Internal Revenue
bulletin

Bulletin No. 2012-3
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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2012–2, page 286.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for January 2012.

Notice 2012–3, page 289.

This notice provides guidance on current refunding issues (as defined in Treas. Reg. section 1.150–1(d)(3)) that refund outstanding prior issues of bonds that qualify for tax-exempt bond financing under certain disaster relief bond programs. The notice applies to current refunding issues that are used to refund original tax-exempt bonds that met the qualification requirements for one of the following programs: (1) "qualified Gulf Opportunity Zone Bonds" under section 1400N of the Code; (2) "qualified Midwestern disaster area bonds" under section 702(d)(1) of the Heartland Disaster Tax Relief Act of 2008 (the "Heartland Disaster Act"); and (3) "qualified Hurricane Ike disaster area bonds" under section 704(a) of the Heartland Disaster Act.

Notice 2012–5, page 291.

This notice provides a safe harbor reporting method that an eligible real estate mortgage investment conduit (REMIC) may use to satisfy its reporting obligations with respect to information regarding REMIC assets that the REMIC must report to residual interest holders.

Rev. Proc. 2012–13, page 295.

Maximum vehicle values. This procedure provides the maximum vehicle values for use with the special valuation rules under regulations section 1.61–21(d) and (e). These values are adjusted for inflation and must be adjusted annually by reference to the Consumer Price Index.

Rev. Proc. 2012–14, page 296.

Section 856 — REIT safe harbor for certain REMIC investments. Safe harbor providing the extent to which investments by a real estate investment trust (REIT) in a regular or a residual interest in certain real estate mortgage investment conduits (REMICs) are qualifying investments and generate qualifying income for REIT purposes under section 856(c) of the Code.

EMPLOYEE PLANS

Notice 2012–6, page 293.

This notice extends and expands the transition relief provided under Rev. Rul. 2011–1, 2011–2 I.R.B. 251, and Rev. Rul. 2008–40, 2008–2 C.B. 166, for certain group trusts, certain retirement trusts that qualify under the Puerto Rico Internal Revenue Code, and that participate in group trusts, and certain qualified retirement plans that benefit Puerto Rico residents. This notice also provides additional time for governmental retiree benefit plans described in section 401(a)(24) of the Code (section 401(a)(24) plans) to be amended to satisfy the applicable requirements of Rev. Rul. 2011–1. Rev. Ruls. 2011–1 and 2008–40 modified.

(Continued on the next page)

Actions Relating to Court Decisions is on the page following the Introduction.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

EXEMPT ORGANIZATIONS

Notice 2012–4, page 290.
This notice notifies tax-exempt organizations that the IRS Modernized eFile system will not be available from January 1, 2012 through February 29, 2012 for electronic filing for Form 990, *Return of Organization Exempt From Income Tax*, Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*, Form 990-PF, *Return of Private Foundation*, or Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*. In addition, this notice describes options available to organizations affected by this two month suspension period and provides relief under sections 6081, 6651 and 6652 of the Code with respect to certain filing requirements.

ADMINISTRATIVE

Rev. Proc. 2012–13, page 295.
Maximum vehicle values. This procedure provides the maximum vehicle values for use with the special valuation rules under regulations section 1.61–21(d) and (e). These values are adjusted for inflation and must be adjusted annually by reference to the Consumer Price Index.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. "Nonacquiescence" signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner does ACQUIESCE in the following decision:

Ronald Andrew Mayo and Leslie Archer Mayo v. Commissioner,[1]
136 T.C. 81 (2011)

[1] Acquiescence relating to the court's holding that business expenses incurred by a professional gambler are deductible under section 162 of the Code and are not subject to section 165(d).

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for January 2012.

Rev. Rul. 2012–2

This revenue ruling provides various prescribed rates for federal income tax purposes for January 2012 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the deemed rate of return for transfers made during calendar year 2012 to pooled income funds described in section 642(c)(5) that have been in existence for less than 3 taxable years immediately preceding the taxable year in which the transfer was made.

REV. RUL. 2012–2 TABLE 1

Applicable Federal Rates (AFR) for January 2012

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	.19%	.19%	.19%	.19%
110% AFR	.21%	.21%	.21%	.21%
120% AFR	.23%	.23%	.23%	.23%
130% AFR	.25%	.25%	.25%	.25%
Mid-term				
AFR	1.17%	1.17%	1.17%	1.17%
110% AFR	1.29%	1.29%	1.29%	1.29%
120% AFR	1.40%	1.40%	1.40%	1.40%
130% AFR	1.53%	1.52%	1.52%	1.52%
150% AFR	1.77%	1.76%	1.76%	1.75%
175% AFR	2.06%	2.05%	2.04%	2.04%
Long-term				
AFR	2.63%	2.61%	2.60%	2.60%
110% AFR	2.89%	2.87%	2.86%	2.85%
120% AFR	3.15%	3.13%	3.12%	3.11%
130% AFR	3.42%	3.39%	3.38%	3.37%

REV. RUL. 2012–2 TABLE 2

Adjusted AFR for January 2012

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	.38%	.38%	.38%	.38%
Mid-term adjusted AFR	1.50%	1.49%	1.49%	1.49%
Long-term adjusted AFR	3.47%	3.44%	3.43%	3.42%

REV. RUL. 2012–2 TABLE 3

Rates Under Section 382 for January 2012

Adjusted federal long-term rate for the current month	3.47%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	3.55%

REV. RUL. 2012–2 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for January 2012

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.44%
Appropriate percentage for the 30% present value low-income housing credit	3.19%

REV. RUL. 2012–2 TABLE 5 Rate Under Section 7520 for January 2012	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	1.4%

REV. RUL. 2012–2 TABLE 6 Deemed Rate for Transfers to New Pooled Income Funds During 2012	
Deemed rate of return for transfers during 2012 to pooled income funds that have been in existence for less than 3 taxable years	1.8%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2012. See Rev. Rul. 2012-2, page 286.

Part III. Administrative, Procedural, and Miscellaneous

Current Refundings of Tax-Exempt Bonds in Certain Disaster Relief Bond Programs

Notice 2012–3

SECTION 1. PURPOSE

This notice provides guidance on "current refunding issues" (as defined in § 1.150–1(d)(3)) that refund outstanding prior issues of bonds that qualify for tax-exempt bond financing under certain disaster relief bond programs. In particular, this notice applies to current refunding issues that are used (directly or indirectly in a series of current refunding issues) to refund original tax-exempt bonds that met the qualification requirements for one of the following programs: (1) qualified Gulf Opportunity Zone Bonds under § 1400N ("GO Zone Bonds") of the Internal Revenue Code (the "Code"); (2) qualified Midwestern disaster area bonds under § 702(d)(1) of the Heartland Disaster Tax Relief Act of 2008 (the "Heartland Disaster Act"), Subtitle A of Title VII of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Division C of Public Law 110–343, 122 Stat. 3765 (2008) ("Midwest Disaster Area Bonds"); and (3) qualified Hurricane Ike disaster area bonds under § 704(a) of the Heartland Disaster Act ("Hurricane Ike Disaster Area Bonds"). These original qualified tax-exempt bonds are referred to collectively in this notice as "Qualified Bonds."

SECTION 2. BACKGROUND

Section 101 of the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109–135, 119 Stat. 2577, 2578 (2005) ("GO Zone Act") added §§ 1400M and 1400N to the Code to provide certain tax benefits in a defined portion of the Hurricane Katrina disaster area. Section 1400N(a)(2) authorizes the issuance of tax-exempt GO Zone Bonds. Section 1400N(a)(2) sets forth certain requirements for issuing these bonds, including a requirement that such bonds be "designated" as qualified GO Zone Bonds by a specified State or local governmental official or state bond commission. Section 1400N(a)(3) imposes a bond volume cap on the maximum aggregate face amount of bonds that may be designated as qualified GO Zone Bonds. Section 764 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111–312, 124 Stat. 3296, 3324 (2010), extended the deadline for the issuance of GO Zone Bonds through December 31, 2011. For further guidance on GO Zone Bonds, *see* Notice 2006–41, 2006–1 C.B. 857 (May 1, 2006).

Sections 702(d)(1) and 704(a) of the Heartland Disaster Act provide generally that the special provisions for tax-exempt private activity bond financing in the GO Zone under § 1400N of the Code apply with certain modifications to tax-exempt private activity bond financing in the Midwestern Disaster Area and Hurricane Ike Disaster Area, respectively. Midwest Disaster Area bonds and Hurricane Ike Disaster Area bonds must be issued by December 31, 2012. For further guidance on Midwest Disaster Area Bonds and Hurricane Ike Disaster Area Bonds, *see* Notice 2010–10, 2010–3 I.R.B. 299 (January 19, 2010).

The statutory provisions relating to the Qualified Bonds are silent regarding the permissibility of current refundings of these bonds after the applicable bond issuance deadlines. Under a substantially similar predecessor provision for qualified New York Liberty Bonds, the Treasury Department and the IRS previously provided guidance on the allowability of current refundings within certain size limitations for purposes of bond issuance deadlines applicable to those bonds. *See* Notice 2003–40, 2003–2 C.B. 10, at Question 5 (July 7, 2003). *Cf.* Staff of Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of H.R. 4440, The "Gulf Opportunity Zone Act of 2005," as Passed by the House of Representatives and the Senate* 5–6, JCX–88–05 (December 16, 2005) (including a description of the Liberty Bond provision in the discussion of present law and also stating that "[c]urrent refundings of outstanding [GO Zone] bonds issued under the provision do not count against the aggregate volume limit to the extent that the principal amount of the refunding bonds does not exceed the outstanding principal amount of the bonds being refunded").

SECTION 3. SCOPE AND APPLICATION

3.01. *Guidance and Reliance*. Pending the promulgation and effective date of future administrative or regulatory guidance, taxpayers may rely on the guidance provided in this notice.

3.02. *Scope of Application*. This notice applies to any current refunding issue that is used (directly or indirectly in a series of current refunding issues) to refund original Qualified Bonds described in Section 1 of this notice if the following requirements are met:

(1) The original Qualified Bonds were issued before the deadline for the issuance of such bonds under § 1400N(a)(2)(D) for GO Zone Bonds or under the modified version of such provision for Midwest Disaster Area Bonds or Hurricane Ike Disaster Area Bonds, as applicable, or any statutory extension of such deadline.

(2) Except as provided herein, the "issue price" (as defined in § 1.148–1(b)) of the current refunding issue is no greater than the outstanding stated principal amount of the refunded bonds. For refunded bonds originally issued with more than a *de minimis* amount of original issue discount or premium (as defined in § 1.148–1(b)) the present value of the refunded bonds (as determined under § 1.148–4(e)) must be used in lieu of the outstanding stated principal amount to determine the maximum issue price of the current refunding issue.

(3) The current refunding issue otherwise meets all applicable requirements for the issuance of tax-exempt private activity bonds as Qualified Bonds, including, without limitation, the requirement under § 147(b) that the average bond maturity be no longer than 120 percent of the average reasonably expected economic life of the facilities financed or refinanced with the net proceeds of such issue.

3.03. *Guidance*. A current refunding issue that meets the requirements of Section 3.02 of this notice may be issued after the specified deadline for the issuance of the original Qualified Bonds under § 1400N(a)(2)(D) for GO Zone Bonds (or under the modified version of such provision for Midwest Disaster Area Bonds or Hurricane Ike Disaster Area Bonds,

as applicable) and be treated as an issue of Qualified Bonds. In addition, in the case of such a current refunding issue, a designation of the original Qualified Bonds by a specified State or local governmental official or state bond commission that meets the designation requirement of § 1400N(a)(2)(C) for GO Zone Bonds (or the modified version of such provision for Midwest Disaster Area Bonds or Hurricane Ike Disaster Area Bonds, as applicable) is treated as meeting this designation requirement for the current refunding issue without further designation or further official State or local governmental action.

3.04. *No Inferences*. Other than bonds issued to currently refund Qualified Bonds, to which this notice expressly applies, no inference should be drawn from this notice that bonds issued to refund other types of bonds, such as build America bonds under § 54AA, after their statutory deadline for issuance meet the qualifications for such types of bonds.

SECTION 4. DRAFTING INFORMATION

The principal authors of this notice are Timothy L. Jones and Vicky Tsilas of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Vicky Tsilas at (202) 622–3980 (not a toll-free call).

Certain Filing Changes for Tax-Exempt Organizations

Notice 2012–4

This notice notifies tax-exempt organizations (organizations) that the IRS Modernized eFile (MeF) system will not be available from January 1, 2012 through February 29, 2012 for electronic filing of Form 990, *Return of Organization Exempt From Income Tax*, Form 990–EZ, *Short Form Return of Organization Exempt From Income Tax*, Form 990–PF, *Return of Private Foundation*, or Form 1120–POL, *U.S. Income Tax Return for Certain Political Organizations* (affected returns). In addition, this notice describes options available to organizations affected by this two month suspension period and provides relief under sections 6081, 6651, and 6652 of the Internal Revenue Code with respect to certain filing requirements. This notice also notifies tax-exempt hospital organizations that, beginning with the 2011 tax year, Form 990, Schedule H, Part V, Section B (Part V.B) is no longer optional, with the exception of lines 1 through 7.

Two-Month Suspension of IRS MeF System for 990 and 1120–POL Filers

In order to facilitate systems and programming changes, the IRS is suspending the availability of its MeF system for filing Forms 990, 990–EZ, 990–PF, and 1120–POL from January 1, 2012 through February 29, 2012 (the suspension period). Although no organizations will be able to file these forms electronically during the suspension period, only organizations with filing due dates (or extended due dates) for such returns in the suspension period are considered "affected organizations" for purposes of this notice. Paper forms may continue to be filed during the suspension period and affected organizations may take advantage of the relief provided in this notice including the ability to file electronically by March 30, 2012. Organizations that file Form 990–N (e-Postcard) may continue to file electronically during this period.

Extended Filing Date for Eligible Affected Organizations

In order to minimize the impact on affected organizations, the IRS is granting an extension of time to file affected returns to March 30, 2012 to organizations whose original due date (or first three-month extended due date) for the affected return occurs during the suspension period. The extension of time to file applies to all such organizations with affected return filings due during this period, whether or not they are required to file electronically. Affected organizations required to file electronically may file electronically prior to January 1, 2012 or between March 1, 2012 and March 30, 2012. Affected organizations that are not required to file electronically may do the same or may file on paper by March 30, 2012. This extension of time to file is automatic; therefore, affected organizations need not file Form 8868, *Application for Extension of Time To File an Exempt Organization Return,* if they file their returns by March 30, 2012.

Because extensions of time to file, generally, may not exceed six months, the extension of time to file to March 30, 2012 provided by this notice is not available for affected organizations that have already obtained two three-month extensions of time to file (*i.e.*, the full six-month extension allowed by statute). However, as discussed in more detail below, the IRS will provide relief from any late filing penalty to affected organizations that were previously granted two three-month extensions of time to file that expire during the suspension period, provided their returns are filed by March 30, 2012. In addition, as indicated in more detail below, this notice provides such organizations normally required to file electronically the option of filing on paper during the suspension period.

Interaction between the March 30, 2012 Extension and Other Extensions

An affected organization that has not previously received an extension and wishes to extend its filing due date until after March 30, 2012, may request an automatic three-month extension of time to file by properly completing and filing Form 8868 by its original due date. For example, an organization with an original Form 990 due date of February 15, 2012 that properly completes and files Form 8868 by February 15, 2012 will receive a three-month extension of time to file that ends on May 15, 2012. In the case of an organization that has already obtained an automatic three-month extension that ends during the suspension period, the IRS will grant the organization an additional 3-month extension if the organization properly completes and files Form 8868 by its extended due date. For example, a February 15, 2012 extended due date will be further extended to May 15, 2012 if the organization properly completes and files Form 8868 by February 15, 2012. An affected organization that has already received two three-month extensions, the second of which ends during the suspension period, may not request a further extension (but as discussed below, no penalty for failure to file will apply if the

organization files its return by March 30, 2012).

Extension of Time to File Does Not Extend Time to Pay Any Tax Liability

Organizations are reminded that an extension of time to file, including the automatic extension of time to file to March 30, 2012 provided in this notice, is not an extension of time to pay any tax liabilities that may be due for the year. Therefore, an organization that has a tax liability for a return that has a due date that falls within the suspension period must make a timely payment of the amount due either by making an estimated tax payment or by filing its return on paper, if permitted normally or under this notice as described below, and remitting payment with its return or by electronic funds transfer if required.

Relief from Late Filing Penalty

An affected organization with a second extended filing due date that falls during the suspension period is not eligible for an additional extension of time to file. However, if such an organization files its return by March 30, 2012, it will have reasonable cause for its late filing and, therefore, will not be subject to a late filing penalty. Such an organization that files by March 30, 2012 is not required to file a Reasonable Cause Statement in order to take advantage of this late filing penalty relief. However, in order to avoid receiving a system-generated penalty notice for late filing, each affected organization should attach a Reasonable Cause Statement to its return. Appendix A of this notice contains an example of a Reasonable Cause Statement that organizations can use. If an affected organization erroneously receives a system-generated penalty notice for late filing from the IRS, the organization should call the telephone number on the penalty notice to request that the IRS abate the penalty in accordance with Notice 2012–4.

Limited Option to File on Paper during the Suspension Period

The automatic extension and automatic penalty relief provisions of this notice are designed to ensure that any affected organization whose filing is delayed by reason of the suspension of the MeF system will not suffer adverse consequences and will be accorded the same results as if it filed a return by the normal filing deadline. The IRS recognizes, however, that some affected organizations generally required to file electronically that have already obtained two three-month filing extensions may be uncomfortable relying on the late filing penalty relief provided in this notice. In that circumstance, the affected organization may file its return on paper. Organizations that are normally required to file electronically and choose to file on paper pursuant to this notice may receive a system-generated form asking for an explanation of why they did not file electronically. It will be sufficient to respond "Paper Filing Pursuant to Notice 2012–4."

Schedule H for Hospitals

Section 9007 of the Patient Protection and Affordable Care Act (Affordable Care Act), Pub. L. No. 111–148, 124 Stat. 119 (March 23, 2010), included new requirements for tax-exempt hospital organizations and their hospital facilities, including information return reporting requirements. To gather information on hospital organizations' compliance with these requirements and on related policies and practices, the IRS revised the Form 990, Schedule H for tax year 2010 to add a new Part V.B. To give the hospital community more time to familiarize itself with the types of information the IRS is requesting, the IRS made Part V.B optional for tax year 2010. *See* Announcement 2011–37, 2011–27 I.R.B. 37. Beginning in tax year 2011, Part V.B is no longer optional, with the exception of lines 1 through 7, regarding community health needs assessments (CHNAs), as the CHNA requirements of the Affordable Care Act are only effective for tax years beginning after March 23, 2012. Accordingly, hospital organizations that are reqiired to file the 2011 Form 990 are required to complete all parts and sections of the 2011 Schedule H, including Part V.B, except lines 1 through 7 of Part V.B.

The IRS has considered public input on Part V.B, and has made revisions to Part V.B for tax year 2011. The IRS anticipates making further revisions to Part V.B for future years and welcomes further public input. To be considered for the tax year 2012 form revisions, input must be received by January 15, 2012. Input submitted after such date will be considered for future years. Input can be submitted to *Form990Revision@irs.gov* or the following address:

Internal Revenue Service
Attn: Stephen Clarke (Notice 2012–4)
SE:T:EO
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

The principal author of this notice is Stephen Clarke of the Tax Exempt and Government Entities Division. For further information regarding this notice, please contact Mr. Clarke at (202) 283–9474 (not a toll-free number).

APPENDIX A

Reasonable Cause Statement

This return is being filed between March 1, 2012, and March 30, 2012, as directed by the IRS in Notice 2012–4, because electronic filing was not available January 1, 2012 through February 29, 2012. We request that penalties be waived because it would be inequitable to impose a penalty on us due to the unusual circumstances requiring us to delay the filing of this return.

Safe Harbor Reporting Method for Eligible REMICS Required to Report on Schedule Q Information with Respect to REMIC Assets

Notice 2012–5

PURPOSE

This notice provides a safe harbor reporting method that an eligible real estate mortgage investment conduit (REMIC) may use to satisfy its reporting obligations under § 1.860F–4(e)(1)(ii) of the Income Tax Regulations with respect to information regarding REMIC assets that the REMIC must report to residual interest holders on a Schedule Q (Form 1066), *Quarterly Notice to Residual Interest*

Holder of REMIC Taxable Income or Net Loss Allocation (Schedule Q).

THE HOME AFFORDABLE REFINANCE PROGRAM (HARP)

In April 2009, the Federal Housing Finance Agency (FHFA) and the United States Department of the Treasury introduced the Home Affordable Refinance Program (HARP) as part of the United States Government's Making Home Affordable Program. On October 24, 2011, FHFA, with Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac), announced an expansion of HARP in an effort to serve additional eligible borrowers who can benefit from refinancing their home mortgages. Details of the expansion were announced on November 15, 2011.

HARP serves borrowers who may not otherwise qualify for refinancing, either because the value of their homes has declined or because they cannot obtain mortgage insurance. The program is available to borrowers who owe more on their mortgages than the value of their homes. HARP provides these homeowners with the ability to refinance their mortgages into more affordable and sustainable mortgages.

LAW

REMICs are widely used securitization vehicles for mortgages. REMICs are governed by sections 860A through 860G of the Internal Revenue Code. For an entity to qualify as a REMIC, all of the interests in the entity must consist of one or more classes of regular interests and a single class of residual interests, *see* section 860D(a), and those interests must be issued on the startup day, within the meaning of § 1.860G–2(k).

Under section 860D(a)(4), an entity qualifies as a REMIC only if, among other things, as of the close of the third month beginning after the startup day and at all times thereafter, substantially all of its assets consist of qualified mortgages and permitted investments. In general, the term "qualified mortgage" means an obligation that is principally secured by an interest in real property. *See* section 860G(a)(3)(A). That is, an obligation secured by an "interest in real property" is not a qualified mortgage unless the obligation is "principally secured" by such an interest.

An obligation is "principally secured" if the fair market value of the interest in real property securing the obligation equals at least 80 percent of the adjusted issue price of the obligation (the 80-percent test). *See* § 1.860G–2(a)(1). The regulations require the 80-percent test to be satisfied either at the time the obligation was originated or at the time the sponsor contributes the obligation to the REMIC. After the startup day, the regulations generally do not require retesting of the value of the interest in real property that secures the obligation.

The REMIC regulations cross-reference the real estate investment trust (REIT) regulations to define the term "interest in real property." Specifically, § 1.860G–2(a)(4) provides that the definition of "interests in real property" in § 1.856–3(c) and the definition of "real property" in § 1.856–3(d) apply for purposes of section 860G(a)(3) and § 1.860G–2(a). In addition, a mortgage pass-thru certificate that is guaranteed by Fannie Mae or Freddie Mac is included as an obligation secured by an interest in real property for purposes of section 860G(a)(3)(A). *See* § 1.860G–2(a)(5).

Section 1.860F–4(e) provides that, at the close of each calendar quarter, a REMIC must provide to each person who held a residual interest in the REMIC during that quarter notice on Schedule Q of certain information, including information with respect to REMIC assets. Under § 1.860F–4(e)(1)(ii)(A), a REMIC must provide to each of its residual interest holders the following information: (1) the percentage of REMIC assets that are described in section 7701(a)(19) (Category 1); and (2) the percentage of REMIC assets that are real estate assets defined in section 856(c)(5)(B) (Category 2),[1] computed by reference to the average adjusted basis (as defined in section 1011) of the REMIC assets during the calendar quarter.[2] If the percentage of REMIC assets represented by either Category 1 or Category 2 is at least 95 percent, then the REMIC need only specify on Schedule Q that the percentage for that category was at least 95 percent (the 95-percent asset-reporting test).

Under § 1.860F–4(e)(1)(ii)(B), if, for any calendar quarter after 1988, the 95-percent asset-reporting test is not met with respect to assets in Category 2 (that is, real estate assets as defined in section 856(c)(5)(B)), then for that calendar quarter, the REMIC must provide the following additional information to any REIT that holds a residual interest:

(1) The percentage of REMIC assets described in section 856(c)(4)(A), computed by reference to the average adjusted basis of the REMIC assets during the calendar quarter (as described in § 1.860F–4(e)(1)(iii)),

(2) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) described in section 856(c)(3)(A) through (E), computed as of the close of the calendar quarter, and

(3) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) that is described in section 856(c)(3)(F) (which refers to income or gain from foreclosure property), computed as of the close of the calendar quarter. For this purpose, the term "foreclosure property" has the meaning specified in section 860G(a)(8) (which governs REMICs), rather than the closely related definition of "foreclosure property" in section 856(e) (which otherwise would determine the income or gain that is described in section 856(c)(3)(F)).

Section 1.860G–2(a)(1) generally treats a mortgage loan as an obligation "principally secured by an interest in real property" for purposes of section 860G(a)(3) if the loan is secured by an interest in real property that is worth at least 80 percent of the outstanding stated principal of the loan (in other words, the loan-to-value ratio of the loan—commonly referred to

[1] The regulation refers to former section 856(c)(6)(B). Section 1255 of the Taxpayer Relief Act of 1997 (P.L. 105–34) redesignated former section 856(c)(6)(B) as current section 856(c)(5)(B).

[2] Section 1.860F–4(e)(1)(ii)(A) also requires a REMIC to provide information with respect to the percentage of REMIC assets that are qualifying real property loans under section 593. Section 1616(a) of the Small Business Job Protection Act of 1996 (P. L. 104–188), however, repealed the section 593 reserve method of accounting for bad debts of thrift institutions for tax years beginning after December 31, 1995. Accordingly, whether assets are "qualifying real property loans under section 593" is no longer relevant, and the reporting of this information to residual interest holders is unnecessary.

as "LTV"—is not greater than 125 percent).[3] If, however, a REMIC holds one or more qualified mortgages that are less than 95-percent secured by an interest in real property, the REMIC may fail the 95-percent asset-reporting test and may be required to report additional information to residual interest holders with respect to the REMIC assets.

SAFE HARBOR REPORTING METHOD

As a safe harbor for purposes of a REMIC's reporting obligation to residual interest holders under § 1.860F–4(e)(1)(ii), if a REMIC is an "eligible REMIC" as defined below and if the percentage of its assets represented by either Category 1 or Category 2 is less than 95 percent but at least 80 percent, then the REMIC need only specify on Schedule Q that the percentage for that category was at least 80 percent.

To qualify as an "eligible REMIC" under this notice—

1. The REMIC must have a guarantee from Fannie Mae or Freddie Mac that will supplement amounts received by the REMIC as required to permit the payment of principal and interest, as applicable, on both the regular interests and residual interests issued by the REMIC; and
2. All of the qualified mortgages (including mortgage pass-thru certificates) that are held by the REMIC must be secured by interests in single-family (one-to-four unit) dwellings.

See also Rev. Proc. 2012–14, this bulletin, for guidance to REITs that hold a regular or residual interest in an eligible REMIC.

EFFECTIVE DATE

The safe harbor reporting method described in this notice applies to reporting for calendar quarters ending on or after December 31, 2011.

DRAFTING INFORMATION

The principal author of this notice is Diana Imholtz of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact Ms. Imholtz at 202–622–3920 (not a toll-free call).

(Also 26 CFR 1.414(l)–1, 1.933–1, 1.501(a)–1, and 301.7805–1.)

Qualified Pension, Profit-Sharing, and Stock Bonus Plans; Exemption from Tax on Corporations, Certain Trusts, Etc.

Notice 2012–6

I. PURPOSE

This notice extends and expands the transition relief provided under Rev. Rul. 2011–1, 2011–2 I.R.B. 251, and Rev. Rul. 2008–40, 2008–2 C.B. 166, for certain group trusts, certain retirement trusts that qualify under the Puerto Rico Internal Revenue Code (Puerto Rico Code) and that participate in group trusts, and certain qualified retirement plans that benefit Puerto Rico residents. This notice also provides additional time for governmental retiree benefit plans described in § 401(a)(24) of the Internal Revenue Code (Code) (§ 401(a)(24) plans) to be amended to satisfy the applicable requirements of Rev. Rul. 2011–1.

II. BACKGROUND

Rev. Rul. 81–100, 1981–1 C.B. 326, provides that qualified retirement plans and individual retirement accounts are permitted to pool their assets for investment purposes in a group trust ("81–100 group trusts") if certain specified requirements are satisfied. Rev. Rul. 81–100 was clarified and modified by Rev. Rul. 2004–67, 2004–2 C.B. 28. Rev. Rul. 2011–1 revises and restates the generally applicable rules for group trusts described in Rev. Rul. 81–100, 1981–1 C.B. 326, as clarified and modified by Rev. Rul. 2004–67. Rev. Rul. 2011–1 permits the participation in 81–100 group trusts of certain retiree benefit plans, such as governmental retiree benefit plans under § 401(a)(24), in addition to § 401(a) qualified retirement plans, if certain requirements are met.

Section 1022(i)(1) of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406 (ERISA) provides a tax exemption under § 501(a) of the Code for certain plans that satisfy the qualification requirements under the Puerto Rico Code ("section 1022(i)(1) plans").

Rev. Rul. 2008–40 holds that a transfer of amounts from a trust under a plan qualified under § 401(a) to a nonqualified foreign trust is treated as a distribution from the transferor plan. Rev. Rul. 2008–40 holds further that a transfer of assets and liabilities from a qualified plan to a plan that satisfies the plan qualification requirements under section 1165 of the Puerto Rico Code is also treated as a distribution from the transferor plan, even if the plan is a section 1022(i)(1) plan. Rev. Rul. 2008–40 provided transition relief for a transfer from a qualified plan to a section 1022(i)(1) plan that occurred before January 1, 2011.

Rev. Rul. 2011–1 provides temporary relief relating to investments of the assets of certain section 1022(i)(1) plans in 81–100 group trusts, and modifies the transition relief provided in Rev. Rul. 2008–40 relating to transfers from qualified plans to section 1022(i)(1) plans. Specifically, under the heading "Plans Described in Section 1022(i)(1) of ERISA," Rev. Rul. 2011–1 provides that:

> The Service anticipates issuing guidance as to whether a plan described in section 1022(i)(1) of ERISA may participate in an 81–100 group trust. Until such guidance is issued, the Service will not treat a group trust as failing to satisfy the requirements of this revenue ruling merely because the group trust includes the assets of a section 1022(i)(1) plan as long as the section 1022(i)(1) plan (1) was participating in the group trust as of January 10, 2011, or (2) holds assets that had been held by a qualified plan immediately prior to the transfer of those assets to the section 1022(i)(1) plan pursuant to the transition relief in Rev. Rul. 2008–40, as modified by this revenue ruling. In addition, Rev. Rul. 2008–40 is hereby

[3] In general, the adjusted issue price of a home mortgage loan is equal to or slightly less than the outstanding stated principal of the loan. Thus, although LTV is based on stated principal rather than on adjusted issue price, if LTV is not greater than 125 percent, then the criterion for "principally secured" will generally be satisfied (that is, the value of the real property collateral will be at least 80 percent of the adjusted issue price).

modified to extend the transition relief for transfers from a qualified plan to a section 1022(i)(1) transferee plan for an additional year. Thus, "January 1, 2012" is substituted for "January 1, 2011" each place it appears in the Transition Relief section of Rev. Rul. 2008–40.

When Rev Rul. 2011–1 and 2008–40 were issued, the qualification provisions for retirement plans were contained in section 1165 of the Puerto Rico Code. On January 31, 2011, the retirement plan qualification provisions of the Puerto Rico Code were extensively amended.[1] These provisions, which now appear at section 1081.01 of the Puerto Rico Code, apply to plans qualified under both U.S. and Puerto Rico law (sometimes referred to as "dual-qualified plans"), as well as to section 1022(i)(1) plans.

III. EXTENSION AND EXPANSION OF RELIEF

The Service anticipates issuing guidance responding to comments received in connection with Rev. Rul. 2011–1. Accordingly, the following relief is provided.

A. ERISA Section 1022(i)(1) Plans

1. Expansion of relief under Rev. Rul. 2011–1 relating to 81–100 group trust status of certain trusts containing section 1022(i)(1) plan investments

The relief provided in Rev. Rul. 2011–1 under the heading "Plans Described in Section 1022(i)(1) of ERISA" continues to apply. In addition, that relief is expanded to cover an 81–100 group trust with respect to an investment by a section 1022(i)(1) plan that is the recipient of a transfer of assets from a qualified retirement plan pursuant to the transition relief under Rev. Rul. 2008–40, as modified by Rev. Rul. 2011–1 and this notice, if assets of the transferor plan were held in the 81–100 group trust on January 10, 2011.

2. Extension of transition relief under Rev. Rul. 2008–40 relating to tax consequences of certain transfers to section 1022(i)(1) plans

(i) Extension of transfer deadline until further guidance for certain qualified plans invested in group trusts

The relief provided in paragraphs 2, 3, and 4(b) under the Transition Relief heading in Rev. Rul. 2008–40 is extended for transfers to a section 1022(i)(1) transferee plan from a qualified retirement plan that participated in an 81–100 group trust on January 10, 2011, until a deadline to be set forth in future published guidance. It is expected that, when further guidance relating to participation of section 1022(i)(1) plans in group trusts is published, that guidance will set a future deadline for transfers covered by this extension.

(ii) One-year general extension of transfer deadline

The Service recognizes that a sponsor of a qualified retirement plan that benefits Puerto Rico residents may need additional time to evaluate whether to spin off the portion of the plan benefiting Puerto Rico residents to a section 1022(i)(1) plan in order to consider the effect of the changes to the Puerto Rico Code enacted earlier this year. Accordingly, Rev. Rul. 2008–40 is hereby further modified to extend the relief provided in paragraphs 2, 3, and 4(b) under the Transition Relief heading in Rev. Rul. 2008–40 for transfers to a section 1022(i)(1) transferee plan from any qualified retirement plan until December 31, 2012, regardless of whether the qualified retirement plan participates in a group trust.

B. Governmental Retiree Benefit Plans

In order to ensure that the governing documents of § 401(a)(24) plans may be timely amended to satisfy the requirements of Rev. Rul. 2011–1, the ruling is modified to provide that, in the case of a § 401(a)(24) plan for which the authority to amend the plan is held by a legislative body that meets in legislative session, the plan will not fail to satisfy the requirements of Rev. Rul. 2011–1 if the governing document is modified to satisfy the applicable requirements of Rev. Rul. 2011–1 by the earlier of:

1. The close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after January 1, 2012; or
2. January 1, 2015.

IV. COMMENTS REQUESTED

In general, if an entity that is not a group trust retiree benefit plan as defined in the holding of Rev. Rul. 2011–1 (an "ineligible entity") participates in a group trust, the consequences described in the holdings of Rev. Rul. 2011–1, including the tax status of the group trust being derived from the tax status of the participating entities to the extent of their equitable interest in the group trust, would not apply to the group trust or to any of the entities that are invested in the trust. Comments are requested on whether the rule stating that the tax status of the group trust is derived from the tax status of the participating entities to the extent of their equitable interest in the group trust should be extended to cases where the equitable interest in the group trust is held by an ineligible entity that is an employee benefit plan if (a) the plan is tax exempt under § 501 or a similar rule and (b) in all other respects the requirements in paragraphs (1) through (8) of the holding of Rev. Rul. 2011–1 (including the exclusive benefit requirement in (5) and the separate account requirement in (6)) are satisfied. Comments should be submitted by April 16, 2012 (Notice 2012–6), Room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2012–6), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington D.C. Alternatively, comments may be submitted via the Internet at *Notice.comments@irscounsel.treas.gov*. Please include "Notice 2012–6" in the subject line of any electronic communication. All materials submitted will be available for public inspection and copying.

[1] See Código de Rentas Internas para un Nuevo Puerto Rico de la Ley Núm. 1 de 31 de enero de 2011.

V. EFFECT ON OTHER DOCUMENTS

Rev. Ruls. 2011–1 and 2008–40 are modified.

DRAFTING INFORMATION

The principal authors of this notice are Diane Bloom and Robert Walsh of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please call the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number) between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, or at *RetirementPlanQuestions@irs.gov*.

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26 CFR 1.61–21: Taxation of fringe benefits.
(Also: Internal Revenue Code §§ 61, 280F.)

Rev. Proc. 2012–13

SECTION 1. PURPOSE

.01 This revenue procedure provides: (1) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2012 for which the vehicle cents-per-mile valuation rule provided under section 1.61–21(e) of the Income Tax Regulations may be applicable is $15,900 for a passenger automobile and $16,700 for a truck or van; (2) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2012 for which the fleet-average valuation rule provided under section 1.61–21(d) of the regulations may be applicable is $21,100 for a passenger automobile and $21,900 for a truck or van.

SECTION 2. BACKGROUND

.01 If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income and wages. Internal Revenue Code § 61; Treas. Reg. § 1.61–21.

.02 For employer-provided passenger automobiles (including trucks and vans) made available to employees for personal use that meet the requirements of section 1.61–21(e)(1) of the regulations, generally the value of the personal use may be determined under the vehicle cents-per-mile valuation rule of section 1.61–21(e). However, regulations section 1.61–21(e)(1)(iii)(A) provides that for a passenger automobile first made available after 1988 to any employee of the employer for personal use, the value of the personal use may not be determined under the vehicle cents-per-mile valuation rule for a calendar year if the fair market value of the passenger automobile (determined pursuant to regulations section 1.61–21(d)(5)(i) through (iv)) on the first date the passenger automobile is made available to the employee exceeds a specified dollar limit.

.03 For employer-provided vehicles available to employees for personal use for an entire year, generally the value of the personal use may be determined under the automobile lease valuation rule of section 1.61–21(d) of the regulations. Under this valuation rule, the value of the personal use is the Annual Lease Value. Provided the requirements of regulation section 1.61–21(d)(5)(v) are met, an employer with a fleet of 20 or more automobiles may use a fleet-average value for purposes of calculating the Annual Lease Values of the automobiles in the employer's fleet. The fleet-average value is the average of the fair market values of all the automobiles in the fleet. However, section 1.61–21(d)(5)(v)(D) of the regulations provides that for an automobile first made available after 1988 to an employee of the employer for personal use, the value of the personal use may not be determined under the fleet-average valuation rule for a calendar year if the fair market value of the automobile (determined pursuant to regulations section 1.61–21(d)(5)(i) through (v)) on the first date the passenger automobile is made available to the employee exceeds a specified dollar limit.

.04 The maximum passenger automobile values for applying the vehicle cents-per-mile and the fleet-average value rules reflect the automobile price inflation adjustment of Code section 280F(d)(7). The method of calculating this price inflation amount for automobiles other than trucks and vans uses the "new car" component of the CPI "automobile component". When calculating this price inflation adjustment for trucks and vans, the "new trucks" component of the CPI is used. This results in somewhat higher maximum values for trucks and vans. This change reflects the higher rate of price inflation that trucks and vans have been subject to since 1988, and is consistent with the change announced in Rev. Proc. 2003–75, 2003–2 C.B. 1018, for purposes of calculating depreciation deductions. *See also* Rev. Proc. 2011–21, 2011–12 I.R.B. 560. For purposes of this revenue procedure, the term "trucks and vans" refers to passenger automobiles that are built on a truck chassis, including minivans and sport utility vehicles (SUVs) that are built on a truck chassis.

SECTION 3. PROCEDURE

.01 Maximum Automobile Value for Using the Cents-per-mile Valuation Rule. An employer providing a passenger automobile for the first time in calendar year 2012 for the personal use of any employee may determine the value of the personal use by using the vehicle cents-per-mile valuation rule in section 1.61–21(e) of the regulations if its fair market value on the date it is first made available does not exceed $15,900 for a passenger automobile other than a tuck or van, or $16,700 for a truck or van. If the fair market value of the passenger automobile exceeds this amount, the employer may determine the value of the personal use under the general valuation rules of regulation section 1.61–21(b) or under the special valuation rules of section 1.61–21(d) (Automobile lease valuation) or section 1.61–21(f) (Commuting valuation) if the applicable requirements are met. *See* Rev. Proc. 2010–10, 2010–3 I.R.B. 300, for guidance on determining the maximum value of passenger automobiles first made available during calendar year 2010, and Rev. Proc. 2011–11, 2011–4 I.R.B. 329, for guidance on determining the maximum value of passenger automobiles first made available during calendar year 2011.

.02 Maximum Automobile Value for Using the Fleet-Average Valuation Rule. An employer with a fleet of 20 or more automobiles providing an automobile for the first time in calendar year 2012 for the personal use of any employee for an entire year may determine the value of the personal use by using the fleet-average valuation rule in regulations section

1.61–21(d)(5)(v) to calculate the Annual Lease Values of the automobiles in the fleet. The fleet-average valuation rule may not be used to determine the Annual Lease Value of any automobile if its fair market value on the date it is first made available exceeds $21,100 for a passenger automobile other than a truck or van, or $21,900 for a truck or van. If all other applicable requirements are met, an employer with a fleet of 20 or more vehicles consisting of passenger automobiles other than trucks or vans as well as trucks and vans may use the fleet-average valuation rule as long as none of the vehicles exceed their respective maximum allowable values. If the fair market value of any passenger automobile in the fleet exceeds these amounts, the employer may determine the value of the personal use under regulations section 1.61–21(f) (Commuting valuation rule) or the general valuation rules of section 1.61–21(b) or may determine the Annual Lease Value of such automobile separately under the automobile lease valuation rule of section 1.61–21(d)(2) if the applicable requirements are met.

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to employer-provided passenger automobiles first made available to employees for personal use in calendar year 2012.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Don M. Parkinson of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding the maximum automobile values for applying the valuation rules of regulations section 1.61–21(e)(1)(iii)(A) (the vehicle cents-per-mile valuation rule), and section 1.61–21(d)(5)(v)(D) (the fleet average valuation rule), contact Don M. Parkinson at (202) 622–6040 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part 1, §§ 856; 1.856–3, 1.856–5, and 1.860F–4.)

Rev. Proc. 2012–14

SECTION 1. PURPOSE

This revenue procedure sets forth a safe harbor that provides the extent to which an investment by a real estate investment trust (REIT) in a regular or a residual interest in certain real estate mortgage investment conduits (REMICs) may be treated as a real estate asset for purposes of sections 856(c)(4)(A) and 856(c)(5)(B) of the Internal Revenue Code and the extent to which interest from that investment may be treated as derived from interest on an obligation secured by a mortgage on real property or on an interest in real property for purposes of section 856(c)(3)(B).

SECTION 2. BACKGROUND—HARP

.01 In April 2009, the Federal Housing Finance Agency (FHFA) and the United States Department of the Treasury introduced the Home Affordable Refinancing Program (HARP) as part of the United States Government's Making Home Affordable Program. On October 24, 2011, FHFA, with Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac), announced an expansion of HARP in an effort to serve additional eligible borrowers who can benefit from refinancing their home mortgages. Details of the expansion were announced on November 15, 2011.

HARP serves borrowers who may not otherwise qualify for refinancing, either because the value of their homes has declined or because they cannot obtain mortgage insurance. The program is available to borrowers who owe more on their mortgages than the value of their homes. HARP provides these homeowners with the ability to refinance their mortgages into more affordable and sustainable mortgages.

.02 It is expected that many mortgages refinanced under HARP will be held by REMICs.

SECTION 3. BACKGROUND-REMICS

.01 REMICs are widely used securitization vehicles for mortgages. REMICs are governed by sections 860A through 860G.

.02 For an entity to qualify as a REMIC, all of the interests in the entity must consist of one or more classes of regular interests and a single class of residual interests, *see* section 860D(a), and those interests must be issued on the startup day, within the meaning of § 1.860G–2(k) of the Income Tax Regulations.

.03 In addition to being issued on the startup day with fixed terms, a regular interest must (1) unconditionally entitle the holder to receive a specified principal amount (or other similar amount), and (2) provide that interest payments, if any, at or before maturity are based on a fixed rate (or to the extent provided in regulations, at a variable rate). *See* section 860G(a)(1).

.04 Under section 860D(a)(4), an entity qualifies as a REMIC only if, among other things, as of the close of the third month beginning after the startup day and at all times thereafter, substantially all of its assets consist of qualified mortgages and permitted investments. This asset test is satisfied if the entity owns no more than a *de minimis* amount of other assets. *See* § 1.860D–1(b)(3)(i). As a safe harbor, the amount of assets other than qualified mortgages and permitted investments is *de minimis* if the aggregate of the adjusted bases of those assets is less than one percent of the aggregate of the adjusted bases of all of the entity's assets. Section 1.860D–1(b)(3)(ii).

.05 A mortgage loan is a qualified mortgage only if it is principally secured by an interest in real property. Section 860G(a)(3)(A).

.06 In general, for purposes of section 860G(a)(3)(A), an obligation is principally secured by an interest in real property only if it satisfies the "80-percent test" set forth in § 1.860G–2(a)(1)(i).

.07 Under the 80-percent test, an obligation is principally secured by an interest in real property if the fair market value of the interest in real property securing the obligation—

(1) Was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated; or

(2) Is at least equal to 80 percent of the adjusted issue price of the obligation at the

time the sponsor contributes the obligation to the REMIC.

.08 With limited exceptions, a mortgage loan is not a qualified mortgage unless it is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC. *See* section 860G(a)(3)(A)(i).

.09 The legislative history of the REMIC provisions indicates that Congress intended the provisions to apply only to an entity that holds a substantially fixed pool of real estate mortgages and related assets and that "has no powers to vary the composition of its mortgage assets." S. Rep. No. 99–313, 99th Cong., 2d Sess. 791–92, 1986–3 (Vol. 3) C.B. 791–92.

SECTION 4. BACKGROUND—REMIC REPORTING

.01 Section 1.860F–4(e)(1)(ii)(A) provides that for calendar quarters after 1988, a REMIC must provide to each of its residual interest holders information regarding (among other items) the percentage of REMIC assets that are real estate assets defined in section 856(c)(5)(B),[1] computed by reference to the average adjusted basis (as defined in section 1011) of the REMIC assets during the calendar quarter (as described in § 1.860F–4(e)(1)(iii)). If the percentage of REMIC assets represented by real estate assets is at least 95 percent, then the REMIC need only specify that the percentage of real estate assets was at least 95 percent.

.02 Section 1.860F–4(e)(1)(ii)(B) provides that if, for any calendar quarter after 1988, less than 95 percent of the assets of the REMIC are real estate assets defined in section 856(c)(5)(B), then, for that calendar quarter, the REMIC must also provide to any REIT that holds a residual interest the following information—

(1) The percentage of REMIC assets described in section 856(c)(4)(A), computed by reference to the average adjusted basis of the REMIC assets during the calendar quarter (as described in § 1.860F–4(e)(1)(iii)),

(2) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) described in section 856(c)(3)(A) through (E), computed as of the close of the calendar quarter, and

(3) The percentage of REMIC gross income (other than gross income from prohibited transactions defined in section 860F(a)(2)) described in section 856(c)(3)(F) (which refers to income or gain from foreclosure property), computed as of the close of the calendar quarter. For this purpose, the term "foreclosure property" has the meaning specified in section 860G(a)(8) (which governs REMICs), rather than the closely related definition of "foreclosure property" in section 856(e) (which otherwise would determine the income or gain that is described in section 856(c)(3)(F)).

.03 Notice 2012–5, this bulletin, provides that for purposes of an eligible REMIC's reporting obligation to residual interest holders under § 1.860F–4(e)(1)(ii), if the percentage of REMIC assets represented by real estate assets is less than 95 percent but at least 80 percent, then the REMIC need only specify on Schedule Q (Form 1066), *Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation*, that the percentage for that category was at least 80 percent.

SECTION 5. BACKGROUND—REITS

.01 Many REITs invest in real estate loans that are secured by real property. REITs may also invest in REMIC regular or residual interests (see section 856(c)(5)(E)).

.02 Section 856(a) provides that an entity shall not be considered a REIT for any taxable year unless certain requirements are satisfied. Under section 856(c)(4)(A), at the close of each quarter of its taxable year, at least 75 percent of the value of a REIT's total assets must be represented by real estate assets, cash and cash items (including receivables), and Government securities.

.03 Section 856(c)(5)(B) provides that the term "real estate assets" means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs that meet the requirements of sections 856 through 859. Section 1.856–3(d) provides that the term "real property" means land or improvements thereon, such as buildings and that the term "real property" includes interests in real property. Section 1.856–3(d) further provides that local law definitions are not controlling for purposes of determining the meaning of the term "real property" as used in section 856 and the regulations thereunder.

.04 Section 856(c)(3)(B) provides that at least 75 percent of a REIT's gross income must be derived from certain items, including interest on obligations secured by mortgages on real property or on interests in real property.

.05 Section 1.856–5(c)(1) provides that if a mortgage covers both real property and other property, an apportionment of the interest income must be made for purposes of the 75-percent requirement of section 856(c)(3). Section 1.856–5(c)(1)(i) provides that if the loan value of the real property is equal to or exceeds the amount of the loan, the entire amount of interest income shall be apportioned to the real property. Section 1.856–5(c)(2) provides that the loan value of the real property is the fair market value of the property, determined on the date the commitment by the trust to purchase the loan or to make the loan becomes binding on the trust.

.06 Section 856(c)(5)(E) provides that for purposes of Part II of subchapter M, a regular or residual interest in a REMIC shall be treated as a real estate asset, and any amount includible in gross income with respect to such an interest shall be treated as interest on an obligation secured by a mortgage on real property, except that a REIT shall be treated as holding and receiving directly its proportionate share of the assets and income of a REMIC if less than 95 percent of the assets of such REMIC are real estate assets (determined as if the REIT held such assets). For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest held by such REMIC in another REMIC shall be treated as a real estate asset under principles similar to the principles of the preceding sentence, except that, if such REMICs are part of a tiered structure, they shall be treated as one REMIC for purposes of section 856(c)(5)(E).

[1] Both §§ 1.860F–4(e)(1)(ii)(A) and § 1.860F–4(e)(1)(ii)(B) refer to former section 856(c)(6)(B), and § 1.860F–4(e)(1)(ii)(B)(1) refers to former section 856(c)(5)(A). Section 1255 of the Taxpayer Relief Act of 1997 (P.L. 105–34) redesignated former sections 856(c)(6)(B) and 856(c)(5)(A) as current sections 856(c)(5)(B) and 856(c)(4)(A), respectively.

.07 The REMIC provisions do not require REMICs to provide holders of regular interests with information regarding the percentage of REMIC assets that are real estate assets for purposes of Part II of subchapter M. Furthermore, if the percentage of an eligible REMIC's assets that are real estate assets is less than 95 percent but at least 80 percent, then the REMIC need only inform a REIT holding a residual interest in that REMIC that the percentage of assets described in section 856(c)(5)(B) was at least 80 percent. See Notice 2012–5, this bulletin.

.08 To qualify as an "eligible REMIC" under Notice 2012–5, the REMIC must have a guarantee from Fannie Mae or Freddie Mac that will supplement amounts received by the REMIC as required to permit the payment of principal and interest, as applicable, on both the regular interests and residual interests issued by the REMIC; and all of the qualified mortgages (including mortgage pass-thru certificates) that are held by the REMIC must be secured by interests in single-family (one-to-four unit) dwellings.

.09 Although eligible REMICs are not required to provide more than limited information to REITs holding residual interests in those REMICs regarding the percentage of the REMICs' assets described in section 856(c)(5)(B), it is important for those REITs to know—

(1) The extent to which both regular and residual interests may be treated as real estate assets for purposes of sections 856(c)(4)(A) and 856(c)(5)(B); and

(2) The extent to which gross income with respect to those investments may be treated for purposes of section 856(c)(3)(B) as derived from interest on obligations secured by a mortgage on real property or on an interest in real property.

SECTION 6. SCOPE

.01 Section 7 of this revenue procedure applies to a regular interest that is held by a REIT in an eligible REMIC as defined in Notice 2012–5.

.02 Section 7 of this revenue procedure applies to a residual interest that is held by a REIT in an eligible REMIC as defined in Notice 2012–5, if, in accordance with Notice 2012–5, the REMIC informs the REIT holding the residual interest in that REMIC that the percentage of the REMIC's assets described in section 856(c)(5)(B) was at least 80 percent.

SECTION 7. APPLICATION

If a REIT holds a regular or a residual interest in an eligible REMIC that meets the requirements of either section 6.01 or section 6.02 of this revenue procedure, then—

.01 The REIT may treat 80 percent of the value of the regular or residual interest as a real estate asset. If the REIT has information establishing that, as a result of holding the interest, its proportionate share of the eligible REMIC's assets under section 856(c)(5)(E) produces a higher percentage for purposes of section 856(c)(4)(A), then the REIT may use that higher percentage.

.02 Any amount includible by the REIT in gross income with respect to the regular or residual interest may be treated as 80 percent derived from interest on an obligation secured by a mortgage on real property within the meaning of section 856(c)(3)(B). If the REIT has information establishing that, as a result of holding the interest, its proportionate share of the eligible REMIC's income under section 856(c)(5)(E) produces a higher percentage for purposes of section 856(c)(3), then the REIT may use that higher percentage.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for regular or residual interests in an eligible REMIC that has a startup date after November 30, 2011.

DRAFTING INFORMATION

The principal author of this revenue procedure is David B. Silber of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information, contact Mr. Silber at (202) 622–3930 (not a toll-free call).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z —Corporation.

Numerical Finding List[1]

Bulletins 2012–1 through 2012–3

Announcements:

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2011–27 through 2011–52 is in Internal Revenue Bulletin 2011–52, dated December 27, 2011.

Finding List of Current Actions on Previously Published Items[1]

Bulletins 2012–1 through 2012–3

Notices:

2010-88
As modified by Ann. 2011-40, is superseded by
Notice 2012-1, 2012-2 I.R.B. *260*

Revenue Procedures:

2011-1
Superseded by
Rev. Proc. 2012-1, 2012-1 I.R.B. *1*

2011-2
Superseded by
Rev. Proc. 2012-2, 2012-1 I.R.B. *92*

2011-3
Superseded by
Rev. Proc. 2012-3, 2012-1 I.R.B. *113*

2011-4
Superseded by
Rev. Proc. 2012-4, 2012-1 I.R.B. *125*

2011-5
Superseded by
Rev. Proc. 2012-5, 2012-1 I.R.B. *169*

2011-6
Superseded by
Rev. Proc. 2012-6, 2012-1 I.R.B. *197*

2011-7
Superseded by
Rev. Proc. 2012-7, 2012-1 I.R.B. *232*

2011-8
Superseded by
Rev. Proc. 2012-8, 2012-1 I.R.B. *235*

2011-9
Superseded by
Rev. Proc. 2012-9, 2012-2 I.R.B. *261*

2011-10
Superseded by
Rev. Proc. 2012-10, 2012-2 I.R.B. *273*

Revenue Rulings:

2008-40
Modified by
Notice 2012-6, 2012-3 I.R.B. *293*

2011-1
Modified by
Notice 2012-6, 2012-3 I.R.B. *293*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2011–27 through 2011–52 is in Internal Revenue Bulletin 2011–52, dated December 27, 2011.

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