

value of the proprietary interest in T. Therefore, the transaction satisfies the continuity of interest requirement.

*Example 11. Modification of binding contract.* The facts are the same as in Example 10, except that on April 1 of Year 1, the parties modify their contract. Pursuant to the modified contract, which is a binding contract, the T shareholders will receive 50 P shares and \$60 in exchange for all of the outstanding T stock. At the end of the day on March 31 of Year 1, the P stock trades for \$.80 per share. Under paragraph (e)(2) of this section, although there was a binding contract with fixed consideration as of January 3 of Year 1, terms of that contract relating to the consideration to be provided to the target shareholders were modified on April 1 of Year 1. Therefore, whether the transaction satisfies the continuity of interest requirement is determined by reference to the value of the P stock as of the end of the day on March 31 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for \$40 of P stock and \$60, the transaction preserves a substantial part of the value of the proprietary interest in T. Therefore, the transaction satisfies the continuity of interest requirement.

*Example 12.* The facts are the same as in Example 11 except that, at the end of the day on March 31 of Year 1, the P stock trades for \$.51 per share. As in Example 11, whether the transaction satisfies COI is determined by reference to the value of the P stock as of the end of the day on March 31 of Year 1. Because, for continuity of interest purposes, the T stock is exchanged for \$25.50 of P stock and \$60, a substantial part of the value of the proprietary interest in T is not preserved. Therefore, the transaction does not satisfy the continuity of interest requirement.

(ii) *Effective date.* Paragraph (e)(7) Examples 10, 11, and 12 apply to transactions occurring pursuant to binding contracts entered into after the date these regulations are published as final regulations in the **Federal Register**.

\* \* \* \* \*

Approved: June 29, 2004.

**Nancy Jardini,**

*Acting Deputy Commissioner for Services and Enforcement.*

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**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### 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 8, 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](http://www.irs.gov/regs) or the Federal eRulemaking Portal at [www.regulations.gov](http://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.

\* \* \* \* \*

Nancy J. Jardini,

*Acting Deputy Commissioner of Services and Enforcement.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 40 and 49

[REG-163909-02]

RIN 1545-BB75

#### Collected Excise Taxes; Duties of Collector

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

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the obligations of persons that receive payments for air transportation or communications services subject to excise tax when persons liable for the tax refuse to pay the tax. The text of those temporary regulations also serves as the text of these proposed regulations. These proposed regulations affect persons liable for those taxes and persons that receive payments subject to tax.

**DATES:** Written and electronic comments and requests for a public hearing must be received by November 8, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-163909-02), room 5203, 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-163909-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs), or via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-163909-02).

**FOR FURTHER INFORMATION CONTACT:** Concerning submissions, the Publication and Regulations Unit, (202) 622-7180; concerning the regulations, Taylor Cortright, (202) 622-3130 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

These proposed regulations relate to the obligations of persons that receive payments for air transportation or communications services subject to excise tax when persons liable for the tax refuse to pay the tax. These proposed regulations would amend the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and

Services Excise Tax Regulations (26 CFR part 49). The text of temporary regulations published in this issue of the **Federal Register** 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, and because the notice of proposed rulemaking does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the 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) or 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 may 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 hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is Patrick S. Kirwan, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.