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Sept. 22, 2025

VIA EMAIL: pra.comments@irs.gov

Mr. Andres Garcia
Internal Revenue Service
1111 Constitution Avenue NW, Room 6526
Washington, DC 20224

Re: Internal Revenue Service (IRS) Form 1120-REIT and Instructions and Form 8875 and Instructions/OMB Control No. 1545-0123

Dear Mr. Garcia:

Nareit appreciates the opportunity to offer our comments regarding the 2023 Internal Revenue Service (IRS) Forms 1120-REIT[1] and its instructions[2] and Form 8875 and its instructions[3] in response to the July 25, 2025 request for comments by the IRS.

Nareit serves as the worldwide representative voice for real estate investment trusts (REITs)[4] and real estate companies with an interest in U.S. real estate and capital markets.

Discussion

Nareit believes that if adopted, the comments set forth below would enhance the quality, utility, and clarity of the information to be collected, and would minimize the burden of the collection of information on respondents.

Please note that the comments set forth below update prior submissions by Nareit, including most recently on Jan. 21, 2025, with respect to the Forms 1120-REIT and 8875 and their instructions. Nareit appreciates that some of our earlier comments have been reflected in the most recent draft Form 1120-REIT and its instructions.

[1] The most recent draft (2025) Form 1120-REIT is dated Sept. 2, 2025. The most recent final Form 1120-REIT is dated 2024.
[2] The most recent draft Form 1120-REIT instructions are dated Dec. 23, 2024.The most recent final (2024) Form 1120-REIT instructions are dated Jan. 21, 2025.
[3] Final version as of Sept. 2014.
[4] Nareit's members are REITs and other real estate companies throughout the world that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses. REITs of all types collectively own more than $4.5 trillion in gross assets across the U.S., with public REITs owning $2.5 trillion in assets. U.S. listed REITs have an equity market capitalization of more than $1.4 trillion. REITs provide everyday Americans the opportunity to invest in real estate, and 170 million Americans live in households that benefit from ownership of REITs through stocks, 401(k) plans, pension plans, and other investment funds.

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I. Allow for E-filing of Forms 1120-REIT and 8875

Nareit agrees with the recommendation of the Internal Revenue Service Advisory Council (IRSAC) on pps. 33-34 of its 2020 "Public Report" that:

> The IRS provide funding and give priority to expansion of electronic filing ... All forms should be digitalized. When the IRSAC members were asked what forms should be prioritized the following were suggested … Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts.[5]

Nareit recommends that the IRS allow both electronic filing and electronic signatures for both the Form 1120-REIT and the Form 8875 (Taxable REIT Subsidiary Election). For many REITs, the Form 1120-REIT is the only tax return required to be filed in paper form. Further, while certain states permit e-filing of a REIT tax income tax return, the relevant software will not permit doing if the corresponding federal form is not e-filed. Finally, the benefits of e-filing that the IRS promotes for other taxpayers (such as accuracy, completeness, security, and ease)[6] should also be available to REITs.

II. Form 1120-REIT

We request that the Department of the Treasury and the Internal Revenue Service modify the Form 1120-REIT and its instructions as follows:

1. Clarify that Part III of Form 1120-REIT has been modified to calculate a REIT's gross income for purposes of section 857(b)(5)

Part III of Form 1120-REIT calculates the tax imposed by section 857(b)(5) for failure to meet the REIT gross income tests in sections 856(c)(2) and (c)(3). However, the 2024 (final) version of Part III of Form 1120-REIT, Line 1a requires the amount included on Line 8 of Part I of Form 1120-REIT, which, in certain cases, may not correspond with gross income as gross income is required to be calculated for purposes of sections 856(c)(2) and (c)(3), particularly for gross income earned through partnerships. For clarity, and to ensure greater uniformity in taxpayer reporting, Part III should be modified so that its calculation is based on the REIT's gross income as computed under Section 856(c)(2) and 856(c)(3), which is different from the computation of REIT taxable income in Part I.

[5] *See also* IRSAC Report No. 2022-40-036, Appendix V (May 4, 2022), for a similar recommendation.
[6] https://www.irs.gov/pub/irs-utl/OC-Severalgreatreasonstoefileyourfederaltaxreturn.pdf; https://apps.irs.gov/app/understandingTaxes/whys/thm06/les03/media/is2_thm06_les03.pdf; https://www.irs.gov/newsroom/here-are-some-reasons-taxpayers-should-e-file-their-taxes; *see also* https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_08_Efiling.pdf

For example, Line 7 of Part I (which is included in calculating Line 8 of Part I) includes ordinary income from the trade or business of a partnership set forth of a Schedule K-1. When a REIT is a partner in a partnership, Treas. Reg. § 1.856-3(g) provides that such REIT is deemed to own the assets and be entitled to the income of the partnership in accordance with its capital interest in the partnership for purposes of applying the income qualification tests of section 856(c)(2) and section 856(c)(3). In other words, a REIT partner calculates its gross income from the partnership in proportion to its capital interest, which may be different from the amount set forth on its Schedule K-1 from the partnership for purposes of these income tests. As K-1 income is included in Line 8 of Part I, and the amount set forth on Line 8 is used as the starting point for Part III, the calculation for Part III may not properly include (or may improperly omit) certain amounts.

Similarly, Line 5 of Part I of the 1120-REIT requires the reporting of "capital gain net income." However, because Part III of the Form 1120-REIT calculates the failure to satisfy the REIT gross income tests, Part III should use gross income from capital gains, rather than capital gain net income.

These incongruities add an additional burden on taxpayers attempting to comply with section 857(b)(5) when completing the Form 1120-REIT. Many REITs must submit additional schedules. Accordingly, it would be useful to include in Part III a line that states "Adjustments to REIT Income, Part I, Line 8." The inclusion of this line would enable Part III of Form 1120-REIT to refer to the information included in Part I, but with appropriate adjustments.

Nareit appreciates that the draft 2025 Form 1120-REIT would modify Line 1a of Part III of the Form 1120-REIT by requiring "total income from Part I, line 8, *adjusted per sections 856(c)(2) and (c)(3)*", and Nareit supports the inclusion of this description in the final 2025 Form 1120-REIT, along with corresponding clarifications to the accompanying 2025 Instructions to Form 1120-REIT.

2. Item D on Page 1 of Form 1120-REIT

We request that the Department of the Treasury and the Internal Revenue Service modify Item D of Form 1120-REIT and its instructions by substituting the word "REIT" with "Taxpayer" so that Item D reads "Date Taxpayer established"

Item D could be to request the date the REIT election became effective, due to the inclusion of "REIT" in the description. However, the instructions of Form 1120-REIT explain Item D should report the incorporation date or organization date of the entity. To provide additional clarity, we recommend that the word "REIT" in Item D on Form 1120-REIT be substituted with "Taxpayer" to align the instructions with the Form.

3. Additional Items

It may be helpful to include a checkbox near the top of Form 1120-REIT relevant to an initial-electing REIT that is switching its year from a fiscal year to a calendar year under section 859.

Additionally, it would be helpful if Schedule A were amended to reflect the calculation of the deduction for dividends paid attributable to any increase in earnings and profits as a result of section 562(e)(1)(A).

III. Form 8875

While the Form 8875 is not a required attachment to Form 1120-REIT, we thought it would be useful to include the comments below.

Specifically, we request that the Department of the Treasury and the Internal Revenue Service modify the Form 8875 and its instructions as follows.

1. **Contact information for TRS officer.** Part I of Form 8875 should be amended to require contact information of an officer or legal representative of the TRS. Including this information would facilitate the IRS' ability to contact the TRS for more information if necessary. Additionally, it would be helpful if either the IRS associates the election with both the TRS and the affiliated REIT or the IRS sends a confirmation letter to both the TRS and affiliated REIT with respect to a filed Form 8875.

2. **"Automatic" TRS subsidiaries: correction of reference to statutory language and include check box for Automatic TRS subsidiaries.** Section 856(l)(2) treats every corporation other than a REIT in which a TRS owns directly or indirectly securities possessing more than 35% of the total voting power or total value of the outstanding securities of such corporation as a TRS. Thus, Line 16 of Part III of Form 8875 should delete the words "Does this taxable REIT subsidiary own" and replace it with "During the period when the taxable REIT subsidiary election is in effect, will this taxable REIT subsidiary own or has this taxable REIT subsidiary owned directly or indirectly". Also, the phrase "35%" should be replaced with "more than 35%". It is not relevant to the TRS election whether a TRS owns an exactly 35% interest in a corporation. Similarly, under "Line 16" in the instructions, the first paragraph of the text should be amended to state "A taxable REIT subsidiary that directly or indirectly owns more than 35%. . ." Correcting this language would enhance the quality, utility, and clarity of the information to be collected. Finally, it would be helpful to include a box to check for automatic TRS subsidiaries.

3. **Automatic TRSs: additional correction of reference to statutory language.** Additionally, the second paragraph of the text under Line 16 in the instructions should replace "owns less than

35% of the total voting power" with "owns 35% or less of the total voting power," as well as "an ownership interest of 35% or more" with "an ownership interest of more than 35%". The instructions also should note that, regardless of whether an entity in which a TRS owns a greater than 35% interest is listed as an "Automatic TRS" in a filing to the IRS, such an entity is treated as an "automatic TRS" under IRC § 856(l)(2). The instructions also should note that the REIT may wish to consider affirmatively making a taxable REIT subsidiary election with any "automatic" taxable REIT subsidiary to address any unforeseen change in circumstances. Again, correcting this language would enhance the quality, utility, and clarity of the information to be collected.

4. **Modification of "Purpose of Form."** The second paragraph of the instructions to Form 8875 under "Purpose of Form" should be amended to include the following: "Consider whether the election should be made by: a) every corporation more than 10% of the total voting power or total value of the outstanding securities of which is held by the REIT; and, b) every REIT (including subsidiary REITs) within a corporate structure." This reminder could reduce the potential allocation of IRS and taxpayer resources by resulting in fewer requests for relief under Treas. Reg. § 301.9100 for failure to timely file the TRS election.

5. **Allow for specific date for revocation of TRS election.** In order to improve the practical utility of the information provided regarding the revocation of a TRS' election, the last sentence in the first paragraph of the instructions under "Revocation of Election" to Form 8875 should be revised to allow the REIT and TRS to provide a specific effective date on which a revocation to the TRS election would be effective. *Cf*. section 1362(d) concerning revocation of the S corporation election (an election filed on or before March 15th of a specific year is effective on January 1st of such year, an election filed after March 15th of a specific year is effective the following January 1st and a revocation can provide a prospective effective date). The instructions currently state that the revocation is effective on the date filed. However, if the REIT and TRS would like the revocation to be effective on a Sunday or holiday in a specific year, it would seem inappropriate to require the revocation to be filed on that Sunday or holiday, when no mail is picked up or delivered.

   Additionally, Nareit recommends that Line 11 of Part III be modified by having two check boxes, one for the Election and another for Revocation. To the right of the check boxes should be a field to enter the effective date for the election or revocation. Finally, Nareit recommends that a check box be added for a "protective TRS" election.

6. **Instructions regarding revocation of TRS election for "automatic TRSs."**
   a. A sentence should be added to the first paragraph of the instructions to Form 8875 under "Revocation of Election" stating something to the effect that if a TRS election is revoked for a specific TRS, it is also revoked for all of the "automatic TRSs" (*i.e.*, subsidiaries of the former

TRS that had not made affirmative TRS elections, but were treated as automatic TRSs of the former TRS under section 856(l)(2)). As noted above, under section 856(l)(2), a corporation more than 35% of the securities of which is owned by a TRS is itself treated as a TRS. If a parent TRS revokes its TRS election, these entities no longer can be treated as "automatic" TRSs, and a separate TRS election should be made for them within 75 days of the filing of the revocation. As long as a separate TRS election is made for them in a timely manner, there should be no loss of their status as TRSs for any period of time. Revocation of a TRS election should not affect any affirmative TRS elections previously made by these entities even if such entities would have been treated under section 856(l) as "automatic" TRSs. By making these changes, the IRS would provide additional clarity to taxpayers and would reduce the potential for subsequent private ruling requests in certain circumstances.

b. In certain situations, an entity may change its classification from a corporation to a partnership or disregarded entity. In those instances, the effective date which the entity ceases to be treated as a TRS should be the same as effective date when the entity ceases to be a corporation and the TRS election is automatically terminated.

7. **Instructions should clarify that TRS election applies to any entity that succeeds to the attributes of either the REIT or TRS under section 381(a)**. The second sentence in the second paragraph of the instructions to Form 8875 under "Revocation of Election" should be revised to make clear that the TRS election applies to any entity that succeeds to the attributes of either the REIT or TRS under Internal Revenue Code section 381(a). This clarification would reduce potential burdens on the IRS and on taxpayers by eliminating a trap for a successor REIT or TRS that failed to make a TRS election, and could prevent the need to issue a private letter ruling granting an extension of time to make a new TRS election as in PLRs 201144022 and 200544015. A successor REIT could revoke its predecessor's TRS elections if desired.

8. **Allow automatic extension of time to file TRS election.** Guidance should permit an automatic extension of time to file a TRS election of, for example, six months or one year, either through amending Treas. Reg. § 301.9100-2 to include the TRS election as one of the elections eligible for an automatic extension of time or through issuing a revenue procedure that would provide the procedures for granting an extension of time in lieu of filing a private letter ruling request under § 301.9100-1 through §301.9100-3. Because the failure to file a timely TRS election could lead to REIT disqualification (if the REIT owns more than 10% of the purported TRS), a draconian punishment to a potentially publicly traded company for a possibly inadvertent oversight, allowing for an extension of time pursuant to a revenue procedure in certain cases would provide greater certainty to the capital markets. *See, e.g.*, Rev. Proc. 2009-41, 2009-2 C.B. 439, applicable in the case of a failure to file a timely Form 8832 (concerning entity classification elections).

Rev. Proc. 2009-41 generally provides that so long as:

a. The relevant entity failed to obtain its desired classification solely because of the failure to file a timely Form 8832;

b. Either the relevant entity has not filed a federal tax or information return for the first year in which the election was intended to be effective because the due date for such return has not passed, or the relevant entity has timely filed all required federal tax and information returns consistent with its requested classification for all of the years that the entity intended the requested classification to be effective;

c. The relevant entity had reasonable cause for failure to file a timely Form 8832, and three years and 75 days from the requested effective date of the relevant entity's classification have not passed; and

d. The entity files a completed Form 8832 with a statement explaining the reason for the failure to file a timely Form 8832, the IRS will determine whether the requirements for granting additional time have been satisfied and will notify the entity of the result of its determination, presumably in a more expedited manner than that which might apply in the context of a private letter ruling request. See also Rev. Proc. 2013-30, 2013-36 I.R.B. 1 (setting forth the exclusive simplified methods for taxpayers to request relief for late S corporation elections, Electing Small Business Trust elections, Qualified Subchapter S Trust elections, Qualified Subchapter S Subsidiary elections, and late corporate classification elections which the taxpayer intended to take effect on the same date that the taxpayer intended that an S corporation election for the entity should take effect).

   Similar simplified procedures in lieu of a private letter ruling could apply in the case of certain failures to file the TRS election in a timely manner, which would reduce the potential burdens on the IRS and taxpayers.

9. **Nareit also recommends that the retroactivity rules under Form 8875 (for TRSs) conform to those under Form 8832 (Entity Classification)**. Treas. Reg. § 301.7701-3 permits an up-to-75-day retroactivity period. Form 8875 permits a two month and 15-day retroactivity period. There does not seem to be a reason why the two periods could not be conformed. The mismatch between the two periods is a source for potential foot faults. Accordingly, Nareit suggests clarifying that, when the Form 8832 and the Form 8875 are filed on the same date, (or the Form 8832 is effective on a prior date), a Form 8875 is not invalid if mailed prior to or on the same date as the Form 8832. Also, consider permitting the same mailing address for both the Form 8875 and the Form 8832, given that these forms often are mailed at the same time. As currently

drafted, Form 8832 must be sent to Ogden or to Kansas City, depending on the circumstances, while Form 8875 must be sent to Ogden.

10. **Additionally, Nareit recommends that the Form 8875 permit an electing entity to revoke its TRS election up to 75 days prior to the date of filing of the Form 8875**. Currently, the TRS election under Form 8875 cannot be revoked retroactively. On the other hand, Form 8832 does permit a subsequent change to an entity classification election to be made 75 days prior to the date of filing of Form 8832. Similarly, we suggest that a TRS be permitted to revoke its election under Form 8875 effective 75 days prior to the date of filing of Form 8875.

11. **Nareit recommends that an election on Form 8875 automatically effect (simultaneous with the chosen effective date for the TRS election) a "check-the-box" election for corporate entity classification**. A similar concept applies for exempt organizations, REITs, and S corporations under Treas. Reg. § 301.7701-3. An alternate approach would be to create a separate section on Form 8875 in which a check-the-box election could be made.

We believe that the foregoing suggested revisions would: assist the IRS in collecting the information necessary for the proper performance of the functions of the agency, enhance the quality, utility, and clarity of the information to be collected, including through e-filing; and assist in minimizing the burden of the collection of information on respondents.

Thank you for the opportunity to submit these comments.

We would be pleased to discuss these comments if you believe it would be helpful. Please feel free to contact me at (202) 739-9446 or dbernstein@nareit.com.

Respectfully submitted,

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