

filed. In the event that the determination is an agreement with the district director (or other delegate) described in section 860(e)(3) and paragraph (b)(1)(ii) of this section, the claim may be filed with the district director with whom (or pursuant to whose delegation) the agreement was made.

(The reporting requirements of this section were approved by the Office of Management and Budget under control number 1545-0045)

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; sec. 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 7936, 49 FR 2107, Jan. 18, 1984; 49 FR 3177, Jan. 26, 1984, as amended by T.D. 8939, 66 FR 2819, Jan. 12, 2001]

#### § 1.860-3 Interest and additions to tax.

(a) *In general.* If a qualified investment entity is allowed a deduction for deficiency dividends with respect to a taxable year, under section 860(c)(1) the tax imposed on the entity by chapter 1 of the Code (computed by taking into account the deduction) for that year is deemed to be increased by the amount of the deduction. This deemed increase in tax, however, applies solely for purposes of determining the liability of the entity for interest under subchapter A of chapter 67 of the Code and for additions to tax and additional amounts under chapter 68 of the Code. For purposes of applying subchapter A of chapter 67 and 68, the last date prescribed for payment of the deemed increase in tax is considered to be the last date prescribed for the payment of tax (determined in the manner provided in section 6601(b)) for the taxable year for which the deduction for deficiency dividends is allowed. The deemed increase in tax is considered to be paid as of the date that the claim for the deficiency dividend deduction described in section 860(g) is filed.

(b) *Overpayments of tax.* If a qualified investment entity is entitled to a credit or refund of an overpayment of the tax imposed by chapter 1 of the Code for the taxable year for which the deficiency dividend deduction is allowed, then, for purposes of computing interest, additions to tax, and additional amounts, the payment (or payments) that result in the overpayment and that precede the filing of the claim described in section 860(g) will be applied

against and reduce the increase in tax that is deemed to occur under section 860(c)(1).

(c) *Examples.* This section is illustrated by the following examples:

*Example 1.* Corporation X is a real estate investment trust that files its income tax return on a calendar year basis. X receives an extension of time until June 15, 1978, to file its 1977 income tax return and files the return on May 15, 1978. X does not elect to pay any tax due in installments. For 1977, X reports real estate investment trust taxable income (computed without the dividends paid deduction) of \$100, a dividends paid deduction of \$100, and no tax liability. Following an examination of X's 1977 return, the district director and X enter into an agreement which is a determination under section 860(e)(3). The determination is dated November 1, 1979, and increases X's real estate investment trust taxable income (computed without the dividends paid deduction) by \$20 to \$120. Thus, taking into account the \$100 of dividends paid in 1977, X has undistributed real estate investment trust taxable income of \$20 as a result of the determination. X pays a dividend of \$20 on November 10, 1979, files a claim for a deficiency dividend deduction of this \$20 pursuant to section 860(g) on November 15, 1979, and is allowed a deficiency dividend deduction of \$20 for 1977. After taking into account this deduction, X has no real estate investment trust taxable income and meets the distribution requirements of section 857(a)(1). However, for purposes of section 6601 (relating to interest on underpayment of tax), the tax imposed by chapter 1 of the Code on X for 1977 is deemed increased by this \$20, and the last date prescribed for payment of the tax is March 15, 1978 (the due date of the 1977 return determined without any extension of time). The tax of \$20 is deemed paid on November 15, 1979, the date the claim for the deficiency dividend deduction is filed. Thus, X is liable for interest on \$20, at the rate established under section 6621, for the period from March 15, 1978, to November 15, 1979. Also, for purposes of determining whether X is liable for any addition to tax or additional amount imposed by chapter 68 of the Code (including the penalty prescribed by section 6697), the amount of tax imposed on X by chapter 1 of the Code is deemed to be increased by \$20 (the amount of the deficiency dividend deduction allowed), the last date prescribed for payment of such tax is March 15, 1978, and the tax of \$20 is deemed to be paid on November 15, 1979. X, however, is not subject to interest and penalties for the amount of any tax for which it would have been liable under section 11(a), 56(a), 1201(a), or 857(b) had it not been allowed the \$20 deduction for deficiency dividends.

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*Example 2.* Assume the facts are the same as in example (1) except that the district director, upon examining X's income tax return, asserts an income tax deficiency of \$4, based on an asserted increase of \$10 in real estate investment trust taxable income, and no agreement is entered into between the parties. X pays the \$4 on June 1, 1979, and files suit for refund in the United States District Court. The District Court, in a decision which becomes final on November 1, 1980, holds that X did fail to report \$10 of real estate investment trust taxable income and is not entitled to any refund. (No other item of income or deduction is in issue.) X pays a dividend of \$10 on November 10, 1980, files a claim for a deficiency dividend deduction of this \$10 on November 15, 1980, and is allowed a deficiency dividend deduction of \$10 for 1977. Assume further that \$4 is refunded to X on December 31, 1980, as the result of the \$10 deficiency dividend deduction being allowed. Also assume that any assessable penalties, additional amounts, and additions to tax (including the penalty imposed by section 6697) for which X is liable are paid within 10 days of notice and demand, so that no interest is imposed on such penalties, etc. X's liability for interest for the period March 15, 1978, to June 1, 1979, is determined with respect to \$10 (the amount of the deficiency dividend deduction allowed). X's liability for interest for the period June 1, 1979, to November 15, 1980, is determined with respect to \$6, *i.e.*, \$10 minus the \$4 payment. X is entitled to interest on the \$4 overpayment for the period described in section 6611(b)(2), beginning on November 15, 1980.

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; sec. 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 7936, 49 FR 2108, Jan. 18, 1984]

### § 1.860-4 Claim for credit or refund.

If the allowance of a deduction for a deficiency dividend results in an overpayment of tax, the taxpayer, in order to secure credit or refund of the overpayment, must file a claim on Form 1120X in addition to the claim for the deficiency dividend deduction required under section 860(g). The credit or refund will be allowed as if on the date of the determination (as defined in section 860(e)) two years remained before the expiration of the period of limitations on the filing of claim for refund

for the taxable year to which the overpayment relates.

(The reporting requirements of this section were approved by the Office of Management and Budget under control number 1545-0045)

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; sec. 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 7936, 49 FR 2109, Jan. 18, 1984]

### § 1.860-5 Effective date.

(a) *In general.* Section 860 and §§ 1.860-1 through 1.860-4 apply with respect to determinations after November 6, 1978.

(b) *Prior determination of real estate investments trusts.* Section 859 (as in effect before the enactment of the Revenue Act of 1978) applies to determinations with respect to real estate investment trusts occurring after October 4, 1976, and before November 7, 1978. In the case of such a determination, the rules in §§ 1.860-1 through 1.860-4 apply, a reference in this chapter 1 to section 860 (or to a particular provision of section 860) shall be considered to be a reference to section 859 (or to the corresponding substantive provision of section 859), as in effect before enactment of the Revenue Act of 1978, and "qualified investment entity" in §§ 1.381(c)25-1(a) and 1.860-1 through 1.860-3 means a real estate investment trust.

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; sec. 860(e) (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)))

[T.D. 7936, 49 FR 2109, Jan. 18, 1984]

### § 1.860A-0 Outline of REMIC provisions.

This section lists the paragraphs contained in §§ 1.860A-1 through 1.860G-3.

*Section 1.860A-1 Effective dates and transition rules.*

- (a) In general.
- (b) Exceptions.
  - (1) Reporting regulations.
  - (2) Tax avoidance rules.
    - (i) Transfers of certain residual interests.
    - (ii) Transfers to foreign holders.
    - (iii) Residual interests that lack significant value.
  - (3) Excise taxes.
  - (4) Rate based on current interest rate.
    - (i) In general.
    - (ii) Rate based on index.
    - (iii) Transition obligations.