

Congress of the United States

Washington, DC 20515

February 20, 2020

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

RE: Requested Withdrawal of Section Two of IRS Notice 2007-55

Dear Secretary Mnuchin:

As the Department of the Treasury undergoes its review of Federal regulations to identify ways to reduce tax complexity and burdens while spurring economic growth, we respectfully request that the Department withdraw Section Two of IRS Notice 2007-55 (the “IRS Notice”) pertaining to the treatment of liquidating distributions of a real estate investment trust (REIT). This provision subjects a liquidating distribution made by a REIT to a foreign taxpayer (which is essentially the sale of shares of stock in the REIT) to a punitive tax that is not levied on other similar types of investments. In our view, repealing the IRS Notice will restore the intent of Congress with respect to the tax law governing liquidations, provide parity to investors, and increase direct foreign investment in U.S. commercial real estate and infrastructure in every corner of the nation.

In writing the Foreign Investment in Real Property Act (FIRPTA), Congress intended that liquidating distributions by REITs, as with the liquidating distributions of any other corporation, be treated as sales of stock. Prior to the issuance of the IRS Notice, foreign shareholders relied on well-established U.S. tax law providing that the REIT liquidating distributions were treated as sales of stock. The Internal Revenue Code specifically states that amounts received by a shareholder in a distribution in complete liquidation of a corporation “shall” be treated as in full payment in exchange for the shareholder’s stock. The IRS Notice upended established tax law by stating that liquidating distributions made by a REIT to foreign investors should be treated, to the extent attributable to gain with respect to U.S. real property, as capital gain distributions subject to FIRPTA tax. Domestic investors continue to be treated as engaging in the sale of shares of stock. Indeed, following an earlier detailed submission requesting withdrawal of the IRS Notice, on June 16, 2015, the Tax Section of the America Bar Association asked the IRS again to withdraw the IRS Notice.

The IRS Notice creates winners and losers in the tax code by subjecting foreign investment in U.S. real property to a much higher tax burden than foreign investment in any other class of assets. For example, if a foreign taxpayer receives a liquidating distribution from a domestic REIT, that distribution is treated as the sale of real estate subject to the FIRPTA tax penalty. But if that same taxpayer sold his shares of stock in a domestic REIT or received a liquidating distribution from any other type of domestic corporation, it would not be subject to U.S. tax. The result of this unequitable tax burden is that foreign investors hold only five percent of U.S.

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commercial real estate by value – an extremely low number compared to other classes of U.S. assets.

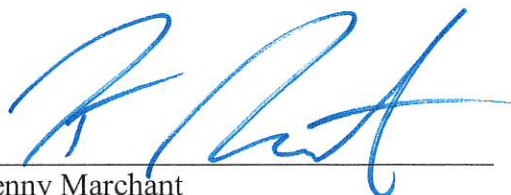
Ultimately, the IRS Notice has created a significant impediment to foreign investment in U.S. commercial real estate and infrastructure, holding back our country's growth at a time when new infusions of capital are necessary. In 2015, Congress made minor reforms to the FIRPTA statute, easing some of the tax burden for foreign investors, and these small changes are estimated to have injected billions of dollars in foreign investment into the U.S. real estate market. Capital investment spiked not only in places like Manhattan but nationwide. In 2016, the first year these FIRPTA changes were on the books, foreign capital investment spiked in cities such as Charlotte, Nashville, and Memphis. With this surge of investment came jobs in the construction, development, and service-related industries. While this jolt of foreign investment is a positive result, it is estimated that an additional \$2.8 trillion of global capital that could be invested in the U.S. real estate market, including in critically-needed investment in infrastructure, continues to sit on the sidelines because of the punitive FIRPTA tax imposed by the IRS Notice.

As even the minor easing of the FIRPTA tax burden led to a surge in investment and new job creation, we respectfully request that you withdraw the IRS Notice and reinstate the IRS' previous treatment of REIT liquidating distributions as sales of stock. We appreciate your consideration of this request.

Sincerely,



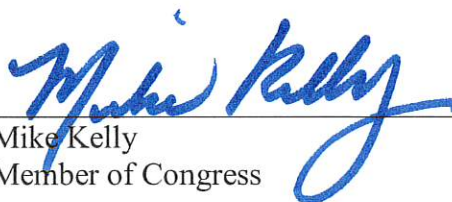
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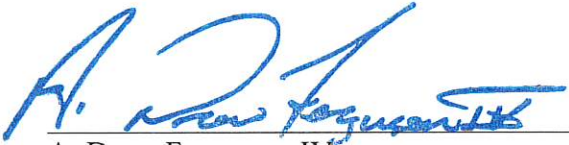
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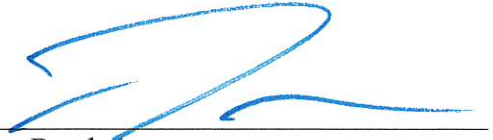


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