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## IRS Releases Additional Rulings Revoking Prior CLN Rulings Issued to RICs

The IRS continued to release private letter rulings revoking rulings previously issued to RICs relating to their investments in commodity linked notes (CLNs). The private letter rulings were revoked because of the issuance of guidance providing that the IRS will no longer issue letter rulings on questions relating to the treatment of a corporation as a RIC that requires a determination of whether a financial instrument or position is a security under the Investment Company Act of 1940. (See our prior coverage here ([http://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-september-28-2016?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=tax-insights-2017-05-10](http://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-september-28-2016?utm_source=newsletter&utm_medium=email&utm_campaign=tax-insights-2017-05-10).) The IRS’s private letter rulings involving a RIC’s investment in CLNs implicitly required such a determination; therefore, rulings where a RIC was able to demonstrate that it relied upon the ruling (i.e., by investing in CLNs) were revoked prospectively. These normally permitted a RIC to rely on the ruling for CLN investments made on or prior to June 30, or retroactively to all years open under the statute of limitations on assessment, as of the date of the letter of revocation, and to all future years (i.e., because, despite the CLN ruling, the RIC either did not invest in CLNs or invested in CLNs indirectly through a wholly owned offshore subsidiary). A RIC’s investment in a CLN still is permissible, in part, if the CLN constitutes a security under Section 2(a)(36) of the 1940 Act, as amended. The rulings issued are categorized as follows:

Rulings Providing for Prospective Revocation	Rulings Providing for Retroactive
Private Letter Rulings: 201717020, 201717022, 201717024, 201717025, 201717031, 201717032, 201717034, 201717035	Private Letter Rulings: 201717021, 201717026, 201717027, 201717028, 201717029, 201717033

## House Passes ACA Repeal Bill

H.R. 1628, the American Health Care Act (AHCA) (<https://www.congress.gov/bill/115th-congress/house-bill/1628>), was passed by the House on May 4. The AHCA would repeal the Affordable Care Act and its taxes, including the 3.8 percent tax on net investment income. The AHCA will now be considered in the Senate.

## Wyden Introduces MODA to Reform Tax Treatment of Derivatives

S. 1005, the Modernization of Derivatives Tax Act of 2017 (MODA) (<https://www.congress.gov/bill/115th-congress/senate-bill/1005>), introduced by Sen. Ron Wyden, D-Ore., of the Senate Finance Committee, “modernizes” the tax treatment of derivatives and their underlying investments. Under MODA, any item of income, deduction, gain or loss taken into account with respect to a derivative would be treated as ordinary income or loss.

## IRS Rules on Distribution of Cash and Stock for REIT Purposes

In private letter ruling 201717005 (<https://www.irs.gov/pub/irs-wd/201717005.pdf>), the IRS ruled that the distribution of cash and stock by a REIT to its shareholders (determined at the election of each shareholder, subject to a limitation on the aggregate amount of cash distributed of not less than 20 percent of the total distribution and certain other limitations) to effect a distribution of all of the REIT's earnings and profits accumulated in taxable years prior to its REIT election will be treated as a distribution of property with respect to the REIT's stock to which Sections 301 and 857(a)(2) apply by reason of Section 305(b). (Section references are to the Internal Revenue Code of 1986, as amended, unless noted otherwise.) Moreover, cash and stock distributions by the REIT to its shareholders in its first two taxable years as a REIT will be treated as distributions of property with respect to the REIT's stock to which Sections 301 and 857(a)(1) apply by reason of Section 305(b). The IRS also ruled that the amount of any distribution of stock received by any shareholder as part of the REIT's cash or stock distributions in the two years following the effective date of the REIT election that qualifies for the deduction for dividends paid under Section 857(b)(2)(B) in such amounts as will permit the REIT to satisfy its distribution requirements under Section 857(a)(1) will be considered to be equal to the amount of cash that the shareholder could have elected to receive instead.

## IRS Rules on Distributions of Stock and Securities

In Revenue Ruling 2017-9, 2017-21 IRB 1 (<https://www.irs.gov/pub/irs-drop/rr-17-09.pdf>), the IRS ruled that the transfer by a parent corporation to its subsidiary of property (including a transfer of property constituting an active trade or business for the purpose of meeting the requirements of Section 355(b)(1)(A)) immediately followed by the distribution by the subsidiary to the parent corporation of the stock of its controlled subsidiary is treated as an exchange to which Section 351 applies, followed by a distribution of stock of the controlled subsidiary to which Section 355 applies. The IRS found that the two transfers (i.e., the transfer by the parent corporation to its subsidiary and the transfer by the subsidiary of the controlled subsidiary stock to the parent) were separate transactions and that the effect of the steps was consistent with the policies underlying Sections 351 and 355. The IRS further ruled that a transfer of money or other property by the controlled subsidiary to its parent corporation, made in pursuance of a plan of reorganization under Sections 368(a)(1)(D) and 355, would follow its substance and be considered a distribution.



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## Trump Signs Executive Order Relating To Electioneering Prohibition

President Trump signed an executive order (<https://www.whitehouse.gov/the-press-office/2017/05/04/presidential-executive-order-promoting-free-speech-and-religious-liberty>) on May 4 instructing the IRS to use “maximum enforcement discretion” over a rarely enforced regulation that bars tax-exempt religious groups from endorsing political candidates or positions. The order directs the IRS not to take adverse action against individuals, houses of worship or other religious organizations that speak about moral or political issues from a religious perspective “where speech of similar character has, consistent with law, not ordinarily been treated as participation or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office by the Department of the Treasury.” “Adverse action” is defined in the order as imposing a tax penalty, delaying or denying tax-exempt status, disallowing deductions for contributions to section 501(c)(3) organizations, or other actions that deny or make unavailable a deduction, exemption, credit or benefit. The White House originally said President Trump would urge the IRS to use “maximum enforcement discretion” regarding the Johnson Amendment, which was passed in 1954 and prohibits 501(c)(3) organizations from endorsing specific political candidates. However, the order instructs the Department of Treasury to enforce the law as it is currently written. The amendment is named for Lyndon B. Johnson, who introduced it in the Senate in 1954 (almost a decade prior to when he became president). As a candidate and after taking office, President Trump stated that he would “totally destroy” the Johnson Amendment. The repeal of the Johnson Amendment might be included as part of tax reform legislation being developed in the House of Representatives.