

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200917020**  
Release Date: 4/24/2009

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

Index Number: 301.00-00, 301.01-00, 305.00-00, 305.01-00

, ID No.  
Telephone Number:

Refer Reply To:  
CC:CORP:B05  
PLR-138072-08  
Date:  
January 16, 2009

Legend

Taxpayer =  
StateX =  
Exchange =  
Year1 =  
Year2 =

Dear :

This ruling responds to a letter dated August 26, 2008, submitted by your authorized representative, requesting rulings under sections 301 and 305 of the Internal Revenue Code (the "Code"). Additional information was received subsequently.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

## SUMMARY OF FACTS

Taxpayer is an accrual basis StateX corporation that files its federal income tax returns as a real estate investment trust (“REIT”) on a calendar year basis. Taxpayer represents that it qualifies as a REIT under the Code, that it intends to maintain such qualification as a REIT, and that it regularly distributes its earnings and profits as required under section 857(a)(1).

Taxpayer has one class of common stock outstanding (the “Common Stock”), which is publicly traded and listed on the Exchange.

Subject to the approval of Taxpayer's Board of Directors, Taxpayer intends to make one of its quarterly Year1 and Year2 dividend payments (each “the Special Dividend”) in the form of cash or Common Stock of equivalent value, at the election of each stockholder. The total amount of cash payable in the Special Dividend will be limited to an amount of not less than 10 percent of the Special Dividend. Taxpayer, however, will reserve the right to pay the Special Dividend in all cash at Taxpayer's sole discretion.

Taxpayer expects to declare the Special Dividend using the following election mechanism:

Each stockholder may elect to receive its dividend in the form of: (a) cash (the “Cash Option”) or (b) Common Stock (the “Stock Option”) by the election deadline. If a stockholder fails to make a valid election by the election deadline, that stockholder will be deemed to have made an election to be determined by Taxpayer at Taxpayer's sole discretion. To the extent necessary, Taxpayer will issue cash in lieu of fractional shares of Common Stock. Any shares of Common Stock paid in the Special Dividend will be subject to the same limitations on share ownership as apply to other shares of Common Stock currently outstanding that are imposed by Taxpayer's charter (such limitations, the “Excess Share Clause”). Taxpayer does not anticipate that any stockholder's receipt of the Special Dividend will be affected by the Excess Share Clause.

The calculation of the number of shares to be received by any shareholder will be determined, as close as practicable to the payment date, based upon a formula utilizing market prices that is designed to equate in value the number of shares to be received with the amount of money that could be received instead.

While each stockholder will have the option to elect to receive cash in lieu of stock for all of the stockholder's entire entitlement under the Special Dividend, the amount of cash to be distributed in the aggregate will be no less than 10 percent of the Special Dividend (such amount, the “Cash Limit”). Any cash paid in lieu of fractional

shares of Common Stock will not count towards the Cash Limit. In no event will the total amount of cash available be less than 10 percent of the Special Dividend. Taxpayer intends to reserve the right to pay the entire Special Dividend in all cash.

If the total number of shares of Common Stock with respect to which an election to receive the dividend in cash is made ("Cash Election Shares") would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limit, then all holders of Cash Election Shares will receive the Special Dividend on all Cash Election Shares in cash.

If the number of Cash Election Shares would result in the payment of cash in an aggregate amount that is greater than the Cash Limit, then stockholders electing to receive the Special Dividend in cash will receive the Special Dividend on their Cash Election Shares as follows:

(a) cash on each stockholder's Cash Election Shares equal to the proportion that such stockholder's Cash Election Shares bear to the total Cash Election Shares of all stockholders, multiplied by an amount equal to the Cash Limit; plus

(b) shares of Common Stock in payment of the Special Dividend on each stockholder's remaining Cash Election Shares.

As a result, if too many stockholders elect to receive the Special Dividend in cash, the stockholder may instead receive a pro rata amount of cash, but in no case less than 10 percent of their entitlement under the Special Dividend.

If Taxpayer exercises its reserved right to pay the Special Dividend in all cash, then all holders of Cash Election Shares will receive the Special Dividend on all Cash Election Shares in cash.

## RULINGS

Based solely on the information provided and the representations made, we rule as follows with respect to the Special Dividend. Any and all of the cash and stock distributed in the Special Dividend (as described above) by Taxpayer shall be treated as a distribution of property with respect to its stock to which section 301 applies. Sections 301 and 305(b). The amount of the distribution of the stock received by any stockholder electing to receive stock will be considered to equal the amount of the money which could have been received instead. §1.305-1(b)(2).

## CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a REIT under subchapter M of the Code. Furthermore, no opinion is expressed with regard to whether the Special Dividend constitutes a Preferential Dividend under section 562(c) of the Code.

## PROCEDURAL STATEMENTS

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 letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

*T. Ian Russell*

T. Ian Russell  
Senior Counsel, Branch 5  
Office of Associate Chief Counsel  
(Corporate)