



1401 H Street, NW, Washington, DC 20005-2148, USA  
202/326-5800 www.ici.org

***By Electronic Delivery***

August 14, 2017

Hon. David Kautter  
Assistant Secretary, Tax Policy  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

William Paul  
Acting Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

RE: Proposed Regulations on Centralized  
Partnership Audit Regime (REG-136118-  
15)

Dear Mr. Kautter and Mr. Paul:

The Investment Company Institute<sup>1</sup> thanks the Internal Revenue Service (“IRS”) and the Treasury Department for reflecting our comments when drafting the proposed regulations implementing the new partnership audit regime enacted as part of the Bipartisan Budget Act of 2015.<sup>2</sup> Specifically, the proposed regulations clarify that regulated investment companies (“RICs”) and real estate investment trusts (“REITs”) may use the deficiency dividend procedures under section 860 when a RIC or REIT is a partner in a partnership that is subject to audit under section 6225 or 6226. We believe that the proposed regulations appropriately permit RICs to use the deficiency dividend procedures, as clearly was intended by Congress when enacting the new partnership audit rules.<sup>3</sup> We thus encourage the IRS and Treasury Department to adopt these portions of the regulations as proposed. We also echo others’ comments that the IRS should provide extensions of the 270-day period under the section 6225 modification process as a matter of course. Finally, we encourage the government to promulgate regulations permitting upper-tier partners to use the method under section 6226 with respect to an imputed underpayment that has been passed through to the partnership from a lower-tier partnership.

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<sup>1</sup> The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of US\$20.0 trillion in the United States, serving more than 95 million US shareholders, and US\$6.0 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

<sup>2</sup> See Institute Letter to William Wilkins and Tom West, dated October 24, 2016.

<sup>3</sup> See General Explanation of Tax Legislation Enacted in 2015 (the “Blue Book”), Joint Committee on Taxation, March 2016, p. 70.

## **Application of Section 860**

Under section 6225, a partnership's imputed underpayment amount may be reduced by taking into account the impact of the underlying adjustments on the partners' reviewed-year returns. The proposed regulations permit a RIC or a REIT to pay a deficiency dividend in respect of the adjustment to generate a dividends paid deduction for the reviewed year to avoid any RIC or REIT-level tax, other than the interest charge under section 860 and any share of penalties imposed.

Alternatively, section 6226 provides procedures under which a partnership may send adjusted partnership statements to the partners for the reviewed year. Those partners must then include in their adjustment-year tax return an amount determined by calculating the amount by which their tax liability would have increased in the reviewed year, and any subsequent years, if that partner's allocable share of the adjustments had been properly taken into account in the reviewed year. The proposed regulations permit a RIC or REIT that receives such an adjusted partnership statement to use the deficiency dividend procedures under section 860 to generate a dividends paid deduction for the adjusted year (and any subsequent years that may be affected), avoiding tax at the RIC or REIT-level.

As the Institute requested, the proposed regulations appropriately clarify the ability of RICs to use the deficiency dividend procedures under both sections 6225 and 6226. Further, the proposed regulations properly provide that RICs only will be subject to interest under section 6226 on any correction amount determined after subtracting any deficiency dividend deduction from the adjustments taken into account by the RIC. In other words, a RIC should not be subject to double interest under sections 860 and 6226 on the same amounts. Finally, we agree that the proposed regulations properly treat a RIC as a C corporation in determining whether a partnership is an eligible partnership under section 6221(b) because it has 100 or fewer partners that are all eligible partners. For these reasons, we encourage the IRS and Treasury Department to adopt these portions of the proposed regulations as written.

## **Deficiency Dividends under Section 6225**

As required by Section 6225(c), the proposed regulations provide that a partnership may request modification of an imputed underpayment if a reviewed year partner files one or more amended returns that take into account all or a portion of the adjustment and pay any tax due. Pursuant to the Secretary's regulatory authority under section 6225(c), the proposed regulations provide that, if a RIC or REIT is a partner in a partnership and pays a deficiency dividend under section 860 with respect to the adjustment, the deficiency dividend will be treated similar to an amended return. Accordingly, the partnership can take into account the payment of the deficiency dividend and the associated dividends paid deduction in its request for modification reducing the amount of an imputed underpayment. A partnership must provide any information with respect to a request for modification within 270 days of the notice of proposed partnership adjustment (NOPPA), unless the IRS grants an extension. The preamble to the proposed regulations asks whether these provisions adequately allow RICs and REITs to use the modification process.

It certainly is not ideal for a RIC to pay a deficiency dividend with respect to an amount that may not be final. To reduce the possibility that a deficiency dividend is paid under this modification process with respect to an adjustment that is later modified, we agree with the suggestion of the National Association of Real Estate Investment Trusts (“NAREIT”) that the IRS should grant extensions of the 270-day period as a matter of course until all relevant issues have been resolved with the Appeals division of the IRS.<sup>4</sup>

### **Tiered Partnerships**

The Institute agrees with others who have recommended the ability of an upper-tier partnership to pass through to its partners an adjustment from a lower-tier partner under section 6226. We believe that such a rule satisfies the intent of the new partnership audit rules without unfairly harming lower-tier partners by denying them the benefits of the alternative rules in section 6226. Although the proposed regulations reserve on this issue, we encourage the IRS and Treasury Department to provide guidance permitting the use of section 6226 in tiered partnerships. In particular, an upper-tier RIC in a tiered partnership also should be permitted to use the deficiency dividend procedures under section 860 with respect to the amount passed through from the lower-tier partnership.

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The Institute believes that the proposed regulations appropriately permit RICs to use the deficiency dividend procedures under section 860 when a RIC is a partner in a partnership subject to audit under section 6225 or 6226. We thus urge the IRS and Treasury Department to adopt those portions of the proposed regulations in the final regulations. We also encourage the government to grant extensions to the 270-day period under section 6225 as a matter of course and to promulgate regulations permitting the use of section 6226 in tiered partnerships.

Please do not hesitate to contact us if you have any questions regarding the application of the proposed regulations to RICs. I can be reached at (202) 371-5432 or [kgibian@ici.org](mailto:kgibian@ici.org).

Sincerely,

*/s/ Karen L. Gibian*

Karen Lau Gibian  
Associate General Counsel, Tax Law

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<sup>4</sup> See NAREIT letter dated August 4, 2017.

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cc: Michael Novey  
Drita Tonuzi  
Jennifer Black  
Curt Wilson  
Helen Hubbard