

PARKING AND TENANT SERVICE INCOME

In most reverse exchanges, the exchange accommodation titleholder (EAT) leases the parked property to the taxpayer. When the taxpayer is a real estate investment trust (REIT), a lease is the preferred method of getting the taxpayer the benefit of the income from the parked property. Management fee income is a poor way to transfer the economics of the parked property to a REIT because management fees are not considered “rents from real property” and, therefore, are “bad” income for a REIT.

Often, the lease used in parking arrangements is a “master lease.” A master lease conveys all rights under all leases, management, and servicing agreements. However, a simple master lease may not always produce the correct result when parking property for a REIT, if the parked property produces income that may be considered “impermissible tenant service income.”

For example, in PLR 200428019, a REIT taxpayer owned and operated cold-storage facilities. Customers were invoiced fees for the storage space, as well as fees for loading, unloading, and handling merchandise in and out of storage. These services, if provided by a REIT, would most likely be considered “impermissible tenant service income.” Ordinarily, a REIT would solve this problem by having a taxable REIT subsidiary (TRS) provide the product handling services. In a parking transaction in which impermissible tenant service income is generated by the property, the taxpayer and EAT should make sure that each type of income is allocated to the appropriate entity. Under the above facts, the lease should allocate the REIT or its operating partnership rents from real property, and items of impermissible tenant service income should be allocated to a TRS.

REITs look carefully to spot instances of impermissible tenant service income. In a reverse exchange, it is likewise important to see that the income derived from the property parked in a reverse exchange is the proper income, allocated to the proper entity, whether that entity is the REIT’s operating partnership or a TRS.