

# United States Senate

WASHINGTON, DC 20510

December 18, 2019

The Honorable Steven T. Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Secretary Mnuchin:

We urge you to withdraw Section 2 of IRS Notice 2007-55 (2007 IRS Notice). The 2007 IRS Notice reversed well-established tax law and congressional intent under which real estate investment trust (REIT) liquidating distributions to foreign shareholders were treated as sales of stock, and thus were not subject to the Foreign Investment in Real Property Tax Act (FIRPTA) in circumstances where such stock sales would not have been subject to FIRPTA. Under the 2007 IRS Notice, liquidating distributions are treated as capital gain distributions subject to FIRPTA, which results in a tax on these foreign investments in U.S. real estate businesses. This unintended tax burden discourages foreign investors from putting capital to work to create jobs and improve our communities.

The 2007 IRS Notice created tax disparity between REIT shareholders in economically parallel positions. Specifically, REIT liquidating distributions to domestic shareholders are treated as sales of stock, while such distributions to foreign shareholders are treated as capital gain distributions. This tax imposed solely on foreign investment in U.S. real estate can have a discouraging impact on such investment. Since liquidating distributions are the economic equivalent of a shareholder selling all of its stock in a REIT, there is little reason why the tax treatment should be different. A bipartisan letter sent to you on October 10, 2017, and signed by 32 House Ways and Means Committee members expressed the same sentiment.

Two years ago, the Trump administration issued IRS Notice 2017-38, with the stated intent of reducing burdensome tax regulations. In addition, on March 5, 2019, the Treasury Department released a policy statement stating that “[f]ailure to promulgate regulations previewed in notices on a timely basis can cause confusion or uncertainty for taxpayers.” Accordingly, the policy statement announced that each future notice of intent to issue proposed regulations will provide that, if such proposed regulations or other guidance are not released within 18 months after the notice’s publication, the Treasury Department and the IRS will not assert positions adverse to taxpayers based on the notice until additional guidance is issued. Although the 2007 IRS Notice is not covered by the policy statement, the absence of regulations or other guidance since the 2007 IRS Notice was issued over a decade ago has caused the same “confusion [and] uncertainty for taxpayers” that was intended to be addressed by the Treasury Department’s new policy.

While the signers of this letter have differences of opinion regarding the merits of Notice 2017-38 and the March 5, 2019, policy statement, we all agree that withdrawal of Section 2 of the 2007 IRS notice is consistent with these Administration policies. Such action would reinstate the consistent treatment of REIT liquidating distributions to domestic and foreign shareholders. We would also urge the IRS to announce that it will not assert positions adverse to taxpayers based on the 2007 IRS Notice until further guidance is released, consistent with Treasury Department policy.

Prior to the issuance of the 2007 IRS Notice, foreign shareholders relied on well-established U.S. tax law that treated REIT liquidating distributions as sales of stock. The Internal Revenue Code expressly states that amounts received by a shareholder in a distribution in complete liquidation of a corporation “shall” be treated as full payment in exchange for the stock. Congressional intent has been that liquidating distributions by REITs, as with liquidating distributions of any other corporation, should be treated as sales of stock.

Withdrawing Section 2 of the 2007 IRS Notice would entice an infusion of foreign capital into the U.S. commercial real estate market. Even modest reforms that Congress made to the FIRPTA statute in 2015 (P.L. 114-113) are estimated to have injected billions of dollars in foreign investment into several primary and secondary U.S. commercial real estate markets.<sup>1</sup> With this new investment came jobs in the construction, development, and service-related industries. While this increased foreign capital investment is a positive and welcomed development, trillions of dollars in global capital are estimated to be available that could be invested in the U.S. real estate market.<sup>2</sup> Our tax policies should welcome such investment, not discourage it.

In closing, we urge withdrawal of Section 2 of the 2007 IRS Notice in order to restore Congress’ intended treatment of liquidating distributions, encourage increased foreign investment in U.S. real estate, and further spur job creation in the United States.

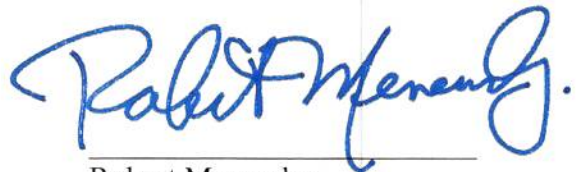
Thank you in advance for your consideration of this request.

Sincerely,



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Johnny Isakson  
United States Senator



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Robert Menendez  
United States Senator

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<sup>1</sup> In 2016, the first year that these FIRPTA reforms were in force, investments of foreign capital increased in several cities. Mazur, Jonathan et al., [4Q16 United States Capital Markets Report](#), at 8 (Newmark Grubb Knight Frank, 2017).

<sup>2</sup> In 2010, one report estimated that \$2.8 trillion of global capital is available for investment in the U.S. real estate market. Rosen, Kenneth T. et al., [FIRPTA Reform: Key to Reviving Commercial Real Estate, Executive Summary](#), at i (Rosen Consulting Group, March 2010).



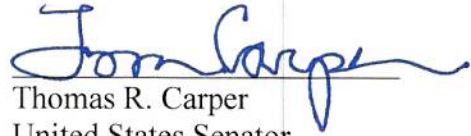
Mike Crapo  
United States Senator



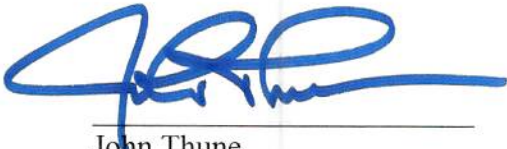
Debbie Stabenow  
United States Senator



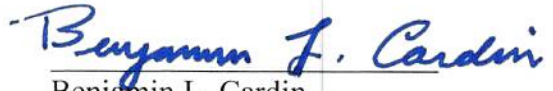
Pat Roberts  
United States Senator



Thomas R. Carper  
United States Senator



John Thune  
United States Senator



Benjamin L. Cardin  
United States Senator



Rob Portman  
United States Senator



Steve Daines  
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Tim Scott  
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