Internal Revenue Service	Department of the Treasury
Index Number: 1362-02.03	Washington, DC 20224
	Person to Contact:
Number: 200024044 Release Date: 6/16/2000	Telephone Number:
	Refer Reply To: PLR-118757-99 / CC:DOM:P&SI:3 Date: March 21, 2000
LEGEND	

Company

=

- Property =
- <u>d1</u> = <u>d2</u> =

<u>State</u> = y =

<u>z</u> =

Dear

This responds to your letter dated November 24, 1999, on behalf of <u>Company</u>, requesting a ruling that the income that <u>Company</u> receives from <u>Property</u> will not be passive investment income within the meaning of 1362(d)(3)(C)(i) of the Internal Revenue Code.

FACTS

According to the information submitted, <u>Company</u>, a C corporation with accumulated earnings and profits, was incorporated on <u>d1</u> in <u>State</u>. <u>Company</u> intends to elect under 1362(a) to be an S corporation.

<u>Company</u> is engaged in a number of businesses, including owning and leasing <u>Property</u>. <u>Property</u> is leased to a tenant for extracting sand, gravel, rocks, and clay byproducts (collectively the materials), to be processed and used in the construction industry. <u>Property</u> includes an office, as well as equipment and facilities designed for PLR-118757-99

the facilitation of mining and material processing. Pursuant to a lease, the tenant pays <u>Company</u> a monthly fee for use of <u>Property</u> and the related facilities.

Although the tenant performs the actual extraction and processing, <u>Company</u> provides services to the tenant, either directly or through independent contractors, such as: technical assistance concerning the installation, use, and inspection of extraction equipment; technical assistance concerning liquid and solid waste disposal; maintenance and renewal of state and local permits; landscaping; and government and community relations. For the fiscal year ending <u>d2</u>, <u>Company</u> received or accrued <u>y</u> in rents and paid or incurred <u>z</u> in relevant expenses on <u>Property</u>.

LAW AND ANALYSIS

Section 1362(d)(3)(C)(i) provides that except as otherwise provided, the term "passive investment income" means gross receipts derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities.

Section 1.1362-2(c)(5)(ii)(B)(1) of the Income Tax Regulations provides that the term "rents" means amounts received for the use of, or the right to use, property (whether real or personal) of the Corporation.

Section 1.1362-2(c)(5)(ii)(B)(2) provides that "rents" does not include rents derived in the active trade or business of renting property. Rents received by a corporation are derived in an active trade or business of renting property only if, based on all the facts and circumstances, the corporation provides significant services or incurs substantial costs in the rental business. Generally, significant services are not rendered and substantial costs are not incurred in connection with net leases. Whether significant services are performed or substantial costs are incurred in the rental business is determined based upon all the facts and circumstances including, but not limited to, the number of persons employed to provide the services and the types and amounts of costs and expenses incurred (other than depreciation).

CONCLUSIONS

After applying the relevant law to the facts submitted and the representations made, we conclude that the rent <u>Company</u> receives from <u>Property</u> is not passive investment income under § 1362(d)(3)(C)(i). This ruling does not apply to any licensing fee the tenant may pay for extracting the materials.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed regarding whether <u>Company</u> is eligible to be an S corporation. Further, the passive investment income rules of § 1362 are completely independent of the passive activity rules of § 469; unless an exception under § 469 applies, the rental activity remains passive for purposes of

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§ 469.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3) of the Code, this ruling may not be used or cited as precedent.

Sincerely yours,

Shannon Cohen Acting Assistant to the Chief, Branch 3 Office of the Assistant Chief Counsel (Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter Copy for § 6110 purposes