

DEPARTMENT OF THE TREASURY

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Internal Revenue Service

26 CFR Part 1

REG-154077-03

RIN 1545-BC71

Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the application of the unified partnership audit procedures to disputes regarding the ownership of residual interests in a Real Estate Mortgage Investment Conduit (REMIC). These regulations will affect taxpayers that invest in REMIC residual interests.

DATES: Written or electronically generated comments and requests for a public hearing must be received by November 1, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-154077-03), 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 4 p.m. to CC:PA:LPD:PR (REG-154077-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at: www.irs.gov/regs or the Federal eRulemaking Portal at www.regulations.gov (IRS - REG-154077-03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Arturo Estrada, (202) 622-3900 (not a toll-free number); concerning the submissions of comments, or a request for a public hearing, LaNita VanDyke (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This proposed regulation amends 26 CFR Part 1 under section 860F of the Internal Revenue Code (Code) relating to the application of the unified partnership audit procedures of subchapter C of chapter 63 of the Code to REMICs and the holders of residual interests. Section 860F(e) provides that a REMIC is treated as a partnership (and holders of residual interests in that REMIC shall be treated as partners) for purposes of subtitle F of the Code, which includes the unified partnership audit procedures. The taxable income of a holder of a REMIC residual interest is determined under the REMIC provisions of part IV of subchapter M, which require the holder to take into account its daily portion of the REMIC's taxable income or net loss for each day during the taxable year on which the holder holds its interest. Section 860C(a)(1). The provisions of

subchapter K relating to the determination of the taxable income of a partnership and its partners do not apply to REMICs or the holders of REMIC residual interests. Section 860A(a).

Questions have arisen regarding whether the identity of the holder of a REMIC residual interest is treated as a partnership item for purposes of the unified partnership audit procedures. Questions also have arisen regarding the applicability of the unified partnership audit procedures when a determination is made under the REMIC regulations to disregard certain transfers of REMIC residual interests and continue to treat the transferor as the holder of the transferred REMIC residual interests. See §§1.860E-1(c) and 1.860G-3.

The IRS and Treasury Department have determined that the identity of a holder of a REMIC residual interest is more appropriately determined at the residual interest holder level than at the REMIC entity level.

Explanation of Provisions

The proposed regulations provide that the determination of the identity of a holder of a REMIC residual interest is not a partnership item for purposes of the unified partnership audit procedures as applied to REMICs, whether or not such determination involves the application of a disregarded transfer rule. Unlike the identity of a partner in a partnership subject to subchapter K, the identity of the holder of a REMIC residual

interest does not affect the calculation of the REMIC's taxable income or net loss.

Proposed dates of applicability

These regulations are proposed to apply after December 31, 1986. See §1.860A-1(b)(1)(ii).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has 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 these regulations do not impose a collection requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

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) or electronic comments that are submitted timely to the IRS. The IRS and Treasury

Department request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Arturo Estrada, Office of the Associate 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 is amended by adding an entry in numerical order to read in part as follows:

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

Section 860F-4 issued under 26 U.S.C. 860G(e) and 26 U.S.C. 6230(k).

Par. 2. In §1.860F-4, paragraph (a) is amended by adding a sentence at the end to read as follows:

§1.860F-4 REMIC reporting requirements and other administrative rules.

(a) *** The identity of a holder of a residual interest in a REMIC is not treated as a partnership item with respect to the

REMIC for purposes of subchapter C of chapter 63.

Acting Deputy Commissioner of Services and
Enforcement