

MEMO# 35677

April 11, 2024

Proposed Regulations on the Stock Buyback Excise Tax

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TO: ICI Members

Closed-End Investment Company Committee

Tax Committee SUBJECTS: Closed-End Funds

Tax RE: Proposed Regulations on the Stock Buyback Excise Tax

The Treasury Department released proposed regulations on the stock buyback excise tax on April 9th.[\[1\]](#) The proposed regulations confirm that repurchases by a RIC or REIT of its own shares are exempt from tax.[\[2\]](#) The ICI's prior recommendation[\[3\]](#) to extend this exemption to 40-Act funds that are not RICs were considered and not accepted.[\[4\]](#) Consequently, share redemptions by 40-Act funds that are taxed as corporations (but not RICs) would be subject to the stock buyback excise tax. Certain closed-end funds may be structured as non-RIC corporations for tax purposes. The proposed regulations also:

- Require "covered corporations," including RICs and REITs, to file excise tax returns (Forms 720 and 7208), reporting all share repurchases, even if all repurchases are covered by the RIC exemption and no tax is due,[\[5\]](#)
- Define a RIC by reference to section 851,[\[6\]](#)
- Reaffirm the de minimis rule, for corporations repurchasing shares with an aggregate value less than \$1 million per year,[\[7\]](#) and
- Clarify that the RIC and REIT exception does not apply to "an applicable foreign corporation" or a "covered surrogate foreign corporation."[\[8\]](#)

Instead of exempting RICs from the stock buyback excise tax, the proposed regulations provide that RIC stock redemptions are "a reduction for purposes of computing the covered corporation's stock repurchase excise tax base."[\[9\]](#) The proposed regulations are consistent with the IRS draft Form 7208 (Excise Tax on Repurchase of Corporate Stock), which provides a line for RICs to report repurchases of RIC stock, as a reduction from the excise tax base. Excise tax filings are required for the tax years ending after December 31, 2022, but are not due until the first full calendar quarter after the publication of final regulations.[\[10\]](#)

The ICI will submit comments on the proposed regulations. The ICI anticipates the comments to recommend removing the requirement for RICs to file excise tax returns if all

repurchases are exempt from tax, or providing other methods of conveying that all repurchases were exempt. Given that the regulations considered and rejected the ICI's recommendation to exempt non-RIC 40-Act funds from the tax, any additional recommendations to include this exemption would likely require new arguments and rationales not included in the ICI's prior comments. We will discuss this topic during the next Tax Committee call.

Please contact Mike Horn at michael.horn@ici.org or 202.326.5832 or Katie Sunderland at katie.sunderland@ici.org or 202.326.5826 if you have any questions, comments, or concerns.

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Notes

[1] REG-115710-22 and REG-118499-23.

[2] Section 4501(e)(5); Prop. Reg. section 58.4501-3(f).

[3] See ICI memos 34518 (Dec 13, 2022) and 35005 (Feb 23, 2023), at ici.org/memo34518 and ici.org/memo35005.

[4] The preamble to the regulations summarizes the ICI's recommendation, states that Treasury does not agree with the recommendation, and explains the ration for rejecting it.

[5] See Prop. Reg. section 58-6001-1(a) and the preamble. "Under the proposed regulations any covered corporation that makes a repurchase must comply with these requirements, even if every repurchase is eligible for a statutory exception (for example, in the case of repurchases by a regulated investment company or a real estate investment trust) or is offset by issuances."

[6] Prop. Reg. section 58.4501-1(b)(23).

[7] Section 4501(e)(3); Prop. Reg. section 58.4501-2(b)(2).

[8] Prop. Reg. section 58.4501-7(m)(5).

[9] Prop. Reg. section 58.4501-3(f).

[10] Prop. Reg. section 58-6071-1(c). For example, if the final regulations are published in September 2024, the excise tax returns would be due by January 31, 2025, the due date for the quarter ending December 31, 2024.