

MEMO# 35766

July 16, 2024

Final Regulations Exempt RICs from Filing Stock Buyback Excise Tax Returns

[35766]

July 09, 2024

TO: ICI Members

Tax Committee

Transfer Agent Advisory Committee SUBJECTS: Recordkeeping

Tax RE: Final Regulations Exempt RICs from Filing Stock Buyback Excise Tax Returns

The Internal Revenue Service (IRS) and US Treasury Department issued final procedural regulations on the stock buyback excise tax on June 28th. The final regulations generally require a covered corporation to file an excise tax return (on Form 7208) reporting share repurchases and issuances. However, a covered corporation that maintains its status as a regulated investment company (RIC) or real estate investment trust (REITs) for the year does not need to file an excise tax return. The preamble to the final regulations indicates that the IRS and Treasury accepted ICI and Nareit's joint recommendation to exempt RICs and REITs from filing returns due to the compliance burdens, duplication, and low utility of the information. A RIC that fails to maintain its qualification as a RIC or that revokes its RIC election would be required to file an excise tax return to report any share repurchases during the year.

RICs are required to comply with the recordkeeping requirements of the stock buyback excise tax. These regulations require RICs to maintain complete and detailed records sufficient to establish the amount of repurchases, issuances, and other adjustments or exceptions. The IRS may issue written requests requiring covered corporations to provide this share repurchase documentation. Covered corporations must retain this share repurchase information indefinitely. Non-tax regulations issued under the Investment Company Act of 1940 require investment companies to permanently retain an itemized daily record of share repurchases and issuances. Consequently, funds may already retain share repurchase and issuance records sufficient to comply with the stock buyback excise tax recordkeeping requirements, however, ICI members are encouraged to determine whether their records are fully compliant.

These final regulations take effect immediately.

Note that final regulations containing the operating rules for the stock buyback excise tax have not been released as of this date. Those regulations are expected to address whether

the excise tax applies to an investment company registered under the Investment Company Act of 1940 that does not elect RIC taxation or fails to qualify for RIC taxation. Proposed regulations indicated that such investment companies would be subject to tax, and the ICI submitted comments recommending an exemption.

If you have any questions on comments on these procedural regulations, please contact Mike Horn (michael.horn@ici.org or 202.326.5832) or Katie Sunderland (katie.sunderland@ici.org or 202.326.5826).

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