

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also: Part I, §§ 301, 305, 852, 857; 1.305-1, 1.305-2)

Rev. Proc. 2017-45

SECTION 1. PURPOSE

This revenue procedure provides guidance regarding certain stock distributions by real estate investment trusts (REITs) and regulated investment companies (RICs). Specifically, pursuant to section 4 of this revenue procedure, if a Publicly Offered REIT or Publicly Offered RIC (each as defined in section 3 of this revenue procedure) distributes stock in a transaction meeting the requirements of section 5 of this revenue procedure, the Internal Revenue Service (IRS) will treat the distribution of stock as a distribution of property to which § 301 of the Internal Revenue Code (Code) applies by reason of § 305(b).

SECTION 2. BACKGROUND

.01 Section 301(a) provides that, except as otherwise provided in Chapter 1 of the Code, a distribution of property (defined in § 317(a)) made by a corporation to a shareholder with respect to its stock is treated in the manner provided in § 301(c).

.02 Section 301(c) provides that the portion of a distribution which is a dividend (as defined in § 316) is included in gross income, and that the remaining portion of the distribution is applied first against the adjusted basis of the stock and then is treated as gain from the sale or exchange of property.

.03 Section 305(a) provides that, except as otherwise provided in § 305, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

.04 Section 305(b)(1) provides that § 305(a) does not apply to a distribution by a corporation of its stock, and the distribution is treated as a distribution of property to which § 301 applies, if the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either in its stock or in property.

.05 Section 305(b)(2) provides that § 305(a) does not apply to a distribution by a corporation of its stock, and the distribution is treated as a distribution of property to which § 301 applies, if the distribution (or a series of distributions of which such distribution is one) has the result of the receipt of property by some shareholders, and an increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation.

.06 Section 1.305-2(a) of the Income Tax Regulations provides that, under § 305(b)(1), if any shareholder has the right to an election or option with respect to whether a distribution is to be made either in cash or any other property, or in stock or rights to acquire stock of the distributing corporation, then, with respect to all shareholders, the distribution of stock or rights to acquire stock is treated as a distribution of property to which § 301 applies regardless of--

(1) Whether the distribution is actually made in whole or in part in stock or in stock rights;

(2) Whether the election or option is exercised or exercisable before or after the declaration of the distribution;

(3) Whether the declaration of the distribution provides that the distribution will be made in one medium unless the shareholder specifically requests payment in the other;

(4) Whether the election governing the nature of the distribution is provided in the declaration of the distribution or in the corporate charter or arises from the circumstances of the distribution; or

(5) Whether all or part of the shareholders have the election.

.07 Section 1.305-1(b)(2) provides that, if a corporation that regularly distributes its earnings and profits, such as a RIC, declares a dividend pursuant to which the shareholders may elect to receive either cash or stock of the distributing corporation of equivalent value, the amount of the distribution of the stock received by any shareholder electing to receive stock will be considered to equal the amount of the cash which could have been received instead.

.08 Section 852(a) provides, in part, that, except for § 852(c), the provisions of Part I of Subchapter M of Chapter 1 of the Code generally do not apply to a RIC for a taxable year unless the deduction for dividends paid (as defined in § 561 with certain modifications) with respect to the taxable year equals or exceeds a calculated minimum amount.

.09 Section 857(a) provides, in part, that, except for §§ 857(d) and 856(g), the provisions of Part II of Subchapter M of Chapter 1 of the Code generally do not apply to a REIT for a taxable year unless the deduction for dividends paid during the taxable year (as defined in § 561 with certain modifications) equals or exceeds a specified amount.

.10 Section 561(a) provides generally that the deduction for dividends paid is the sum of the dividends paid during the taxable year, including dividends treated or considered as paid during the taxable year.

.11 Section 561(b) provides that, in determining the deduction for dividends paid, the rules provided in § 562 (relating to rules applicable in determining dividends eligible for the dividends paid deduction) and § 563 (relating to dividends paid after the close of the taxable year) apply.

.12 Section 562(c)(1) provides that, except in the case of a publicly offered RIC (as defined in § 67(c)(2)(B)) or a publicly offered REIT (as defined in § 562(c)(2)), the amount of any distribution is not considered as a dividend for purposes of computing the dividends paid deduction under § 561, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the

extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference.

.13 Section 67(c)(2)(B)(i) generally defines a publicly offered RIC as a RIC the shares of which are continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. §§ 77a to 77aa)), regularly traded on an established securities market, or held by or for no fewer than 500 persons at all times during the taxable year. Section 67(c)(2)(B)(ii) authorizes the Secretary of the Treasury to issue regulations that reduce the 500-shareholder requirement in certain situations.

.14 Section 562(c)(2) defines a publicly offered REIT as a REIT which is required to file annual and periodic reports with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.).

SECTION 3. DEFINITIONS

For purposes of this revenue procedure, the following definitions apply in the context of a Publicly Offered REIT's or a Publicly Offered RIC's distribution with respect to its stock as to which each shareholder has a Cash-or-Stock Election (as defined in this section 3).

.01 The *All-Cash-Distribution Amount* is the amount of cash that would be distributed if every shareholder's Elected Cash Amount were 100 percent of that Shareholder's Entire Affected Distribution, and every shareholder had received that shareholder's Elected Cash Amount in cash. (The All-Cash-Distribution Amount cannot be computed until the number of shares outstanding on the record date is determined.)

.02 *Available Cash* means—

- (1) Any excess of—
 - (a) The Cash Limitation Amount, over—
 - (b) The Basic Cash Distribution, or
- (2) If there is no excess, zero.

.03 The *Basic Cash Distribution* is the sum of—

- (1) The aggregate Elected Cash Amounts of all shareholders that are not Excess Cash Claimants, and
- (2) An amount equal to the product of—
 - (a) The Cash Limitation Percentage, and
 - (b) The aggregate Entire Affected Distributions for all Excess Cash Claimants.

.04 The *Cash Limitation Amount* is the maximum aggregate amount of cash to be distributed to all shareholders as limited by the declaration of the distribution. (If the declaration expresses the limitation in terms of a maximum percentage of the total distribution that may be made in cash, the Cash Limitation Amount will not be known until the number of shares outstanding on the record date is determined.)

.05 The *Cash Limitation Percentage* is the ratio, expressed as a percentage, of—

- (1) The Cash Limitation Amount, to
- (2) The All-Cash-Distribution Amount.

.06 A *Cash-or-Stock Election* is an election each shareholder may make to receive up to all of the shareholder's Entire Affected Distribution either—

- (1) In cash, or

(2) In stock of the distributing corporation of equivalent value as determined under section 5.07 of this revenue procedure.

.07 The *Elected Cash Amount* is the amount, if any, of each shareholder's Entire Affected Distribution that the shareholder elects to receive in cash, without regard to any limitation that the declaration of the distribution imposes on the maximum aggregate amount of cash to be distributed to all shareholders.

.08 A shareholder's *Elected Cash Percentage* is the ratio, expressed as a percentage, of—

- (1) The shareholder's Elected Cash Amount, to
- (2) The shareholder's Entire Affected Distribution.

.09 The *Entire Affected Distribution* is a shareholder's entire entitlement under the declaration of the distribution to the extent that the entitlement is subject to a Cash-or-Stock Election.

.10 An *Excess Cash Claimant* is any shareholder whose Elected Cash Percentage exceeds the Cash Limitation Percentage.

.11 An *Excess Cash Claim* is the excess of—

- (1) The Elected Cash Amount of an Excess Cash Claimant, over
- (2) The product of—
 - (a) The Entire Affected Distribution of the Excess Cash Claimant, and
 - (b) The Cash Limitation Percentage.

.12 *Publicly Offered REIT* has the meaning provided in § 562(c)(2).

.13 *Publicly Offered RIC* has the meaning provided in § 67(c)(2)(B).

SECTION 4. APPLICATION

If a Publicly Offered REIT or a Publicly Offered RIC makes a distribution of stock in a transaction that is described in section 5 of this revenue procedure, then the IRS will treat the distribution of stock as a distribution of property to which § 301 applies by reason of § 305(b). The value of the stock received by any shareholder in lieu of cash will be considered to be equal to the amount of cash for which the stock is substituted, as described in section 5.07 of this revenue procedure. For purposes of this revenue procedure, if a shareholder participates in a dividend reinvestment plan, the stock received by that shareholder pursuant to the dividend reinvestment plan is treated as received in exchange for cash received in the distribution.

This APPLICATION section does not apply to situations that are not described in the SCOPE section of this revenue procedure, and, except as explicitly provided in this APPLICATION section, all otherwise applicable provisions of law continue to apply to transactions that are so described.

SECTION 5. SCOPE

A transaction is described in this section 5 if it satisfies all of the requirements in sections 5.01–5.07 of this revenue procedure.

.01 A Publicly Offered REIT or a Publicly Offered RIC makes a distribution to its shareholders with respect to its stock.

.02 Pursuant to the declaration of the distribution, each shareholder has a Cash-or-Stock Election with respect to part or all of the distribution. The existence of a Cash-or-Stock Election does not affect the federal income tax treatment of the portion, if any, of the declared dividend that is not subject to the election.

.03 The Cash Limitation Percentage is not less than 20 percent.

.04 Every shareholder that is not an Excess Cash Claimant receives cash equal to the shareholder's Elected Cash Amount.

.05 If the aggregate of all shareholders' Elected Cash Amounts does not exceed the Cash Limitation Amount, then every Excess Cash Claimant receives cash equal to that shareholder's Elected Cash Amount.

.06 If the aggregate of all shareholders' Elected Cash Amounts exceeds the Cash Limitation Amount, then each Excess Cash Claimant receives an amount of cash that is as close in amount as practicable to the sum of—

(1) The product of the Cash Limitation Percentage and that shareholder's Entire Affected Distribution; and

(2) The product of the Available Cash and the ratio of—

(a) That shareholder's Excess Cash Claim to

(b) The aggregate of the Excess Cash Claims of all Excess Cash Claimants.

.07 The calculation of the number of shares to be received by a shareholder is determined based upon a formula that—

(1) Utilizes the market price of the shares;

(2) Is designed so that the value of the number of shares to be received in lieu of cash with respect to a share corresponds as closely as practicable to the amount of cash to be received under the declaration with respect to that share; and

(3) Uses data from a period of no more than two weeks ending as close as practicable to the payment date.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective with respect to distributions declared on or after August 11, 2017.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Justin O. Kellar of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure contact Justin O. Kellar on (202) 317-6847 (not a toll free call).