



The Real Estate Roundtable

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June 3, 2008

The Honorable Douglas Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Final Regulations Under Section 337(d) Relating to Conversion Transactions

Dear Commissioner Shulman:

On May 1, 2008, the American Bar Association Tax Section (the "Tax Section") submitted comments recommending certain changes to the regulations under section 337(d) relating to conversions of entities from, and transfers of assets by, C corporations to REITs or RICs. The Real Estate Roundtable and the National Association of Real Estate Investment Trusts* are writing this joint letter in support of the suggestions made in those comments.

The comments address two specific issues:

First, the Tax Section points out that the regulations technically apply to transfers from a C corporation to a REIT or RIC in an "exchanged basis" transaction and indicates that this treatment is inappropriate. "Exchanged basis" transactions include section 1031 like-kind exchange transactions. C corporations often transfer real property in like-kind exchange transactions where a REIT is the acquirer. These transactions are commonplace, non-abusive, and do not implicate any of the concerns that are properly addressed by the regulations.

Second, the Tax Section states that the regulations improperly treat tax-exempt corporations as "C corporations" for purposes of the regulations. It follows from this treatment that a transfer of assets from a tax-exempt corporation to a REIT or RIC can result in the imposition of a C corporation level tax with respect to the property (under section 1374 principles if the property is sold by the REIT or RIC within ten years). As the Tax Section points out, this treatment also applies in connection with a transfer of assets from a real estate partnership to a REIT where the partnership has partners that are tax-exempt corporations. Such transfers are undertaken all the time, and for the reasons given by the Tax Section, we believe that the regulations should not be applied in these situations.

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These issues are important to the real estate industry generally and to REITs in particular. We believe that the solutions proposed by the Tax Section are balanced and proper, and we hope that you will give serious consideration to adopting those solutions.

If we can be of any assistance to you as you consider these important issues, please let us know.

Sincerely,



Stephen M. Renna
Senior Vice President & Counsel
The Real Estate Roundtable



Tony M. Edwards
Executive Vice President & General Counsel
NAREIT

* The Real Estate Roundtable brings together leaders of the nation's top publicly-held and privately owned real estate ownership, development, lending and management firms with the leaders of the industry's sixteen national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy. Collectively, Roundtable members' portfolios contain over 5 billion square feet of office, retail and industrial properties valued at more than \$700 billion; over 1.5 million apartment units; and in excess of 300,000 hotel rooms. Participating trade association members represent more than 1 million people involved in virtually every aspect of real estate.

The National Association of Real Estate Investment Trusts* (NAREIT) is the representative voice for U.S. real estate investment trusts (REITs) and publicly traded real estate companies worldwide. Members are REITs and other businesses that own, operate and finance income-producing real estate, as well as those firms and individuals who advise, study and service those businesses.