



Real estate
working for you

March 18, 2020

The Honorable David J. Kautter
Assistant Secretary (Tax Policy)
1500 Pennsylvania Avenue, N.W.
Room 3120MT
Washington, D.C. 20220

Re: REIT Partial Stock Dividend Guidance

Dear Mr. Kautter:

Nareit¹ would like to raise a tax issue that arose for real estate investment trusts (REITs) during the financial crisis starting in 2008 that also applies during the current emergency situation presented by COVID-19. The issue relates to the mix of stock and cash that a REIT must distribute to qualify as a dividend under section 301² that is deductible for purposes of a REIT's distribution requirements and for a REIT's dividends paid deduction.

Prior to 2008, the IRS had issued multiple private letter rulings³ confirming that dividends with an 80% stock and 20% cash component (at the election of the shareholder) qualified as dividends deductible for purposes of the REIT distribution tests. Under these private letter rulings, the shareholders receiving either stock or cash took the distributions into income.

In the economic crisis manifesting itself in 2008, credit providers effectively stopped lending and equity issuances on the stock market were rare even at historically low entry points. To allow publicly traded REITs to maintain their operations by conserving significant amounts of cash generated from their real estate operations, the Internal Revenue Service (IRS) issued Revenue Procedure 2008-68 confirming that dividends declared with respect to a taxable year ending on or before Dec. 31, 2009 with a mix of up to 90% stock and 10% cash qualified for a REIT's dividends paid deduction.⁴ Rev. Proc. 2008-68 was extended to registered investment companies (RICs) in Rev. Proc. 2009-15, which in turn was extended

¹ Nareit is the worldwide representative voice for real estate investment trusts (REITs) and publicly traded real estate companies with an interest in U.S. real estate and capital markets. Nareit advocates for REIT-based real estate investment with policymakers and the global investment community. Through the properties they own, finance and operate, REITs help provide the essential real estate we need to live, work and play. All U.S. REITs own approximately \$3 trillion in gross assets, public U.S. REITs account for \$2 trillion in gross assets, and stock-exchange listed REITs have an equity market capitalization of over \$1 trillion. In addition, more than 80 million Americans invest in REIT stocks through their 401(k) and other investment funds.

² Unless otherwise noted, references to "section" in this letter refer to sections of the Internal Revenue Code of 1986, as amended (the Code).

³ See PLRs 200832009, 200817031, 200618009, 200615024, 200406031, 200348020, and 200122001.



Real estate
working for you

for two years (for taxable years ending on or before Dec. 31, 2011) by Rev. Proc. 2010-12. In Rev. Proc. 2017-45, the IRS confirmed that distributions by a publicly offered REIT or RIC with a stock and cash mix of up to 80% stock and 20% cash qualify as dividends for purposes of the distribution test and the dividends paid deduction.

The current COVID-19 has significantly impacted all REITs, but most severely in the lodging, retail, and health care sectors. Many REITs have reduced their dividends because the rents they expect to receive are declining dramatically because of the restrictions put in place or suggested by federal and state authorities. To provide the option to conserve capital in these challenging times, Nareit requests that the Treasury Department issue guidance similar to the earlier revenue procedures with respect to 2020 and 2021 to allow REITs and RICs to use a 90%/10% combination of stock and cash.

If you would like to discuss this request in greater detail, please contact me at tedwards@nareit.com or (202) 739-9408; Cathy Barre, Nareit's Executive Vice President & General Counsel at cbarre@nareit.com or (202) 739-9422; or Dara Bernstein, Nareit's Senior Vice President & Tax Counsel at dbernstein@nareit.com or (202) 739-9446.

Respectfully submitted,

Tony M. Edwards
Senior Executive Vice President

Cc:
The Honorable Michael J. Desmond
Andrea Hoffenson, Esq.
Helen Hubbard, Esq.
Michael S. Novey, Esq.
Krishna Vallabhaneni, Esq.