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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9184

RIN 1545-BC71

Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulation.

SUMMARY: This document contains final 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: These regulations apply after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Arturo Estrada, (202) 622-3900(not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This 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 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.

Effective Date

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

Special Analyses

It has been determined that this Treasury decision 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 Treasury decision has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

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.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 of the paragraph 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.

Mark E. Matthews

Deputy Commissioner for Services and Enforcement.

Approved: February 15, 2005

Eric Solomon

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).