

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-100905-97]

RIN 1545-AU96

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes to eliminate the regulatory requirement that certain information be set forth on the face of a collateralized debt obligation (CDO) or regular interest in a Real Estate Mortgage Investment Conduit (REMIC).

Implementing the proposal should reduce the burden imposed on issuers of CDOs and regular interests without impairing the flow of tax information to either the holders of those instruments or the IRS. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by July 19, 1999. Outlines of topics to be discussed at the public hearing scheduled for September 13, 1999, at 10 a.m. must be received by August 23, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG-100905-97), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and

5 p.m. to: CC:DOM:CORP:R (REG-100905-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/reglist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kenneth Christman, (202) 622-3950; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Final regulations (TD 8366) imposing reporting requirements with regard to CDOs and REMIC regular interests were published in the **Federal Register** for September 30, 1991 (56 FR 49512, as corrected by 56 FR 51175). Among other things, those regulations compel the issuer of a CDO or REMIC regular interest to set forth certain information on the face of the instrument (legending). Several commentators have asked the IRS to reassess the need for this rule.

Explanation of Provisions

Section 1272(a)(6) of the Internal Revenue Code provides a special rule for calculating the accrual of original issue discount (OID) on REMIC regular interests and CDOs. Special rules are needed because the timing of payments on these instruments is often uncertain. Although CDOs and REMIC regular interests are issued with fixed maturity dates, they may be accelerated to the extent that obligations collateralizing them prepay.

Because the holder of a CDO or REMIC regular interest would not necessarily have the information needed to calculate OID under section 1272(a)(6), Congress added section 6049(d)(7) to require enhanced reporting for such instruments. In addition, Congress gave the IRS and Treasury specific authority to issue regulations carrying out that purpose. 2 H.R. Conf. Rep. 99th Cong. 2d Sess. II-237 (1986), 1986-3 (Vol. 4) C.B. 237.

The regulations issued under section 6049(d)(7) are comprehensive. Sections 1.6049-7(a) through 1.6049-7(f) establish a chain of reporting obligations that ensures essential tax information will flow to holders of CDOs and REMIC regular interests. The information made available includes the amount of a holder's OID accrued during the calendar year. Importantly, this information is updated annually.

In addition to the ongoing information reporting provided under §§ 1.6049-7(a) through 1.6049-7(f), Section 1.6049-7(g)

provides for certain information to be legended on the face of a CDO or REMIC certificate when first issued. The information includes the total amount of OID on the instrument, the issue date, the rate at which interest is payable (if any) as of the issue date, and the yield to maturity.

Legending appears to provide little practical benefit. Most CDOs and REMIC regular interests are held through book-entry systems, which means the legended information is rarely (if ever) reported to the holders. Even if the information were reported, it would be of little use. Holders who are entitled to have OID determined for them do not need the information. Holders who need or want to determine OID themselves cannot make the necessary section 1272(a)(6) calculations without acquiring additional information. Furthermore, legended information is available through other sources. It can be obtained from vendors of financial information or requested under other section 6049 regulations. For these reasons, the IRS and Treasury propose to rescind § 1.6049-7(g).

Comments are invited on these proposed regulations. In particular, any taxpayers that rely on legended information are asked to specify the items relied on and suggest other ways to provide those items (such as including them among the items that must be reported under §§ 1.6049-7(a) through 1.6049-7(f)).

Proposed Effective Date

The rescission of § 1.6049-7(g) is proposed to be effective on the date the regulations are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 13, 1999, beginning at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For further information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by August 23, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Kenneth Christman, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§1.6049-7 [Amended]

Par. 2. In § 1.6049-7, paragraph (g) is removed.

/s/

Robert E. Wenzel

Deputy Commissioner of Internal Revenue