

Section 856.—Definition of Real Estate Investment Trust

If a REIT leases space to a joint venture that includes a taxable REIT subsidiary of the REIT, do payments to the REIT from the joint venture qualify as rents from real property under section 856(d) of the Internal Revenue Code. See Rev. Proc. 2003-66, page 364.

SECTION 1. PURPOSE

This revenue procedure describes conditions under which payments to a real estate investment trust (REIT) from a joint venture between a taxable REIT subsidiary of the REIT (TRS) and a third party that is not related either to the TRS or the REIT for space at a property owned by the REIT will be treated as rents from real property under § 856(d) of the Internal Revenue Code.

SECTION 2. BACKGROUND

.01 A TRS may form a joint venture with one or more third parties to provide services to tenants of the TRS' parent REIT. To facilitate the services that are provided to tenants, the joint venture may lease space at the property where it is providing services to tenants.

.02 To qualify as a REIT, an entity must derive at least 95 percent of its gross income from sources listed in § 856(c)(2) and at least 75 percent of its gross income from sources listed in § 856(c)(3). "Rents from real property" are among the sources listed in both of those sections.

.03 Section 856(d)(1) defines rents from real property (subject to exclusions provided in § 856(d)(2)) to include rents from interests in real property, charges for services customarily rendered in connection with the rental of real property, and rent attributable to certain leased personal property.

.04 Section 856(d)(2)(B) provides, in part, that except as provided in § 856(d)(8), the term "rents from real property" does not include any amount received or accrued directly or indirectly from any person if the REIT owns, directly or indirectly: (i) in the case of any person that is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of such person; or (ii) in the case of any person that is not a corporation, an interest of 10 percent or more in the assets or net profits of such person. Section 856(d)(5) provides that for purposes of § 856(d), the rules prescribed in section 318(a) apply for determining the ownership of stock, assets, or net profits of any person, except as modified by subparagraphs (A) and (B) of §856(d)(5).

.05 Section 856(d)(8)(A) provides that amounts paid to a REIT by a TRS shall not be excluded from rents from real property by reason of § 856(d)(2)(B) if at least 90 percent of the leased space of the property is rented to persons other than TRSs of the REIT and other than related parties described in § 856(d)(2)(B), but only to the extent that the amounts paid to the REIT by the TRS as rents from real property are substantially comparable to such rents paid by the other tenants of the REIT's property for comparable space.

SECTION 3. SCOPE

This revenue procedure applies to a REIT that leases space to a joint venture between a TRS of the REIT and a third party that is unrelated to either the TRS or the REIT and is treated as a partnership for federal income tax purposes, if the REIT would be treated under §856(d)(2) as having an interest of 10 percent or more in the assets or net profits of the joint venture.

SECTION 4. PROCEDURE

The Internal Revenue Service will treat rents from a joint venture that qualifies under Section 3 of this revenue procedure as rents from real property if amounts paid to the REIT by the joint venture as rents from real property are substantially comparable to such rents paid by the other tenants of the REIT's property for comparable space and at least 90 percent of the leased space

of the REIT's property is rented to persons other than (i) TRSs of the REIT and (ii) related parties described in § 856(d)(2)(B) (including joint ventures that qualify under Section 3 of this revenue procedure).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for leases in effect or entered into on or after January 1, 2001.

DRAFTING INFORMATION

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