

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

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CC:PSI:B07 – PLR-113281-04

Date:

April 20, 2004

LEGEND:

Corporation:

State:

Date 1:

Date 2:

Date 3:

b

c

Dear :

This is in reply to your letter, dated Date 3, requesting a ruling regarding the application of § 216(b) of the Internal Revenue Code to Corporation.

The represented facts are as follows. Corporation was formed on Date 1 under the laws of State, and operates a building in a cooperative form of ownership. The building consists of b residential units and a commercial space, which is leased to Tenant. Corporation's lease with Tenant expires on Date 2.

Corporation proposes to allocate shares of its authorized but unissued stock to the commercial space for future conversion of the space into c residential units. Corporation proposes to sell the stock to be allocated to the residential units to Tenant, and thereafter Corporation and Tenant will cancel the Tenant's lease.

Corporation represents that the shares to be issued with respect to each 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 each unit.

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The proprietary lease will entitle Tenant as the purchaser of the additional shares attributable to the commercial space to occupy the unit either for retail purposes or as a residential apartment. The owner of the unit will at all times have the right, as against Corporation, to occupy the unit for dwelling purposes.

Corporation represents that the local zoning law and building regulations currently permit modification of the commercial space to residential use as a matter of right. The size and location of the commercial space is such that, with certain modifications, it could be converted into residential apartments. Corporation submits facts and representations to show that the cost of adding sleeping and cooking facilities is less than 20% of the fair market value the units would have if they were sold as residential units.

You have specifically requested two rulings:

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

2) Tenant who purchases the stock of Corporation attributable to the commercial space for the commercial use of such space will qualify as a "tenant-stockholder" for purposes of § 216(b)(2), provided such stock is fully paid up in an amount which bears a reasonable relationship to the portion of the value of Corporation's equity in the building and land which is attributable to the commercial space.

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 the 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

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equity in the house or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

Rev. Rul. 74-241, 1974-1 C.B. 68, holds 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, 1990-2 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 local zoning, building, and fire codes permit both the conversion and residential use of the unit as a matter of right.

Applying the above standards to the facts and representations submitted and subject to the limitation below, we conclude that provided Corporation meets the requirements of § 216(b)(1)(A), (C), and (D), neither the issuance of stock by Corporation to be allocated to the commercial space nor the possible nonresidential use of the commercial space will prevent Corporation from qualifying as a cooperative housing corporation within the meaning of § 216(b)(1).

We also conclude that Tenant who purchases the stock of Corporation attributable to the commercial space for the commercial or residential use of the space will qualify as a “tenant-stockholder” for purposes of § 216(b)(2), provided the stock is fully paid up in an amount which bears a reasonable relationship to the portion of the value of Corporation’s equity in the apartment building and land which is attributable to the commercial space which Tenant is entitled to occupy.

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(b).

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

A copy of this ruling should be attached to the taxpayer’s tax return filed for the year in which the transaction referred to in this ruling is completed.

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In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely yours,

/s/

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

CC: