

April 18, 2016

Ms. Diane Stoddard
Assistant City Manager
6 East 6th Street
PO Box 708
Lawrence, Kansas 66044

Re: 800 New Hampshire;
IRB Documents

Delivered via E-Mail

Dear Diane,

The 800 New Hampshire property was acquired by Compton Holdings, L.C., on May 1, 2015, as replacement property in a like-kind exchange of property pursuant to Section 1031 of the Internal Revenue Code. Then, in order to raise equity to pay for the improvements to the property (adding the four stories of apartments), we formed 800 New Hampshire, LLC, and we raised the funds from outside investors to meet the equity requirements of our lenders. As we move forward, the ownership structure for the 800 New Hampshire project will involve a tenancy in common ("TIC") arrangement between these two property owners of record, as tenants in common. Accordingly, the IRB documents will need to be drafted in the name of both record owners, 800 New Hampshire, LLC, a Kansas limited liability company, and Compton Holdings, L.C., a Kansas limited liability company.

When it comes to the undivided ownership of real property by multiple owners, the distinction between owning the real property as tenants in common, versus an actual partnership, is of critical importance. Partnership interests belong to a category of property excluded from IRC §1031. One of the requirements under IRC §1031 is that the taxpayer must acquire an interest in "real property", which is defined to include a TIC type interest in real estate. You cannot, however, under the like-kind exchange rules simultaneously exchange the real estate into a partnership interest. Under the circumstances, Compton Holdings, L.C. is not in a position to contribute its ownership interest in the real property and form a partnership with 800 New Hampshire at this time. Property acquired in a Section 1031 like-kind exchange must be "held-for" either productive use in a trade or business or for investment (see IRC §1031(a)(1)). Unfortunately, the tax code does not provide a bright-line test for the minimum holding period required to satisfy this "held-for" requirement. It is widely accepted among tax practitioners that a holding period of 12 months is sufficient, and that the longer the holding period the better.



TIC treatment is essential for multiple property owners to gain and/or maintain IRC §1031 eligibility. In response to a large number of requests a few years back for rulings from taxpayers that specific TIC arrangements would not be treated as partnerships for tax purposes, the IRS issued Revenue Procedure 2000-46, which stated the intention of the IRS to issue public guidance concerning TIC interests. A couple of years later, the IRS issued Revenue Procedure 2002-22, to address the tax treatment of an owner in a TIC under like-kind exchange rules, and provided taxpayer guidance on using TIC arrangements. TIC investments are a way of sharing ownership of property among two or more persons (not partners) in which each co-tenant owns an undivided fractional interest in the property with the other co-tenants owning interests of the same or of differing sizes.

Accordingly, the investment structure and TIC ownership of the 800 New Hampshire project is necessitated by federal income tax considerations. Please let me know if you have questions, or if I may be of any further assistance.

Very truly yours,

William Fleming