

inducement fee received with respect to the acquisition of a noneconomic residual interest in an applicable REMIC has not been recognized in full by the holder as of the time the holder sells, or otherwise disposes of, that residual interest in the applicable REMIC (in a transaction other than a transaction to which section 381(c)(4) applies), then the holder must include the unrecognized portion of the inducement fee in income at that time.

(e) *Safe harbors.* If inducement fees are recognized in accordance with a method described in this paragraph (e), that method complies with the requirements of paragraph (c) of this section.

(1) *The book method.* Under the book method, an inducement fee is recognized in accordance with the method of accounting, and over the same period, that is used by the taxpayer for financial reporting purposes (including consolidated financial statements to shareholders, partners, beneficiaries, other proprietors and for credit purposes), provided that the inducement fee is included in income for financial reporting purposes over a period that is not shorter than the period during which the applicable REMIC is expected to generate taxable income.

(2) *The modified REMIC regulatory method.* Under the modified REMIC regulatory method, the inducement fee is recognized ratably over the remaining anticipated weighted average life of the applicable REMIC as if the inducement fee were unrecognized gain being included in gross income under § 1.860F-2(b)(4)(iii).

(3) *Additional safe harbor methods.* The Commissioner, by revenue ruling or revenue procedure published in the Internal Revenue Bulletin, may provide additional safe harbor methods for recognizing inducement fees on noneconomic REMIC residual interests.

(f) *Method of accounting.* The treatment of inducement fees is a method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. A taxpayer is generally permitted to adopt a method of accounting for inducement fees that satisfies the requirements of paragraph (c) of this section. Once a taxpayer adopts a method of accounting for inducement fees, that method must be applied consistently to all inducement fees received in connection with noneconomic REMIC residual interests and may be changed only with the consent of the Commissioner, as provided by section 446(e) and the regulations and procedures thereunder.

(g) *Effective date.* This section is applicable for taxable years ending on or after the date this document is published as a final regulation in the **Federal Register**.

**Par. 3.** Section 1.860A-0 is amended by adding an entry in the outline for § 1.860C-1(d) to read as follows:

**§ 1.860A-0 Outline of REMIC provisions.**  
\* \* \* \* \*

**§ 1.860C-1 Taxation of holders of residual interests.**  
\* \* \* \* \*

(d) Treatment of REMIC inducement fees.  
\* \* \* \* \*

**Par. 4.** Section 1.860C-1 is amended by adding paragraph (d) to read as follows:

**§ 1.860C-1 Taxation of holders of residual interests.**  
\* \* \* \* \*

(d) For rules on the proper accounting for income from inducement fees, see § 1.446-6.

**Par. 5.** Section 1.863-0 is amended by:

1. Adding an entry for § 1.863-1(d).
2. Redesignating the entry for § 1.863-1(e) as § 1.863-1(f).
3. Adding a new entry for § 1.863-1(e).

The additions read as follows:

**§ 1.863-0 Table of contents.**  
\* \* \* \* \*

**§ 1.863-1 Allocation of gross income.**  
\* \* \* \* \*

(d) Scholarships, fellowship grants, grants, prizes and awards.  
(e) REMIC inducement fees.  
\* \* \* \* \*

**Par. 6.** Section 1.863-1 is amended as follows:

1. Paragraph (e) is revised.
2. Paragraph (f) is added.

The revision and addition reads as follows:

**§ 1.863-1 Allocation of gross income under section 863(a).**  
\* \* \* \* \*

(e) *REMIC inducement fees.* An inducement fee (as defined in § 1.446-6(b)(2)) shall be treated as income from sources within the United States.

(f) *Effective dates.* The rules of paragraphs (a), (b) and (c) of this section will apply to taxable years beginning after December 30, 1996. However, taxpayers may apply the rules of paragraphs (a), (b) and (c) of this section for taxable years beginning after July 11, 1995, and on or before December 30, 1996. For years beginning before December 30, 1996, see § 1.863-1 (as

contained in 26 CFR part 1 revised as of April 1, 1996). See paragraph (d)(4) of this section for rules regarding the applicability date of paragraph (d) of this section. Paragraph (e) of this section is applicable for taxable years ending on or after the date this document is published as a final regulation in the **Federal Register**.

**Robert E. Wenzel,**

*Deputy Commissioner for Services and Enforcement.*

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**DEPARTMENT OF TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-129709-03]

RIN 1545-BC34

**Prohibited Allocations of Securities in an S Corporation**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on identifying disqualified persons and determining whether a plan year is a nonallocation year under section 409(p) and on the definition of synthetic equity under section 409(p)(5). These proposed regulations would generally affect plan sponsors of, and participants in, ESOPs holding stock of Subchapter S corporations. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by October 20, 2003.

Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for November 20, 2003, at 10 a.m. must be received by October 30, 2003.

**ADDRESSES:** Send submissions to: CC:PA:RU (REG-129709-03), 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:RU (REG-129709-03), Courier's Desk, Internal Revenue

Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at <http://www.irs.gov/regs>. The public hearing will be held in room 6718.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, John Ricotta at 622-6060; concerning submissions of comments, Guy Traynor, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 409(p). The temporary regulations contain rules relating to the identification of disqualified persons and determination whether a plan year is a nonallocation year under section 409(p) and the definition of synthetic equity under section 409(p)(5). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

**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. Because § 1.409(p)-1 imposes no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. 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 Requests for a 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) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

Comments are requested with respect to issues raised by S corporation ESOPs established by March 14, 2001, that will need to comply with the requirements of section 409(p) beginning in 2005. For

these ESOPs, the inclusion of deferred compensation as synthetic equity can be avoided by distributing such deferred compensation before 2005. Some employers may prefer other transition approaches. For example, a preferable transition approach may be to spin off and terminate the portion of a plan benefitting disqualified persons. Comments are requested on whether guidance is needed to address these possible transition approaches.

Comments are also requested on issues that are reserved in the regulations with respect to whether certain interests in an S corporation should be treated as synthetic equity, including the extent to which rights to acquire assets of the S corporation or another person are established for reasonable business purposes and should not be treated as synthetic equity. While comments can be filed as late as October 20, 2003, commentators are encouraged to file comments as early as possible because the IRS and Treasury intend to move forward to address these issues as early as 2003.

Commentators may also wish to comment on section 409(p)-related issues that are not directly raised in the proposed regulations. For example, commentators may wish to comment on the extent to which administrative guidance may be needed on an interim basis to deal with specific structures used to avoid or evade the purpose of section 409(p).

A public hearing has been scheduled for November 20, 2003, at 10 a.m. in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. 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 30 minutes before the hearing starts at the Constitution Avenue entrance. For 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 comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 30, 2003. 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 John Ricotta of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

**List of Subjects 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**

1. The authority citation for part 1 is amended by an entry in numerical order to read in part as follows:

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

Section 1.409(p)-1 also issued under 26 U.S.C. 409(p)(7)(A). \* \* \*

2. Section 1.409(p)-1 is added to read as follows:

**§ 1.409(p)-1 Prohibited allocation of securities in an S corporation.**

[The text of proposed § 1.409(p)-1 is the same as the text of § 1.409(p)-1T published elsewhere in this issue of the **Federal Register**].

**Robert E. Wenzel,**

*Deputy Commissioner for Services and Enforcement.*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG-132483-03]**

**RIN 1545-BC40**

**Remedial Actions for Tax-exempt Bonds**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

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

**SUMMARY:** This document contains proposed regulations that amend the final regulations that provide certain permitted remedial actions for tax-exempt bonds issued by State and local governments. This document also contains a notice of public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by October 14, 2003.