

Client Alert

September 2016

IRS Issues Final Regulations That Clarify Definition of “Real Property” for REITs

The Internal Revenue Service (“IRS”) recently finalized regulations (the “Regulations”) clarifying the definition of “real property” for purposes of the REIT rules. The Regulations generally are consistent with the proposed regulations that were issued in May 2014. The Regulations will be effective for taxable years beginning after August 31, 2016. Taxpayers may rely on the Regulations for quarters that end before the effective date. Click [here](#) to read the full text of the Regulations.

The Regulations clarify that the following items, which are not currently addressed by published IRS guidance, constitute “real property” under REIT rules:

Qualify as Real Property	
<ul style="list-style-type: none"> Water and air space superjacent to land 	<ul style="list-style-type: none"> Natural products (including crops) and deposits (including ores and minerals) that are unsevered from land
<ul style="list-style-type: none"> Microwave transmission, cell, broadcast and electrical transmission towers* 	<ul style="list-style-type: none"> Transmission lines, pipelines and offshore drilling platforms*
<ul style="list-style-type: none"> Storage structures (including silos and oil and gas storage tanks)* 	<ul style="list-style-type: none"> Stationary wharves and docks (e.g., marinas)*
<ul style="list-style-type: none"> Outdoor advertising displays for which an election has been made under Internal Revenue Code Section 1033(g) (e.g., billboards) 	<ul style="list-style-type: none"> Central refrigeration systems, integrated security systems and humidity control systems**
<ul style="list-style-type: none"> Goodwill attributable to real property 	<ul style="list-style-type: none"> Licenses, permits or other rights for the use of real property

* If permanently affixed

** If part of an inherently permanent structure and held together with a real property interest

The Regulations also provide factors to be utilized in making a “facts and circumstances determination” as to whether items not specifically listed above or otherwise in the Regulations qualify as real property.

The IRS provided several examples indicating certain types of property that do or do not qualify as “real property.” Based on the facts in the examples, the Regulations made the following classifications:

Qualify as Real Property	Do Not Qualify as Real Property
<ul style="list-style-type: none"> • Permanently affixed sculptures 	<ul style="list-style-type: none"> • Bus shelters
<ul style="list-style-type: none"> • Conventional partition systems 	<ul style="list-style-type: none"> • Modular partition systems
<ul style="list-style-type: none"> • Solar mounts for photovoltaic (“PV”) modules and buried exit wire for a solar energy site 	<ul style="list-style-type: none"> • PV modules in solar energy sites that sell electricity to third parties
<ul style="list-style-type: none"> • Valves and vents in a pipeline transmission system 	<ul style="list-style-type: none"> • Meters and compressors in a pipeline transmission system
<ul style="list-style-type: none"> • Electrical and telecommunications infrastructure systems in data centers 	<ul style="list-style-type: none"> • Casino licenses

Effective Dates

The Regulations will be effective for taxable years beginning after August 31, 2016. Taxpayers may rely on the Regulations for quarters that end before the effective date.

Hunton & Williams LLP Tax Practice

Hunton & Williams LLP attorneys are available to provide more information about the Regulations. If you would like to receive more information, please contact George C. Howell, III at (804) 788-8793 or ghowell@hunton.com, Kendal A. Sibley at (804) 788-8697 or ksibley@hunton.com or Allison M. Stelter at (804) 788-8672 or astelter@hunton.com.

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