

MEMO# 30668

April 6, 2017

New York State Resolves RIC Tax Issue

[30668]

April 6, 2017 TO: ICI Members SUBJECTS: Tax RE: New York State Resolves RIC Tax Issue

We are pleased to report that New York State has resolved a significant tax issue affecting regulated investment companies (“RICs”). New York State and New York City reformed their tax codes in 2014 and effectively eliminated the favorable minimum tax that RICs and real estate investment trusts (“REITs”) had formally paid to the state and the city. The new regime drastically increased the minimum tax paid to both the state and the city and significantly narrowed the definition of “investment capital” that was not apportioned to New York receipts, thus requiring RICs and REITs to calculate whether certain investment income was attributable to New York State and New York City. These rules were applicable to tax years beginning after December 31, 2014.

Under recent amendments to New York State law, RICs and REITs now are subject to a minimum tax of no more than \$500 (for New York receipts of more than \$500,000).^[1] Alternatively, RICs and REITs may use a prescribed 8% New York receipts factor for purposes of apportionment.^[2] These provisions are effective for taxable years beginning on or after January 1, 2016. The new amendments do not apply to taxable years beginning after December 31, 2014; however, we understand that the New York Department of Taxation and Finance has agreed to permit RICs and REITs to use the 8% apportionment factor for 2015.

Although there was no agreement on a final budget, these provisions were included in the “extender bill” that recently was passed by the legislature and which the governor is expected to sign. The changes to current law thus will be permanent once enacted.

The New York City extender bill does not include the new minimum tax rates but does include the 8% apportionment factor. We are continuing to discuss the issue with the City.

Karen Lau Gibian
Associate General Counsel

endnotes

^[1] The text of the amendment can be found [here](#), starting at page 174.

[2] The 8% apportionment factor originally applied only to financial instruments that were marked to market under section 475 or section 1256 of the Internal Revenue Code. The revisions to the law now permit RICs and REITs to use the 8% apportionment factor without regard to whether sections 475 and 1256 apply.

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