

Part III - Administrative, Procedural and Miscellaneous

Payments made to a REMIC pursuant to the Home Affordable Modification Program

Notice 2009-36

The Internal Revenue Service (Service) and the Department of the Treasury (Treasury) intend to issue regulations regarding the application of section 860G(d) of the Internal Revenue Code to certain amounts that may be paid to real estate mortgage investment conduits (REMICs) as part of the Home Affordable Modification Program (HAMP). The HAMP was announced on February 18, 2009, and many details of its operation were provided on March 4, 2009. See documents entitled “Home Affordable Modification Program Guidelines” and “Making Home Affordable, Summary of Guidelines.”

BACKGROUND

.01 Section 860G(d)(1) states that, except as provided in section 860G(d)(2), “if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution.”

.02 Section 860G(d)(2) provides that this tax does not apply to any cash contributions that are—

(A) Contributions made to facilitate a clean-up call or a qualified liquidation;

(B) Payments in the nature of a guarantee;

(C) Contributions made during the 3-month period beginning on the startup day;

(D) Contributions made to a qualified reserve fund by any holder of a residual interest in the REMIC; or

(E) Other contributions permitted in regulations.

.03 The question has arisen whether some of the payments that may be made to REMICs under the HAMP are “contributions” that are described in section 860G(d)(1) and, if so, whether they are covered by the exceptions in section 860G(d)(2).

DISCUSSION

If a payment is made to a REMIC under the HAMP, if the payment is described in section 860G(d)(1), and if the payment is not covered by any of the exceptions in section 860G(d)(2), then regulations to be issued by the Service and Treasury will provide an exception for that payment. The regulations are expected to be effective for payments made on or after March 4, 2009. Pending the issuance of further guidance, taxpayers may rely on this Notice and, accordingly, any payment made to a REMIC under the HAMP will not be subject to the 100 percent tax set forth in section 860G(d)(1).

DRAFTING INFORMATION

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