



TaxNewsFlash

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PLR: REIT status regarding certain marina properties

The IRS today publicly released a private letter ruling* regarding a taxpayer intending to elect real estate investment trust (REIT) status and sought rulings concerning its ownership and operation of marina properties through a partnership.

Read [PLR 202237004](#) [PDF 137 KB] (released September 16, 2022, and dated March 17, 2022).

The IRS ruled in PLR 202237004 that:

- The floating docks (as described) would be considered real property for REIT purposes.
- The amount received for the use of space in the indoor and outdoor dry dock storage facilities would not be treated as other than rents from real property for REIT purposes.
- The presence of cabins at a particular property would not cause the assets at such property other than the cabins and any areas reserved for cabin guests to be treated as lodging facilities for REIT purposes.
- The business interruption insurance proceeds related to taxpayer's lost revenue that resulted from certain natural events and that would otherwise constitute qualifying income for the purposes of the income tests would be treated as qualifying income for purposes of the income tests.
- Neither income attributable to the amenities themselves nor income attributable to the services as described in connection with the amenities would constitute impermissible tenant service income.

* Private letter rulings are taxpayer-specific rulings furnished by the IRS Office of Chief Counsel in response to requests made by taxpayers and can only be relied upon by the taxpayer to whom issued. Pursuant to section 6110(k)(3), written determinations such as private letter rulings are not intended to be relied upon by third parties and may not be cited as precedent. These written determinations may, however, offer an indication of the IRS's position on the issues addressed.

KPMG observation

Tax professionals have observed that this is the third ruling concerning the REIT-ability of marina properties (following PLR 202031001 (February 10, 2020) and PLR 201930003 (December 19, 2018)).

Also, similar to PLR 202031001, the IRS limited the definition of a lodging facility to a portion of a given property, which effectively permitted the REIT to use a taxable REIT subsidiary (TRS) for the portion that is not considered a lodging facility.

Because there has been limited published guidance on the meaning of “other establishment more than one-half of the dwelling units in which are used on a transient basis,” the discussions in this letter ruling may be potentially helpful when a property or building includes both long-term and short-term uses. The IRS also confirmed again (after PLR 201812009 (December 14, 2017)) that making facilities (including swimming pools, exercise rooms, and gathering lounges) available to tenants would not be considered a provision of services for purposes of determining impermissible tenant service income.

Issues addressed in PLR 202237004

Inherently permanent structures

In the letter ruling, an electing REIT owns and operates (through a partnership) marina properties containing boat slips, floating docks, boat storage facilities, boat servicing facilities, and support facilities such as laundry facilities, pools, gyms, and restaurants. One property also contains cabins that are made available to guests for one-week or shorter stays.

By way of background, for REIT qualification purposes, the term “real property” means land, improvements to land (defined as inherently permanent structures (IPSS) and their structural components), and certain intangible assets. For this purpose, an IPS means any building or other structure permanently affixed to land or to another IPS. While the regulations contain a list of per se other IPSs, such as stationary wharves and docks, “floating” docks are not included. Accordingly, the letter ruling includes detailed descriptions and representations from the taxpayer regarding the design, structure, and intent of the floating docks to support the conclusion that they: (1) are permanently affixed to steel, timber, or concrete pilings that are driven into the seabed or lake bottom; or (2) are attached to the seabed or lake bottom by a system of wire rope cables, concrete anchors, and winches. For example, the letter ruling described in relevant part:

The configuration of each floating dock is determined during the original design of each of the Properties, and the sections of the dock bounding the boat slips are not interchangeable among the floating docks. If a floating dock needs to be reconfigured, the sections of the dock bounding the boat slips are destroyed; OP has never moved or reused these sections. The floating docks weigh hundreds of thousands to millions of pounds and cannot be towed on the water...

Removing a floating dock from its pilings would require total deconstruction of the floating dock, and that would require cutting the pilings down flush with the seabed or lake bottom, thereby destroying the pilings as well...

Removing the dock affixed by the winch and cable method generally requires between j and k months, depending on the size of the dock, and the cost of building a new dock is less than the cost of moving an existing dock. Cutting the cables from the winches requires the use of specialized industrial tools and the employment of certified divers to remove bolts and to connect the crane/lifting cables to trussing frames...The weight of the anchors typically exceeds the lifting capacity of available barge or crane equipment. For these reasons, the anchors and cables are generally abandoned in place rather than removed from the seabed.

Based on the submitted information and representations, the IRS ruled that the floating docks affixed using the piling method or by the winch and cable method, as described, are permanently affixed to other IPSs or affixed to the ground and, thus, are real property for REIT qualification purposes.

Amounts received for use of space

With respect to dry dock storage facilities, the letter ruling describes these as consisting of: (1) buildings with steel racking structures arranged into vertical bays to accommodate several tiers of boats; and (2) land on which

to store tenants' boats either on affixed racking structures, movable racking structures, blocks, or tenant-owned boat trailers. The dry dock storage leases (which are for terms of at least c days) do not allow the tenant to enter the indoor facilities or access the outdoor facilities except for certain instances of boats stored on tenant-owned trailers.

The leases also generally do not allocate a specifically identified spot in a racking structure or on the land, but they do guarantee the tenant a specified amount of storage space in a dry dock storage facility for the dry dock storage of the tenant's boat. The taxpayer represented it will use a TRS or a "qualified" independent contractor to move the tenants' boats into and out of the dry dock storage facilities as well as to provide boat maintenance or repairs services.

The IRS ruled that the amounts received for the use of space in both the indoor and outdoor dry dock storage facilities would not be considered as other than rents from real property for REIT purposes by reason of the storage leases' failure to convey to tenants a right of entry or a right to use specifically enumerated space within the dry dock storage facilities.

Lodging facilities

The letter ruling also describes that at Property C there are m cabins generally used by guests for stays of less than one week, and the cabin guests are generally not the same parties that lease boat slips or drydock storage space from the taxpayer. Because the taxpayer may use TRSs to perform certain activities at Property C, and an entity cannot qualify as a TRS if it directly or indirectly operates or manages a lodging facility, the taxpayer wanted the assurance that a TRS could be used for the portion of Property C other than the area including and surrounding these cabins. According to the IRS, these cabins are dwelling units used on a transient basis; together with any areas reserved for cabin guests, they constitute an establishment that is a lodging facility for REIT qualification purposes. However, the IRS limited the lodging facility to the area including and surrounding these cabins by reasoning:

The Properties contain separately identifiable items of property that are rented and used independently of each other, such as floating docks, dry dock facilities, and restaurants. The characterization of a separately identifiable item of property that is rented and used independently of the greater property on which the item of property is physically located should not dictate the characterization of the greater property – for example, the presence of a restaurant on a marina property should not automatically render the entire marina property a restaurant. OP provides linens, basic toiletries, and cleaning services to the cabin guests, who stay for short periods of time. Additionally, Taxpayer represents that that the cabin guests are generally not tenants of the marina boat slips or dry dock storage facilities, and that income from the cabins comprises less than q percent of OP's revenues.

Accordingly, the IRS ruled that the presence of the cabins at Property C would not cause the assets at Property C other than the cabins and any areas reserved for the cabin guests to be treated as lodging facilities.

Business interruption insurance

The letter ruling also describes that the partnership carries business interruption insurance (BII) to replace lost revenue in the event a natural disaster damages a marina to such a degree that the marina must shut down temporarily for repairs. The BII policies are triggered by: (1) damage to assets that generate revenue; (2) blockage of ingress or egress to the property; and (3) a blockage or interruption of the supply of critical utilities to the property. The taxpayer specifically requested a ruling concerning the treatment of BII proceeds for two natural events that resulted in extensive damage to certain properties of the partnership necessitating the closure of significant portions of the properties for varying periods of time. The partnership did not earn rental revenue that it typically would have earned during the period the marinas remained closed.

The IRS first noted that it has the authority under section 856(c)(5)(J) to treat any item of income which does not otherwise qualify under the income tests as qualifying income. Then, based on the representation that the BII proceeds directly relate to lost revenue that would otherwise constitute qualifying income for the purposes of the income tests and that the proceeds are calculated to avoid a windfall (lost gross revenue less the operating

expenses not incurred during that period), the IRS ruled that the BII proceeds related to taxpayer's lost revenue resulting from these two events would be treated as qualifying income for purposes of the income tests.

Amenities made available at no additional cost

The letter ruling also describes that there are amenities that are available to all tenants and their guests at no additional cost such as a swimming pool; an exercise room with exercise equipment; tennis courts; locker rooms with showers and space for tenants to change clothing; a tenant lounge with seating that serves as a space for tenants to gather and socialize while their boats are docked in their leased wet slips; and walking trails.

The IRS confirmed "[a]lthough services may be provided in the Amenities, the Amenities themselves are not services." Rather, "[a]ny services that are provided in or with respect to the Amenities are analyzed as any other service provided to tenants" for purposes of impermissible tenant service income.

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