

Cohen & Co

April 1, 2019

Ms. Laurie Brimmer
Internal Revenue Service
Room 6529
1111 Constitution Avenue NW
Washington, DC 20224

Re: Comments on Form 8613, Return of Excise Tax on Undistributed Income of RICs

Dear Madam:

We are writing in response to the Internal Revenue Service (IRS) request for comments on Form 8613, Return of Excise Tax on Undistributed Income of Regulated Investment Companies. This request was made as part of the continued effort to reduce paperwork and respondent burden. We appreciate the opportunity to provide these comments.

As a brief introduction, Cohen & Company, Ltd. has 10 offices, more than 650 employees and is one of the largest CPA firms in the country providing accounting services to the investment industry. With a strong emphasis on tax expertise since the firm's inception in 1977, Cohen & Company provides tax compliance and/or consulting services to approximately 1,000 Regulated Investment Companies (RICs) across the country. Additionally, our commitment to technical excellence and our deep understanding of tax rules and regulations applicable to the RIC Industry have given us the opportunity to serve the profession in a number of prestigious ways. Members of our firm serve or have served on the ICI Tax Advisory Group, and on the AICPA's Investment Companies Expert Panel, Auditing Standards Board, Technical Issues Committee and Task Force on Private Company Financial Reporting, to name a few. We have also testified before Congress on specific tax initiatives and previously submitted comments with respect to other requests.

This submission is made on behalf of our RIC clients, which submit Form 8613 annually. These entities are subject to tax imposed under Internal Revenue Code Section 4982. Taxpayers must file Form 8613 in the event tax is owed or an election is made under Section 4982(e)(4). While the form is only required to be submitted in these cases, almost all RICs file this form to begin the tolling of the statute of limitations with respect to the tax imposed under Section 4982.

The Regulated Investment Company Modernization Act of 2010 (P.L. 111-325) made numerous changes to the taxation of RICs under both Subchapter M, which governs the general taxation of RICs, and under Section 4982, which governs the excise tax on undistributed income. No material modifications have been made to Form 8613 since December 2008, at which time the paid preparer signature was added as a requirement.

We request the IRS alter the presentation of Form 8613 to include a line item for reporting the elective deferral of certain ordinary losses, as defined under IRC Section 4982(e)(7). Our analysis supporting this request can be found on the following pages.

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Background & Analysis

As previously mentioned, the Regulated Investment Company Modernization Act of 2010 made significant changes to the taxation of RICs. One such change was the addition of the elective post-December ordinary loss deferral, now under Section 852(b)(8)(B)(ii) and defined in Section 852(b)(8)(F). This change allowed RICs to defer any loss in excess of the ordinary gain that is not considered a specified loss (defined under Section 852(b)(8)(E)) attributable to the portion of the taxable year after December 31.

Under Section 4982(e)(7), a RIC that has a taxable year other than the calendar year may elect to determine its ordinary income and net ordinary loss for the calendar year without regard to any portion of its net ordinary loss that occurs after the beginning of its fiscal year and before the end of such calendar year. If a RIC elects the application of this rule, the amount of net ordinary loss arising in the aforementioned period is treated as arising on the first day of the following calendar year. Similar to the elective deferral under Section 852(b)(8)(B)(ii), the elective deferral under 4982(e)(7) excludes specified losses determined under Section 4982(e)(5)(B)(ii).

These changes were made in an effort to align ordinary income distribution requirements between Subchapter M and Section 4982. Prior to these changes, a RIC that incurred ordinary losses following the excise tax period would potentially be required to make a return of capital distribution to shareholders. The cohesion of Section 852(b)(8) and Section 4982(e)(7) more accurately matches the distributable income of a RIC and the timing in which that income is paid to shareholders.

Recommendation

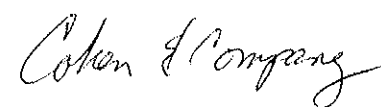
The Form 8613 instructions state: "To make the election, attach a statement to the return for the year in which the election will apply indicating the RIC is electing to defer its net ordinary loss under section 4982(e)(7) and specifying the amount of the net ordinary loss that the RIC is electing to defer." Given there is no requirement to attach a calculation of the amount deferred, specific loss items from which the deferral was generated, or a reversal of the prior year deferral, we propose a line item be included on Form 8613. This would allow for a specific place to indicate the taxpayer is making the election and the amount that is being deferred. The deferral should not factor into the calculation of required distribution on line 4 but rather remain a memo line item similar to the post-October/late year loss election on Form 1120-RIC, page three, Schedule K.

Alternative Proposal

As an alternative, we propose eliminating the attached statement and Section 4982(e)(7) disclosure entirely. This also would result in reduced paperwork and respondent burden. In lieu of the attached statement, RICs would maintain detailed calculations specifically identifying the amount deferred and manner in which it was calculated. It should be noted most RICs already maintain these calculation in their books and records. While we understand this alternative proposal would result in less visibility for the IRS, it would not change the approach RICs take.

Thank you for this opportunity to provide our comments on Form 8613. If you have any questions, please contact Jay Laurila, Ravi Singh, Robert Velotta, or Gordon Jones at 800.229.1099.

Very truly yours,



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