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WHAT THE REIT?!

COVID-19 POTENTIAL IMPACTS – SPECIAL EDITION

IN THIS ISSUE

INTRODUCTION

The best laid schemes o' Mice an' Men

Gang aft agley,

An' lea'e us nought but grief an' pain,

For promis'd joy!

Many plans have gone "agley" at this point. And yet, in surveying the COVID-19 pandemic from home, from what quiet corner we might secure, we all know new plans must be made. We should humbly attempt to make good ones. In this, our second edition of What the REIT?!, we summon the will (in our sweatpants) to take stock of myriad tax matters that may confront a REIT planning for the months to come, including the CARES Act and the Federal government's response thus far, issues likely to arise for a REIT in the economic downturn before us, and even some planning opportunities. Certainly this will not be the last edition on this subject—forgive us for missing anything the first time around, and write us with concerns. Our best wishes go out to all, especially those that are suffering.

MORRISON FOERSTER

REITS IN THE TAX PROVISIONS OF THE CARES ACT

We begin with the tax provisions of the Federal government's most comprehensive legislative response thus far to COVID-19, the Coronavirus Aid, Relief, and Economic Security Act, H.R. 748 (the "***CARES Act***"). The CARES Act contains a number of tax provisions important to businesses in general, including the businesses of REITs, which provisions we have summarized and discussed here. However, the CARES Act contains few provisions specific or uniquely applicable to REITs and real estate. That said:

- Under the CARES Act, certain companies can receive potentially beneficial loans or loan guarantees. However, the Act prohibits companies that receive such loans or guarantees from paying dividends or making distributions during the term of the loan or guarantee and for 12 months after the loan or guarantee is no longer outstanding. As discussed further herein, such prohibition creates an obvious issue for REITs that must satisfy annual distribution requirements under the Internal Revenue Code (the "***Code***"), and the language of the Act does not exempt REITs from such prohibition.

- The new net operating loss ("***NOL***") provisions seem unlikely to be particularly helpful to REITs, at least from an immediate cash-flow perspective. REITs typically manage distributions to eliminate REIT taxable income, and REIT-year NOLs may not be carried back under the new legislation.

- Many REITs, as "real estate" businesses, would have elected out of the interest deduction limitation of Section 163(j). The CARES Act increase of the limitation from 30% of adjusted taxable income to 50% of adjusted taxable income for 2019 and 2020 may help REITs that did not so elect. However, for a REIT that did so elect and now may be having second-thoughts in light of the new legislation, whether and how a REIT could unwind such "irrevocable" election is unclear and may require IRS or Treasury guidance. The CARES Act technical correction to the "qualified improvement property" depreciation rules may compound the angst of REITs that elected out of Section 163(j), as discussed immediately below.

- Under the Tax Cuts and Jobs Act, a taxpayer can deduct the full cost of certain depreciable property ("bonus depreciation"). Likely due to a drafting mistake, certain improvements to building interiors ("qualified improvement property") received a longer-than-expected depreciable life and were ineligible for bonus depreciation. The CARES Act corrects this mistake, identifying qualified improvement property as "15-year property," which both shortens the depreciable life of such property and renders such property eligible for bonus depreciation. This is good news for many real estate businesses. However, as alluded to above, many real estate businesses, including REITs, may have "irrevocably" elected out of Section 163(j), which came at the cost of less favorable depreciation and forgoing bonus depreciation, on the assumption that bonus depreciation was unavailable for qualified improvement property.

- The CARES Act includes an employer payroll tax credit that generally is refundable to the extent the credit exceeds the employer portion of Social Security taxes. Two other credits enacted under the initial COVID-19 responses expressly were characterized as resulting in taxable income; no such designation was included in the CARES Act. If a REIT receives a cash "refund" under this new credit, is the refund taxable income? Is it gross income for purposes of the REIT gross income requirements?

Many of these questions and uncertainties cannot yet be answered. Congress already is talking about additional legislation, which we will follow closely. In addition, taking a cue from the 2008 financial crisis, we are hopeful the IRS and Treasury will issue helpful guidance to taxpayers, including REITs, this time around. In addition to clarifying how our tax laws work in these trying times, the IRS and Treasury have some remarkable tools in their belts, including the simple ability to delay payments, filings, and elections in a crisis such as this. See Section 7508A of the Code for such authority.

PUBLIC REITS IN A BEAR MARKET

Most publicly traded REITs have experienced precipitous declines in the prices of their common and, to a lesser degree, preferred stock. Here, we shine some light on a few bright sides of such declines, as well as several tax issues that may accompany them:

- *Debt Offerings*. Given low stock prices, raising capital through stock offerings may be prohibitively "expensive" for REITs from a cost of capital

perspective. We expect REITs interested in raising capital to turn to the debt markets, and several REITs have accessed the bond market in recent weeks. Among other things, debt means interest, which means interest deductions. To reiterate, for REITs that did not elect out of Section 163(j), interest will be more deductible in 2020 than in years to come. In addition, although market conditions may not warrant this approach currently, at some point REITs may be interested in "reopening" debt—*i.e.*, issuing additional debt under the same terms as an existing issuance. Particularly given the likely volatility of interest rates, REITs considering a reopening must evaluate carefully the "qualified reopening" tax rules, which must be met in order for the new debt to be "fungible" with the existing debt. Generally, such rules require the issuance of the new debt to be within a certain time period of the original issuance or the new debt to have "de minimis" "original issue discount."

- *Preferred Stock Offerings*. Someday (perhaps not today), REITs may turn back to preferred stock offerings to raise capital, potentially prior to more dilutive common stock offerings. Similar to debt offerings, some REITs may want to "reopen" existing series of preferred stock—*i.e.*, issue additional preferred stock under the same class or series as an existing issuance. If the new preferred stock has an above-market dividend rate, such preferred stock could be issued at a "premium" to its liquidation preference, calling into play the "fast-pay" preferred stock tax rules. If such rules applied, the income tax consequences would be both unclear and unpalatable. Practitioners vary in their assessment of such rules, with some believing they could not possibly apply to REIT preferred stock in a reopening or similar "ATM" issuance, and others believing the possible application of such rules effectively preclude the issuance of REIT preferred stock at a premium. Under the right circumstances, we tend to side with those that believe the fast-pay rules should not apply.

- *Stock Dividends*. As we discuss in greater detail in this newsletter, in an effort to balance the conservation of cash with the need to meet applicable distribution requirements under the Code, some REITs may declare and pay taxable stock dividends in the coming months. Particularly given the current economic climate, such dividends come at a price—potentially significant stockholder dilution given current low prices.

- *Settling Forward Contracts*. Using "forward contracts" to raise capital in the future has been in vogue with public REITs for several years. In brief, under such forward contracts, an underwriter agrees to acquire a REIT's stock from the REIT at some point in the future at, roughly speaking, the trading price extant at the time of entering into the forward contract. REITs that entered into forward contracts over their stock prior to the onset of the COVID-19 crisis likely are "in the money," meaning the REITs can issue stock to settle the forward at a price much higher than today's price. The REIT's income tax treatment of "physically" settling a forward contract through the issuance of its shares is clear. However, a REIT may not want to physically settle the contract because the REIT is unable to put the full cash proceeds of such settlement to good use. As a result, cash-settling the contract, in which the REIT receives cash roughly equal to the spread between yesterday's higher and today's lower price, may be an appealing option for some. However, practitioners diverge in their opinion of the income tax treatment of cash-settling. Some believe the receipt of such cash is nontaxable to the REIT under Section 1032; others do not. A possible alternative to cash-settling would be a physical settlement at yesterday's high price followed by a stock buy-back at today's low price. Of course, stock buy-backs carry with them their own issues, particularly in a climate in which public attitudes may be against, and government aid may be conditioned on refraining from, such buy-backs.

- *Incentive Equity Compensation*. A bright side of low stock prices is the ability to issue incentive equity compensation (or is it equity incentive compensation?) at such low prices. This could be as simple as issuing REIT stock at a lower taxable value, options to acquire such stock at lower exercise prices, or LTIP partnership interests in a REIT's operating partnership. Regarding the latter, the issuance of such LTIPs tax-free to the recipient depends on issuing them with zero "liquidation value" at grant, meaning that the LTIPs would receive nothing if the operating partnership were liquidated. Public REITs often key the liquidation value of their operating partnerships to their stock prices; but could extreme capital markets cause such a divergence between stock performance and asset value fluctuations that such methodology is called into question?

COMPLYING WITH THE REIT DIVIDEND REQUIREMENTS IN THE TIME OF COVID-19

Businesses will be conserving cash, and some businesses will be liquidating, as a result of the COVID-19 pandemic. These may not be easy feats for REITs given the REIT distribution requirements. Although, nominally, a REIT is subject to a corporate-level tax on its income and gain, generally it is entitled to a dividends paid deduction to the extent it distributes such income and gain to its shareholders. Additionally, in order to remain qualified as a REIT, generally a REIT must distribute at least 90% of its ordinary taxable income each year. As illustrated below, the REIT requirement to distribute dividends creates a conflict with the desire to conserve cash or liquidate in a time of illiquidity. In addition, such distribution requirement could create a conflict with participation in government programs that limit the ability of a company to make distributions.

REITs seeking to conserve cash could consider several options:

- *Stock Dividends*. Under existing IRS guidance, a "publicly offered" REIT may elect to pay up to 80% of a dividend in the form of its own stock, provided certain requirements are satisfied, including that each shareholder must have the option to receive any or all of its distribution in cash and/or stock (subject to pro rata apportionment among shareholders if the total elections for either cash or stock exceed the total amounts of such consideration that are available). Such dividend counts, in whole, toward the dividends paid deduction and REIT distribution requirement. Nareit has requested that the IRS and Treasury issue guidance allowing for an increase in the maximum stock percentage to 90%, which increase was provided in response to the 2008 financial crisis, and which was in effect until the issuance by the IRS of Rev. Proc. 2017-45 in August 2017.

- *January Dividends*. A REIT can achieve limited deferral of its dividend distribution obligation by declaring a dividend in the fourth quarter of the taxable year (payable to shareholders of record on a date within the fourth quarter). In such a case, the REIT may make the dividend payable as late as January 31st of the following taxable year and still have the dividend treated, for all purposes (including the taxation of its shareholders), as having been paid in the current taxable year. Thus, theoretically, a REIT could defer all of its 2020 dividends until January 2021. Unlike with subsequent-year dividends, described below, there are no excise tax implications with respect to these January dividends, regardless of their magnitude.

- *Subsequent-Year Dividends*. A REIT may elect, on its tax return, to treat all or a portion of a distribution paid in the subsequent taxable year as having been paid in the current taxable year, to the extent of its earning and profits in the current taxable year, provided the distribution is (i) declared prior to the due date for the REIT's tax return (including extensions) and (ii) paid within 12 months of the end of the current taxable year. Although the REIT will be entitled to deduct these dividends in the current year, shareholders of the REIT will include them in income in the year received. Additionally, to the extent the subsequent year dividend results in the REIT not having *actually* distributed in the current taxable year at least the sum of (i) 85% of its ordinary income, and (ii) 95% of its capital gains, the REIT generally will be subject to a non-deductible 4% excise tax on such amounts. Despite this, in some cases a 4% tax may be a relatively small price to pay to avoid the loss of REIT status or the imposition of a corporate-level tax on some of the REIT's income and/or gain.

- *Consent Dividends*. Although impractical for a public REIT, a private REIT may be able to declare a "consent dividend," pursuant to which its shareholders agree to be deemed to have received a taxable dividend without any corresponding receipt of cash.

Some REITs will face liquidation as a result of the COVID-19 crisis, or perhaps were in the process of liquidating when the COVID-19 crisis hit. A REIT generally is entitled to a dividends paid deduction (to the extent of its earnings and profits) for all distributions made during the 24-month period following its adoption of a complete plan of liquidation. If a REIT does not actually complete its liquidation within the 24-month period, it can lose the benefit of all or a portion of the dividends paid deduction for distributions made following the adoption of the plan of liquidation (including those made during the 24-month period). Actually completing a liquidation within 24 months may be difficult during particularly illiquid times. However, there are tools available to assist REITs in liquidation:

- *Liquidating Trusts*. A REIT unable to completely liquidate within the 24-month period could transfer

all of its assets, within the 24-month period, to a "liquidating trust," and distribute the interests in the liquidating trust to its shareholders in complete redemption of their REIT stock. The distribution of the interests in the liquidating trust will be treated as completing the liquidation of the REIT. Properly structured, the liquidating trust should be disregarded for U.S. federal income tax purposes, and so each shareholder will be treated, for such purposes, as owning an undivided interest in each asset transferred to the trust. Such trust would be subject to certain restrictions regarding the types of investments it may acquire, and generally should distribute any excess cash. Additionally, under existing IRS guidance, the trust should have a maximum life of three years (subject to reasonable extension).

- *Liquidating Partnerships*. A related solution would be for the REIT to convert to an entity taxable as a "partnership". For U.S. federal income tax purposes, effectively such conversion would be treated as if the REIT distributed all of its assets to its shareholders in complete liquidation, followed by a contribution of those assets by the former shareholders to a new partnership. The tax consequences to the REIT and its shareholders would be similar to those in the liquidating trust structure, though there would be some technical distinctions in terms of the required tax filings and reporting, and ongoing operation of each entity.

In either case, such solutions can have diverse tax and non-tax consequences and must be planned and evaluated carefully. For example, the actual or deemed liquidation itself will be taxable to the REIT's former shareholders without a corresponding receipt of cash. In addition, a tax-exempt organization or non-U.S. investor that had used the REIT as a "blocker" of "unrelated business taxable income" or U.S. trade or business income, in each case, would become unblocked. Moreover, the limits applicable to the activities of a liquidating trust may be even more onerous then the limits applicable to REITs under the REIT requirements of the Code.

As observed above, certain REITs could receive potentially beneficial loans or loan guarantees under the CARES Act. However, the Act prohibits companies that receive such loans or guarantees from paying dividends or distributions during the term of the loan or guarantee and for 12 months after the loan or guarantee is no longer outstanding. Such prohibition creates an obvious issue for REITs that must satisfy the annual distribution requirement described above, and the language of the Act does not exempt REITs from such prohibition.

REITS AND DEBT RESTRUCTURING

Numerous income tax issues accompany the restructuring of debt for taxpayers, including REITs. In general, the forgiveness of debt, in whole or in part, results in "cancellation of debt" ("***COD***") income equal to the amount forgiven, which may be taxable income to the borrower absent an exclusion under Section 108 of the Code. Conversely, the forgiveness of debt may result in a loss to the lender, which may be capital or ordinary in character. Importantly, a "significant" modification of debt can result in a deemed taxable exchange of the existing debt for new debt. Such deemed exchange also can result in COD income and loss to the borrower and lender, respectively, to the extent, generally, the outstanding balance of the existing debt exceeds the fair market value of the "new" debt. Moreover, the tax consequences of a restructuring can vary widely depending on whether the debt is "recourse" or "non-recourse" and whether the debt is considered satisfied in exchange for any existing collateral securing the debt. For example, non-recourse debt satisfied with the collateral securing such debt results in taxable gain or loss to the borrower based on the difference between the borrower's "amount realized" (generally, the outstanding balance of the debt) and the borrower's adjusted tax basis in the collateral. Special rules, which are particularly complex and challenging even by tax law standards, apply to "real estate mortgage investment conduits," or "REMICs", and other securitization vehicles attempting to restructure debt or liquidate.

A detailed discussion of the foregoing is beyond the scope of this edition of What the REIT?! Needless to say, any taxpayer looking to restructure debt must consider carefully the income tax consequences of such restructuring. With that context in mind, below we touch on some of the issues specific to REITs as borrowers and lenders in a distressed debt context.

REITS AS BORROWERS

If a REIT recognizes COD income, such income is not taken into account for purposes of determining its compliance with both the 75% and 95% gross income tests. However, such income is included in its taxable income for purposes of determining its required dividend distributions in order to avoid tax and remain qualified as a REIT. Similarly, gain recognized by a REIT on the foreclosure of a mortgage owed by a REIT likely would

constitute qualifying income under the gross income tests (unless such gain constituted "prohibited transaction" gain subject to a 100% tax, described herein). However, such gain also would be included in the REIT's taxable income for purposes of the distribution requirement.

In both cases, the REIT will have recognized "phantom" or "dry" income or gain with no corresponding cash to distribute, a particularly unfortunate consequence for a REIT in financial distress. With respect to COD income, a REIT may be able to take advantage of exclusions of such income under the Code, such as the insolvency exclusion. However, no such exclusion exists with respect to gain recognized in the foreclosure of a non-recourse mortgage.

REITS AS LENDERS

A number of REIT tax compliance issues are implicated when a REIT acquires or holds distressed mortgage debt or makes a "significant modification" to such debt, including: (i) whether interest on the debt qualifies as "good" mortgage interest despite being under-collateralized by real property; (ii) whether the debt qualifies as a "good" real estate mortgage despite being under-collateralized; and (iii) whether gain recognized in connection with debt acquired at a discount constitutes "prohibited transaction" gain. Unlike in the case of a REIT as borrower, the IRS has provided relief with respect to a number of these issues when the REIT is a lender. In the case of a modification, these relief provisions apply only if (i) the modification was occasioned by a default, or (ii) default was reasonably foreseeable and the modification is expected to substantially reduce the risk of default.

Income Tests. Generally, to the extent a loan is not fully secured by real property, interest earned on the loan will not be qualifying "interest on obligations secured by real property" for purposes of the REIT 75% gross income test. However, where a REIT modifies a loan that was originally fully secured by real property, the relief provisions apply to allow the REIT to continue to treat the loan as being so fully secured even though the value of the real property at the time of the modification is less than the face amount of the loan. However, when a REIT acquires a mortgage loan with a face amount in excess of the value of the real property securing the loan, the relief provisions would not apply, and only a proportionate amount of interest, equal to the portion of the loan secured by real property (at the time the REIT committed to acquire the loan), would be qualifying 75% income.

Asset Tests. If a REIT acquires or modifies a mortgage loan at a time when the value of the real property securing the loan has decreased to below the face amount of the loan, the relief provisions apply to allow the REIT to treat the new/modified loan as a qualifying real estate asset to the extent of the lesser of: (i) the value of the loan, and (ii) the value of the real property securing the loan (either currently or when the REIT committed to acquire/modify the loan, whichever is greater). For example, to the extent the value of the real property exceeds the value of the loan, the entire loan would be treated as a qualifying asset.

Prohibited Transactions Income. If a REIT sells property held for sale in the ordinary course of a trade or business, any gain recognized on the sale would be subject to a 100% "prohibited transactions" tax. If a REIT modifies a (non-traded) mortgage loan, gain generally would be recognized equal to the excess of the face amount of the loan over the REIT's adjusted tax basis in the loan. Therefore, if the REIT acquired a distressed loan at a significant discount, and subsequently modified the loan, it would recognize gain equal to the amount of such discount. If the loan was acquired with the intent to significantly modify the loan, there is a risk the loan would be treated as "held for sale," due to the modification resulting in a deemed exchange, and the gain recognized on that deemed exchange would be subject to the 100% prohibited transactions tax. However, the relief provisions specifically provide that a loan modified under the conditions described above would not result in a prohibited transaction. That said, "phantom" or "dry" gain would be recognized by the REIT, which gain would have to be distributed. A potential solution is having the seller of the loan modify the loan prior to sale to the REIT; assuming the seller was the original lender, such seller generally would not recognize much, if any, gain on the modification, since its adjusted tax basis in the loan likely would exceed the loan's value and sales price.

OTHER REIT CONSIDERATIONS IN THE TIME OF COVID-19

Undoubtedly, in these unprecedented times REITs will face unexpected circumstances whose consequences under the REIT requirements are unfamiliar or unplanned for. We discuss several examples below:

- *Lease Renegotiations*. REITs who find themselves renegotiating leases with tenants must tread carefully in negotiating such terms, ensuring they do not run afoul of the prohibitions on rent based (in whole or in part) on the net income or profits of a tenant. For

example, retail and restaurant tenants who have been hard hit by social distancing restrictions likely have leases based on a percentage of their gross revenue, sometimes in excess of a threshold. Modifying the percentages or thresholds used to determine rent, or including additional tenant costs in the calculation, ostensibly could run afoul of the percentage rent rules regardless of the context giving rise to the modifications.

- *Rent Deferrals*. If a REIT allows its tenant to defer a portion of its rent, Section 467 of the Code, an oft-overlooked provision under normal circumstances, could apply to such deferral. Section 467 can apply where the aggregate amount of rental payments to be received exceeds $250,000 and the lease has certain increasing, decreasing, prepaid or deferred rents. If Section 467 applies, the REIT may be required to reclassify a portion of the rental payments as interest at 110% of the applicable federal rate or the stated yield on the deferred payments, whichever is higher.

- *Tenant Services*. REITs may find themselves providing additional and unexpected "services" in response to the COVID-19 crisis. While we will not pretend to predict what such services could be, we have heard of additional cleaning of their properties and facilitating tenant financial relief as possibilities. Any such services will have to be evaluated under the "impermissible tenant services" rules to determine whether the tenant's rent continues to qualify as "good" rent under the REIT gross income requirements and whether the provision of such services must be structured in a particular manner, such as being conducted by an "independent contractor" or "taxable REIT subsidiary."

- *Termination Fees*. Many contracts, including management agreements, leases, and merger agreements, provide for termination fees in the event the contract is terminated by a party. If these termination payments are received by a REIT, their treatment under the REIT income tests is not always clear and will depend on the nature of the underlying contract. For example, lease termination fees received by a REIT generally should be treated as qualifying income for purposes of the 75% and 95% gross income tests; essentially, they are a substitute for rent. Similarly, to the extent income under a management agreement would be qualifying or non-qualifying income for REIT testing purposes, income from a termination fee paid pursuant to such agreement should also be qualifying or non-qualifying, as the case may be. On the other hand, the treatment of fees paid to a REIT for the termination of a merger agreement is less clear and, as a result, many merger agreements include "savings clauses" that adjust the amount or timing of such fees to the extent they could result in the disqualification of the recipient as a REIT.

- *Asset Value Fluctuations*. A REIT must satisfy, on a quarterly basis, certain requirements relating to the nature of its assets, including various percentage limitations on its ownership of certain types of non-real estate assets. An exception applies to an asset test failure resulting solely from the fluctuation of the relative value of the REIT's existing assets during the quarter. If, however, the acquisition of any asset during the quarter causes or further exacerbates an asset test failure, this exception is not available. Consequently, a REIT should closely monitor the relative values of its assets, particularly during times of extreme asset value fluctuations, and should be very cautious about adding any new non-qualifying assets (that could be the cause or further exacerbation of such a failure) in order to ensure that it will be able to obtain the benefit of this exception on its next quarterly asset testing date.

- *Income and Gain from Foreclosure Property*. Most REITs do not make mortgage loans expecting to foreclose upon such mortgages. While the government's response to COVID-19 may prevent or delay some foreclosures for some time, foreclosures are likely to occur nonetheless. If a REIT acquires property through a foreclosure and makes an affirmative (revocable) election to treat the property as "foreclosure property," the REIT will be subject to a corporate tax on any income or gain recognized with respect to such foreclosure property. Despite this potential tax liability, the potential benefits of making a foreclosure property election are that: (i) the income and gain will be qualifying income for purposes of the REIT 75% gross income test; and (ii) the REIT will not be subject to the 100% prohibited transactions tax on the sale of the foreclosure property. Conversely, if the foreclosure will generate qualifying rental income, and its sale would not result in a prohibited transactions tax (for example, if the prohibited transactions safe-harbor requirements are satisfied, including the two-year hold period), generally such an election should be avoided.

  Importantly, property is not eligible for the foreclosure property election if the REIT acquired a loan with the expectation that it would foreclose on

the property. Additionally, the foreclosure property election is valid only through the close of the third taxable year following the year of the foreclosure (with the potential for an IRS extension for an additional three years). Also, property will cease to be qualified as foreclosure property if the REIT: (i) enters into a new lease that would generate non-qualifying REIT income; (ii) conducts certain construction activity; or (iii) conducts a trade or business other than through an independent contractor or a TRS.

- *Prohibited Transactions Income on Sale*. As described above, if a REIT sells property held for sale in the ordinary course of a trade or business, any gain recognized on the sale would be subject to a 100% "prohibited transactions" tax. A "safe harbor" allows a REIT to sell property without the imposition of this tax irrespective of whether the property is held for sale. Such safe harbor includes a two-year holding period requirement (during which period qualifying rental income is earned). Thus, if a REIT must sell a property within two years of its acquisition (or before it produces rental income for at least two years), or if a REIT is foreclosed upon and transfers the mortgaged property to the lender within such period, the REIT would be outside the safe harbor and could be subject to the prohibited transactions tax on any gain recognized on that sale. However, failure to satisfy the safe harbor does not, *per se*, result in the imposition of the prohibited transactions tax. Rather, all of the facts and circumstances surrounding the sale will be considered. Although the IRS typically will not issue a ruling with respect to this issue, the IRS did issue a number of rulings during the last financial crisis to the effect that a sale of property motivated by the unusual economic circumstances would not result in a prohibited transaction. Although each situation must be individually analyzed, we think the same type of analysis generally should apply to sales of property in these difficult and unusual economic times.

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