

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. 2021-53

SECTION 1. PURPOSE

This revenue procedure provides temporary guidance regarding the treatment of certain stock distributions by publicly offered real estate investment trusts (REITs) and publicly offered regulated investment companies (RICs) under the Internal Revenue Code (Code). Specifically, in recognition of the need for liquidity as a result of the impacts of the Coronavirus Disease 2019 (COVID-19) pandemic, this revenue procedure, like Rev. Proc. 2020-19, 2020-22 I.R.B. 871, modifies the safe harbor provided in Rev. Proc. 2017-45, 2017-35 I.R.B. 216, by temporarily reducing the minimum required aggregate amount of cash that distributee shareholders may receive to not less than 10 percent of the total distribution in order for § 301 of the Code, by

reason of § 305(b) of the Code, to apply to such distribution. This temporary modification is effective solely with respect to distributions declared by a publicly offered REIT or publicly offered RIC on or after November 1, 2021, and on or before June 30, 2022.

SECTION 2. BACKGROUND

.01 Rev. Proc. 2017-45 provides a safe harbor for Publicly Offered REITs and Publicly Offered RICs that make a distribution to their shareholders with respect to their stock to ensure that such distributions of stock pursuant to a distribution in which each shareholder may elect to receive up to all of the shareholder's distribution in cash or stock of equivalent value are treated as distributions of property to which § 301 applies by reason of § 305(b). See generally Rev. Proc. 2017-45, section 3.12 (defining *Publicly Offered REIT*), section 3.13 (defining *Publicly Offered RIC*), and section 5 (enumerating safe harbor requirements). Rev. Proc. 2017-45 allows a Publicly Offered REIT or Publicly Offered RIC to eliminate C corporation earnings and profits in order to satisfy the REIT or RIC distribution requirements while maintaining sufficient liquidity. If each condition set forth in sections 5.01 through 5.07 of Rev. Proc. 2017-45 is met, (1) the Internal Revenue Service will treat the stock distribution as a distribution of property under § 301 by reason of § 305(b), and (2) the value of the stock received by any shareholder in lieu of cash will be considered to be equal to the amount of cash which could have been received instead.

.02 Section 5.03 of Rev. Proc. 2017-45 requires that the Cash Limitation Percentage be at least 20 percent. Section 3.05 of Rev. Proc. 2017-45 defines the *Cash Limitation*

Percentage as the percentage obtained by dividing (1) the maximum aggregate amount of cash to be distributed to all shareholders as limited by the Publicly Offered REIT's or Publicly Offered RIC's declaration of the distribution, by (2) the amount of cash that would be distributed if each shareholder elected to receive solely cash under their respective Stock-or-Cash Election. Section 3.06 of Rev. Proc. 2017-45 generally defines a *Cash-or-Stock Election* as an election each shareholder may make to receive up to all of the shareholder's entire distribution subject to the election either (1) in cash, or (2) in stock of the distributing corporation of equivalent value as determined under section 5.07 of Rev. Proc. 2017-45.

.03 To enable Publicly Offered REITs and Publicly Offered RICs to conserve capital and thereby enhance their liquidity, Rev. Proc. 2020-19 temporarily allowed such REITs and RICs to further limit the amount of cash available to be distributed to their shareholders by reducing the Cash Limitation Percentage to 10 percent. Rev. Proc. 2020-19 applied to distributions declared on or after April 1, 2020, and on or before December 31, 2020.

.04 For the same reasons, this revenue procedure temporarily allows Publicly Offered REITs and Publicly Offered RICs to limit the amount of cash available to be distributed to their shareholders by reducing the Cash Limitation Percentage to 10 percent.

SECTION 3. TEMPORARY REDUCTION OF CASH LIMITATION PERCENTAGE

With respect to distributions declared by a Publicly Offered REIT or a Publicly Offered RIC on or after November 1, 2021, and on or before June 30, 2022, section

5.03 of Rev. Proc. 2017-45 is modified by striking “The Cash Limitation Percentage is not less than 20 percent” and inserting “The Cash Limitation Percentage is not less than 10 percent”.

SECTION 4. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies Rev. Proc. 2017-45 solely with respect to distributions declared by a Publicly Offered REIT or Publicly Offered RIC on or after November 1, 2021, and on or before June 30, 2022.

SECTION 5. 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).