

IRS to Resume Work on REIT Conversion Ruling Requests

IRS ends processing hiatus triggered by an investigation into the definition of real estate.

On November 14, the Internal Revenue Service (IRS) contacted at least three companies ([Equinix](#), [Iron Mountain](#) and [Lamar Advertising](#)) informing them that the IRS would resume working on their ruling requests seeking guidance that would allow each of them to convert to a real estate investment trust (REIT) for US federal income tax purposes. The IRS had suspended ruling requests pending an internal review of the definition of 'real estate.' Each of these companies has indicated their intention to move forward with plans to prepare for REIT conversion. It is expected that the IRS will continue to issue rulings regarding the definition of real estate under the REIT provisions of the Internal Revenue Code (Code), consistent with existing law and previously published guidance.

Background

A fundamental requirement for qualification as a REIT under the Code is that the company own a substantial amount of real estate. A number of companies which own non-traditional real estate (*i.e.*, other than land, buildings and structures) have submitted ruling requests to the IRS. The IRS previously issued rulings concluding that space on transmission towers and boat slips in a marina were real estate for purposes of the REIT requirements in the Code. The property owned by the companies listed above includes infrastructure associated with data centers (Equinix) and records storage facilities (Iron Mountain), and outdoor advertising structures (Lamar). In June, 2013, the IRS informed these companies that it was forming a working group to study the definition of real estate for purposes of the REIT requirements in the Code, and to determine what changes or refinements, if any, should be made to that definition. The IRS further informed these companies that, until the working group reached a conclusion, the IRS would suspend work on their ruling requests. The formation of this working group may have been, in part, a response to commentary suggesting that the IRS had expanded the definition of real estate through the ruling process, allowing a number of non-traditional real estate companies to convert to REIT status. However, each of these companies owns a substantial amount of property that has traditionally been defined as real estate for purposes of the Code, and treating such property as real estate is consistent with previously published guidance under the REIT provisions of the Code.

A REIT is more than a tax election. REITs have dedicated analysts and an investor base looking for real estate companies that pay regular and substantial dividends. Private owners of real estate may turn to the REIT structure to diversify their investments, gain access to the public capital markets and achieve liquidity, all concepts that may not be feasible where real estate is owned directly or in private partnerships. While the specific types of real estate owned by REITs have changed over time — based on the economy, technological developments and other factors — the IRS's interpretation of the definition of real estate and the other requirements for REIT status under the Code have remained extraordinarily consistent.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

Michael J. Brody
michael.brody@lw.com
+1.213.891.8724
Los Angeles

David S. Raab
david.raab@lw.com
+1.212.906.1344
New York

Ana G. O'Brien
ana.o'brien@lw.com
+1.213.891.8721
Los Angeles

Pardis Zomorodi
paradis.zomorodi@lw.com
+1.213.891.7805
Los Angeles

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. A complete list of Latham's *Client Alerts* can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham & Watkins, visit <http://events.lw.com/reaction/subscriptionpage.html> to subscribe to the firm's global client mailings program.