manage and operate the parking garages under a single management contract with the Companies and will receive arm's-length compensation. The IK will be directly responsible for providing all salary, wages, benefits, administration and supervision of its employees. The Companies note that if the IK charges for any incidental services, neither of the companies will receive any portion of the income derived from or bear any of the expenses incurred in the provision of such services.

Ruling

The IRS concluded that, based on its own prior Revenue Ruling 2004-24 and the Companies' representations, the fact that parking is offered to general public is permissible, if the parking is expected to be used predominantly by tenants and tenant customers.

Additionally, all services rendered at the parking garage will be services that are customarily furnished in the geographic location and an IK from whom the companies derive no income will, under the management contract and in exchange for arm's-length compensation, manage and operate the parking garage, employ the attendants and perform all recurring functions unique to reserved spaces.



Takeaway

This is the first PLR to address a shared parking garage between two REITs and the IRS ruling that the receipt of parking revenue from general public parking in this situation is treated as qualifying rents from real property, and thus qualifying income for purposes of the 95% and 75% REIT income tests will be helpful in similar situations.

Reminder that PLRs are intended only for the taxpayer requesting the ruling and only apply to this specific set of facts.

While PLRs are not intended to be relied upon by third parties, they do offer an indication of the IRS’s position on the issues addressed.

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LAURA JACKSON

Senior Managing Director
+1 973.852.8148
laura.jackson@fticonsulting.com

STEPHEN BERTONASCHI

Senior Managing Director
+1 973.852.8174
stephen.bertonaschi@fticonsulting.com

SCOTT DRAGO

Managing Director
+1 646.632.3864
scott.drago@fticonsulting.com

ADAM KEARNEY

Director
+1 646.632.3810
adam.kearney@fticonsulting.com

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