

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-115472-03]

RIN 1545-BC04

#### Return of Partnership Income

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

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

**SUMMARY:** In the Rules and Regulations section of the **Federal Register**, the IRS is issuing temporary regulations that authorize the Commissioner to provide exceptions to the requirements of section 6031(a) of the Internal Revenue Code for certain partnerships by guidance published in the Internal Revenue Bulletin. The text of those temporary regulations also serves as the text of these proposed regulations. The regulations generally affect both certain partnerships that invest in tax-exempt obligations and partners in those partnerships.

**DATES:** Written or electronic comments must be received by February 9, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-115472-03), 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-115472-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at <http://www.irs.gov/regs>.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, David A. Shulman, (202) 622-3070 (not a toll-free number); concerning the submissions of comments or the request

for a public hearing, Guy Traynor, (202) 622-3693 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Temporary regulations published elsewhere in this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 6031(a). The temporary regulations authorize the Commissioner to provide, in guidance published in the Internal Revenue Bulletin, exceptions to the requirements of section 6031(a) if all or substantially all of the partnership's income is derived from the holding or disposition of tax-exempt obligations (as defined in section 1275(a)(3) and § 1.1275-1(e)) or shares in a regulated investment company (as defined in section 851(a)) that pays exempt-interest dividends (as defined in section 852(b)(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.

##### Proposed Effective Date

These regulations are proposed to apply November 5, 2003.

##### 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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that relatively few partnerships have income that is primarily from tax-exempt obligations. Furthermore, the purpose of this regulation is to decrease (rather than increase) the number of entities required to file a partnership return. Therefore, 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 Public Hearing

Before these proposed regulations are adopted as final regulations,

consideration will be given to any written (a signed original and 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 can 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 David A. Shulman of the Office of the Associate Chief Counsel (Passthroughs & Special Industries), IRS. 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 revising the entry for "Section 1.6031(a)-1" to read in part as follows:

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

Section 1.6031(a)-1 is also issued under section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248; 96 Stat. 324, 669) (TEFRA), and 26 U.S.C. 6031. \* \* \*

**Par. 2.** Section 1.6031(a)-1 is amended as follows:

1. Paragraph (a)(3)(ii) is revised.
2. Paragraph (f) is revised.

The revisions read as follows:

##### § 1.6031(a)-1 Return of partnership income.

- (a) \* \* \*  
(3) \* \* \*  
(i) \* \* \*

(ii) [The text of the proposed amendment to § 1.6031(a)-1 (a)(3)(ii) is the same as the text of § 1.6031(a)-1T (a)(3)(ii) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(2) [The text of the proposed amendment to § 1.6031(a)-1(f)(2) is the same as the text of § 1.6031(a)-1T (f)(2) published elsewhere in this issue of the **Federal Register**].

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 03-28191 Filed 11-5-03; 1:41 pm]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-209817-96]

RIN 1545-AU19

#### Treatment of Obligation-Shifting Transactions

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

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** This document withdraws a proposed regulation relating to the treatment of certain multiple-party financing transactions in which one party realizes income from leases or other similar agreements and another party claims deductions related to that income.

**FOR FURTHER INFORMATION CONTACT:** Pamela Lew, (202) 622-3950, (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

In Notice 95-53 (1995-2 C.B. 334) (modified and superseded by Notice 2003-55) (2003-34 I.R.B. 395), the IRS and Treasury Department stated that regulations under section 7701(l) would be issued to recharacterize lease strips to prevent tax avoidance. On December 27, 1996, a notice of proposed rulemaking (REG-209817-96) relating to the treatment of certain obligation-shifting transactions was published in the **Federal Register** (61 FR 68175). An obligation-shifting transaction is a transaction in which the transferee (the assuming party) assumes obligations or acquires property subject to obligations under an existing lease or similar agreement and the transferor (the property provider) or any other party has already received or retains the right to receive amounts that are allocable to periods after the transfer.

The proposed regulations recharacterize obligation-shifting

transactions in a manner intended to reflect the economic substance of the transactions and to clearly reflect the income of the parties to the transaction. Under the recharacterization, the property provider and the assuming party must report the income from the underlying property allocable to their respective periods of ownership. This result is achieved by imputing a series of transactions to both the assuming party and the property provider that results in a rent-leveling process based on the constant rental accrual method described in § 1.467-3(d). The assuming party is required to recognize rental income for the period in which it owns the property or leasehold interest. The property provider must adjust its income for any differences between amounts it recognized and amounts it would have recognized if it had reported income on a level-rent basis for the periods that it owned the property or leasehold interest. To account for the difference between rental income the assuming party is required to recognize and rental income the assuming party actually receives, the proposed regulations treat the assuming party as issuing an interest-bearing note to the property provider as additional consideration for the obligation-shifting transaction. Both parties must account for the resulting interest income and expense appropriately. To account for any differences in timing or amount between payments the property provider actually receives after the transaction and payments treated as being made to the property provider under the note from the assuming party, the property provider is treated as an obligor or obligee under a second loan, for which the property provider must account accordingly.

After careful consideration, the IRS and Treasury Department have concluded that the complexity presented by these proposed regulations is not necessary to prevent tax avoidance in these transactions. Since the publication of the proposed regulations, the Court of Appeals for the District of Columbia Circuit has held that the partnership used in a lease strip was not a valid partnership because the participants did not join together for a non-tax business purpose. *Andantech L.L.C. v. Commissioner*, Nos. 02-1213; 02-1215, (D.C. Cir. June 17, 2003), 2003 U.S. App. LEXIS 11908, *aff'g in part and remanding for reconsideration of other issues* T.C. Memo 2002-97 (2002). Also, in *Nicole Rose v. Commissioner*, 320 F.3d 282 (2d Cir. 2002) *aff'g per curiam* 117 T.C. 328 (2001), the United States Court of Appeals for the Second

Circuit upheld the Tax Court's determination that a lease transfer did not have economic substance.

In the opinion of the IRS and Treasury Department, the claimed tax treatment for lease strips improperly separates income from related deductions, and lease strips do not produce the tax consequences desired by the participants. See Notice 2003-55 (2003-34 I.R.B. 395).

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-209817-96) that was published in the **Federal Register** on December 27, 1996 (61 FR 68175) is withdrawn.

**Dale F. Hart,**

*Acting Deputy Commissioner for Services and Enforcement.*

[FR Doc. 03-28203 Filed 11-7-03; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-162625-02]

RIN 1545-BB73

#### Real Estate Mortgage Investment Conduits; Application of Section 446 With Respect to Inducement Fees; Hearing

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

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed regulations relating to the proper timing and source of income from fees received to induce the acquisition of noneconomic residual interests in Real Estate Mortgage Investment Conduits (REMICs).

**DATES:** The public hearing originally scheduled for Tuesday, November 18, 2003, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Treena Garrett of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), (202) 622-7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of