

MEMO# 30837

August 14, 2017

IRS Issues Guidance Regarding Elective Stock Dividends by REITS and RICS

[30837]

August 14, 2017 TO: ICI Members
Closed-End Investment Company Committee
Tax Committee SUBJECTS: Closed-End Funds
Tax RE: IRS Issues Guidance Regarding Elective Stock Dividends by REITS and RICS

The Internal Revenue Service (“IRS”) has issued guidance treating as dividends certain stock distributions by publicly offered real estate investment trusts (“REITs”) and publicly owned regulated investment companies (“RICs”). Specifically, Revenue Procedure 2017-45 (attached) provides that the IRS will treat a distribution of stock by a REIT or RIC as a distribution of property to which section 301 applies, by reason of section 305(b), if certain criteria are met. This guidance is effective with respect to distributions declared on or after August 11, 2017.

The IRS previously issued similar guidance to REITs (Rev. Proc. 2008-68) and RICs (Rev. Proc. 2009-15)[\[1\]](#) following the 2008 financial crisis. That guidance applied to distributions made during specified years and required a cash distribution equal to at least 10% of the aggregate declared distributions.[\[2\]](#)

Revenue Procedure 2017-45

Rev. Proc. 2017-45 effectively makes permanent the 2008/2009 guidance that expired several years ago, but with a requirement that the cash distribution equal at least 20% of the aggregate declared distributions. More specifically, under the new guidance, the IRS will treat a distribution of stock by a REIT or RIC as a distribution of property to which section 301 applies by reason of section 305(b), and the amount of such distribution will be considered to equal the amount of the money which could have been received instead, provided that:

1. The distribution is made by a publicly offered REIT or publicly offered RIC to its shareholders with respect to its stock;
2. Pursuant to the declaration of the distribution, each shareholder may elect to receive part or all its entitlement under the declaration in either money or stock of the REIT or RIC subject to a limitation on the amount of money to be distributed in the aggregate to all shareholders is not less than 20% of the aggregate declared distribution (the “Cash Limitation Percentage”);

3. If the Cash Limitation Percentage is not exceeded, every shareholder receives money in accordance with their election;
4. If too many shareholders elect to receive money, each shareholder electing to receive money will receive a pro rata amount of money corresponding to their respective entitlement under the declaration, but in no event will any shareholder electing to receive money receive less than the Cash Limitation Percentage of their entire entitlement under the declaration in money;
5. The calculation of the number of shares to be received by a shareholder is 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 (for purposes of applying paragraph (4) above, the value of the shares to be distributed shall be determined by using this formula); and
6. With respect to any shareholder participating in a dividend reinvestment plan ("DRIP"), the stock received by such shareholder pursuant to the DRIP is treated as received in exchange for cash received in the distribution.

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[Attachment](#)

endnotes

[1] See Institute Memorandum ([23164](#)), dated January 7, 2009. The ICI requested guidance comparable to that issued to REITS primarily for business development companies and closed-end funds, although all RICs could benefit from the guidance.

[2] See Institute Memorandum ([23117](#)), dated December 10, 2008.

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