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One Elk Street, Albany, New York 12207 • 518.463.3200 • www.nysba.org

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April 7, 2008

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2354 Rayburn House Office Building
Washington, D.C. 20515-3215

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1500 Pennsylvania Avenue, N.W.
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Washington, D.C. 20510

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Recommendation for the Repeal of Internal Revenue Code Section
562(c) for Regulated Investment Companies and Real Estate
Investment Trusts

Dear Sirs:

I am writing on behalf of the Tax Section of the New York State Bar Association to recommend the repeal of Section 562(c) of the Internal Revenue Code as it applies to regulated investment companies (RICs) and real estate investment trusts (REITs). This 72-year-old provision, known as the "preferential dividend rule," no longer furthers its original purpose and complying with it significantly burdens RICs and REITs. For these reasons,

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we recommend that it be repealed as it applies to RICs and REITs. We also recommend administrative guidance that would permit RICs and REITs to correct inadvertent violations of the rule.

By way of background, RICs and REITs must satisfy a distribution requirement and otherwise rely on the “dividends paid deduction” to avoid a corporate-level tax. However, this deduction is not available for a “preferential” dividend, which generally includes any non-pro rata dividend within a class of shares or any dividend that violates a preference to which a class is entitled.

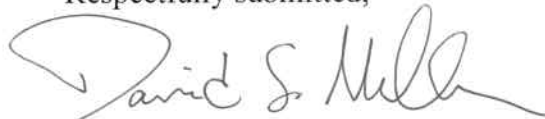
Paying a preferential dividend can therefore have dire consequences. A preferential dividend can prevent a RIC or REIT from satisfying its distribution requirement and cause it to become subject to corporate taxation on all of its income. Even a small, inadvertent error can potentially cause a dividend to be preferential and, if not remedied, result in corporate taxation. Moreover, there are currently no remedies for violations — even inadvertent violations — of the prohibition on preferential dividends that do not involve significant penalties and double taxation.

The enclosed report explains why the preferential dividend rule no longer effectively fulfills its purpose, why other rules more effectively fulfill that purpose and how complying with the preferential dividend rule significantly burdens RICs and REITs. The report also outlines the rule’s history and current application.

In view of the rule’s ineffectiveness and burdens, the report recommends that it be repealed. Until it is repealed or reformed, the report recommends that administrative guidance be issued permitting RICs and REITs to correct inadvertent violations of the rule.

We appreciate your consideration of our recommendations. We would be pleased to discuss these matters with you further or provide any other assistance that you would find helpful.

Respectfully submitted,

A handwritten signature in black ink that reads "David S. Miller". The signature is fluid and cursive, with a large initial "D" and "M".

David S. Miller,
Chair

(Enclosure)

cc: Edward Kleinbard
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