

MEMO# 32069

November 27, 2019

ICI and Nareit Joint Letter to IRS on Excess Inclusion Income

[32069]

November 27, 2019 TO: ICI Members

Tax Committee SUBJECTS: Tax RE: ICI and Nareit Joint Letter to IRS on Excess Inclusion Income

ICI and Nareit submitted the attached letter to the Internal Revenue Service (IRS) and the Treasury Department in response to a recent request for comments concerning the taxation and reporting of real estate investment company (REIT) excess inclusion income. ICI and Nareit reiterate our comments from 2006 and 2007 regarding Notice 2006-97.[\[1\]](#) As discussed in our prior meetings and letters, there remain many open issues that must be clarified. Further, regulated investment companies (RICs), REITs, and their investors are unduly burdened by the Notice's requirements for the following reasons:

1. The Notice imposes requirements on RICs and REITs with respect to disqualified organizations (for purposes of the entity-level tax under section 860E(e)) that RICs and REITs cannot identify.
2. The Notice does not contain specific reporting requirements.
3. The Notice results in shareholder confusion.
4. The Notice does not provide workable withholding tax rules.

The Notice and any further guidance thus should not apply until these concerns have been addressed.

In addition, we recommend that the IRS and Treasury Department implement a new *de minimis* rule for REITs, RICs, and other passthrough entities, as suggested by Nareit in 2007. The *de minimis* rule provided in Notice 2006-97 is of little value because the thresholds are easily surpassed and are limited to shareholders that are not nominees. Instead, we urge the IRS and Treasury Department to provide that RICs, REITs, and other pass-through entities are not required to report excess inclusion income to any shareholders, whether a nominee or not, if the amount of excess inclusion income that would be reported does not exceed one percent of the gross income of the entity for that year. Further, the IRS and Treasury Department should clarify that RICs and REITs are not required to pay the tax imposed by section 860E(e)(6) or apply the withholding tax provisions in section 860G(b)(2) if such a *de minimis* rule applies.

Karen Lau Gibian
Associate General Counsel

[Attachment](#)

endnotes

[1] See Institute [Memorandum No. 20753](#), dated January 5, 2007; [Nareit letter](#) to Glenn Kirkland, dated January 30, 2007.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.