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PLR: Income received by REIT from leasing of advertising signs affixed to buildings

The IRS today publicly released a private letter ruling* concluding that income that a real estate investment trust (REIT) receives from leasing of advertising signs affixed to its buildings is not “other-than-rents from real property” despite the short-term use of the signs and given that the REIT’s related person (taxable REIT subsidiary) leases less than 10% of the leased space at each property.

Read [PLR 202047003](#) [PDF 89 KB] (released November 20 2020, and dated August 19, 2020)

*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.

Background

The REIT owns buildings at two locations, and affixed to the exterior sides of the buildings are steel billboard superstructures to which advertising signs are attached. At each location, a portion of the space on the signs is leased to different users pursuant to multi-year agreements. With respect to the remaining portion, users will lease increments of time to display advertisements, and each user’s advertisements will be displayed only for certain intervals of time in a set hourly rotation with those of other users. While a portion of these multi-user agreements are expected to encompass a certain number days, others may be for shorter periods.

The REIT formed a taxable REIT subsidiary (TRS) and intends to enter into a lease with the TRS of the multi-user signs with a term of a number of years.

The REIT represents that:

- Rents under the TRS agreement will be comparable to rents paid by other users of its signs or for comparable space located in the same geographic area.

- At least 90% of the leased space of each property (defined to include buildings as well as the advertising signs) will be leased to persons other than related tenants (including the sign TRS).

IRS ruling

The IRS ruled that income from leasing of these signs would not be considered as other-than-rents from real property solely by reason of: (1) the short-term uses; or (2) the leases to the TRS covering up to the entirety of the leased signs at each property as long as REIT's related persons (including the sign TRS) lease less than 10% of the leased space at each property.

KPMG observation

The conclusion to today's private letter ruling is similar to that in PLRs 201522002, 201431020, and 201431018, when the IRS treated income from shorter term uses as qualifying rents when the REIT derives "the vast majority of revenues" from long-term uses of signs, and the income is "derived from contracts for the use of advertising space and not contracts for the provision of services." However, the letter ruling released today suggests that for purposes of determining whether the space leased to a TRS (i.e., "up to the entirety of the leased signs at each property") is no more than 90% of the leased space of the property, the property includes both the building and signs.

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