Congress of the United States
Washington, DC 20515

June 24, 2011

The Honorable Emily McMahon
Acting Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Requested Withdrawal of Notice 2007-55

Dear Ms. McMahon and Mr. Wilkins,

We request that you withdraw IRS Notice 2007-55 with respect to the treatment of liquidating distributions of a real estate investment trust (REIT) as a sale of real estate subject to the FIRPTA tax rules rather than a sale of stock. Withdrawal of this notice and reinstatement of prior law should provide greater parity and certainty to investors as well as encourage greater direct foreign investment in the U.S. commercial real estate market at a time when our nation needs this private investment.

According to the Federal Reserve's "beige book" released in March, while there were a few promising signs in certain districts, overall, the Federal Reserve's contacts anticipate "a slow recovery in commercial real estate markets." With hundreds of billions of dollars in commercial mortgages -- billions of dollars which are underwater -- up for bank refinancing in the coming two years, as well as continued slack in bank lending and overall economic uncertainty, a new and large influx of capital including from foreign sources like Sovereign Wealth Funds (SWF) should be welcomed and encouraged as another way to strengthen our economy.

Prior to the issuance of IRS Notice 2007-55, foreign shareholders relied on well-established U.S. tax law providing that REIT liquidating distributions were treated as sales of stock. The Internal Revenue Code specifically states that amounts received by a shareholder in a distribution in complete liquidation of a corporation "shall" be treated as in full payment in exchange for the stock. It has been the intent of Congress that liquidating distributions by REITs, as with the liquidating distributions of any other corporation, be treated as sales of stock.

Notice 2007-55, issued by the IRS in 2007, arrived, for the first time, at a conclusion that liquidating distributions to foreign shareholders should be treated, to the extent attributable to gain with respect to U.S. real property, as capital gain distributions subject to FIRPTA but only for foreign investors. Needless to say, the IRS's position has caused considerable consternation in the foreign investor community and has severely constrained continued foreign investment in U.S. real estate.

The Notice also creates distinctions in tax treatment between REIT shareholders in economically parallel positions. For example, REIT liquidating distributions to domestic shareholders are treated as sales of stock (exempt from FIRPTA taxation), while those to foreign shareholders are not, and hence are open to a new level of taxation, discouraging foreign investment in the U.S. Since liquidating distributions are the economic equivalent of a shareholder selling all of its stock in a REIT, there is no reason why the tax consequences should be different.

The Notice has become a significant impediment to foreign investment in U.S. real estate at a time when the markets are in dire need of foreign capital. With the Notice outstanding, foreign investors are now uncertain regarding the potential U.S. tax burden that may be imposed on gains from investments in U.S. real estate. They are therefore hesitant to invest more equity in U.S. real estate. Furthermore, should the position set forth in the Notice be adopted in more formal Treasury regulations, foreign investors will find U.S. real estate a far less attractive investment than in the past.

As stated in a 2008 letter from the Canada Pension Plan Investment Board to the Treasury International Tax Counsel's office regarding the investment decisions foreign investors may make in light of the Notice, "the interpretation of section 892 contained in the Notice (2007-55) will result in less foreign investment in U.S. real estate funds structured as REITs." The result is counterproductive to all current efforts to attract investment and exacerbates the current upheaval in the commercial real estate market.

Therefore, we respectfully urge you to withdraw IRS Notice 2007-55 and reinstate the IRS's previous treatment of REIT liquidating distributions as sales of stock. We appreciate your consideration of this request, and we urge you to contact our offices as you consider the issues raised in this letter.

Sincerely,

Joseph Crowley
Member of Congress

Kevin Brady
Member of Congress

Charles B. Rangel
Member of Congress

Devin Nunes
Member of Congress

Fortney Pete Stark
Member of Congress

Patrick J. Tiberi
Member of Congress

Jim McDermott
Member of Congress

David G. Reichert
Member of Congress

John Lewis
Member of Congress

Charles W. Boustany, Jr.
Member of Congress

Richard E. Neal
Member of Congress

Peter J. Roskam
Member of Congress

Mike Thompson
Member of Congress

Tom Price
Member of Congress

John B. Larson
Member of Congress

Vern Buchanan
Member of Congress

Earl Blumenauer
Member of Congress

Aaron Schock
Member of Congress

Ron Kind
Member of Congress

Bill Pascrell, Jr.
Member of Congress

Shelley Berkley
Member of Congress

Rick Berg
Member of Congress

Lynn Jenkins
Member of Congress

Erik Paulsen
Member of Congress

Kenny Marchant
Member of Congress

Tom Reed
Member of Congress