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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B07

PLR-153363-04

Date: December 9, 2004

**LEGEND:**

Corporation:

State:

Address:

a:

b:

c:

d:

Dear :

We received a letter dated September 20, 2004 from your authorized representative requesting rulings regarding the application of § 216 and § 1032 of the Internal Revenue Code to the Corporation. This letter responds to your request.

The represented facts are as follows. Corporation was organized under the laws of State for the purposes of acquiring and operating on a cooperative basis an apartment building ("Building"). Corporation owns the land and the Building located at Address, which consists of a commercial units and b residential units. Currently, c shares of common stock are issued and outstanding. Common stock has not been allocated to the commercial units ("Commercial Units"). Commercial Units are currently being leased to commercial tenants.

Corporation proposes to convert one of the Commercial Units to cooperative ownership by selling to a purchaser d newly issued shares of stock attributable to the Commercial Unit. Corporation represents that the shares to be issued with respect to the Commercial Unit will be fully paid up in an amount bearing a reasonable relationship

to the portion of the value of Corporation's equity in the building and land that is attributable to the Commercial Unit.

A purchaser of the d newly issued shares attributable to the Commercial Unit will enter into a proprietary lease with the Corporation. The proprietary lease will entitle the purchaser of the d newly issued shares to occupy the Commercial Unit for residential purposes. The owner of the Commercial Unit will at all times have the right, as against Corporation, to occupy the Commercial Unit for dwelling purposes.

Corporation represents that the local zoning law and building regulations currently permit modifications of the Commercial Unit to residential use as a matter of right. Corporation submits facts and representations to show that it would be reasonable to convert the Commercial Unit to residential use. The size and location of the Commercial Unit is such that, with certain modifications, it could be converted into a residential apartment.

You have specifically requested two rulings:

(1) Provided Corporation satisfied the requirements of § 216(b)(1) (A), (C) and (D), neither the issuance of stock by Corporation to be allocated to the Commercial Unit nor the possible nonresidential use of the Commercial Unit will prevent Corporation from qualifying as a cooperative housing corporation within the meaning of § 216(b)(1).

(2) No gain or loss will be realized by the Corporation on the receipt of money or other property in exchange for the newly issued shares allocable to the Commercial Unit under § 1032.

Section 216(b)(1) provides that the term "cooperative housing corporation" means a corporation -- (A) having one and only one class of stock outstanding, (B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation, (C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and (D) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in § 216(a) are paid or incurred is derived from tenant-stockholders.

Section 216(b)(2) provides that the term "tenant-stockholder" means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

Section 1.216-1(e)(2) provides, in relevant part, that in order to qualify as a "cooperative housing corporation" under § 216, each stockholder of the corporation, whether or not the stockholder qualifies as a tenant-stockholder under §§ 216(b)(2) and 1.216-1(f), must be entitled to occupy for dwelling purposes an apartment in a building or a unit in a housing development owned or leased by such corporation. The stockholder is not required to occupy the premises. The right as against the corporation to occupy the premises is sufficient. Such right must be conferred on each stockholder solely by reasons of his or her ownership of stock in the corporation. That is, the stock must entitle the owner thereof either to occupy the premises or to a lease of the premises. The fact that the right to continue to occupy the premises is dependent upon the payment of charges to the corporation in the nature of rentals or assessments is immaterial.

Rev. Rul. 74-241, 1974-1 C.B. 68, provides that, for purposes of § 216(b)(1)(B), the term "apartment in a building" means an independent housekeeping unit consisting of one or more rooms containing facilities for cooking, sleeping, and sanitation normally found in a principal residence.

Rev. Rul. 90-35, 1990-1 C.B. 48, provides that Rev. Rul. 74-241 does not require that a unit presently contain all the facilities normally found in a principal residence in order to constitute an apartment in a building for purposes of § 216(b)(1)(B). A unit will be treated as meeting that definition if: (1) the stockholder is entitled to convert the unit to an apartment, as defined in Rev. Rul. 74-241, solely by reason of ownership of stock in the cooperative housing corporation; (2) the conversion of the unit would be reasonable under all the facts and circumstances, including structural feasibility and cost; and (3) the applicable zoning, building, and fire codes permit both the conversion and residential use of the unit as a matter of right.

Section 1032(a) provides, in part, that no gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock of such corporation.

Section 1.1032-1(a) provides, in part, that the disposition by a corporation of shares of its own stock for money or other property does not give rise to taxable gain or deductible loss to the corporation regardless of the nature of the transaction or the facts and circumstances involved.

Applying the above standards to the facts and representations submitted and subject to the limitations below, we conclude that the allocation of shares to Commercial Unit, and Corporation's issuance and sale of such shares along with the issuance of a proprietary lease with respect thereto, and the proposed non-residential use of Commercial Unit will not prevent Corporation from meeting the requirements of § 216(b)(1)(B), provided the stock is fully paid up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the

portion of the value of Corporation's equity in the apartment building and land which is attributable to the apartment which the purchaser is entitled to occupy.

Finally, we conclude that no gain or loss will be realized by the Corporation on the receipt of money or other property in exchange for the newly issued shares allocable to the Commercial Unit under § 1032.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion whether Corporation otherwise meets the requirements of § 216 or § 1032.

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

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.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative. A copy of this ruling must be attached to any income tax return to which it is relevant.

Sincerely,

*/s/*

Joseph H. Makurath  
Senior Technician Reviewer, Branch 7  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

cc: