

(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.*

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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In Notice 95-53 (1995-2 C.B. 334) (modified and superseded by Notice 2003-55) (2003-34 I.R.B. 395), the IRS and Treasury Department stated that regulations under section 7701(l) would be issued to recharacterize lease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]

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## 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

public hearing that appeared in the **Federal Register** on Monday, July 21, 2003, (68 FR 43055), announced that a public hearing was scheduled for Tuesday, November 18, 2003, at 10 a.m. in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 446, 860, and 863 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Monday, October 20, 2003. Outlines of oral comments were due on Tuesday, October 28, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, November 5, 2003, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, November 18, 2003, is cancelled.

**Cynthia E. Grigsby,**  
Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03-28204 Filed 11-7-03; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

[Docket No. FEMA-B-7441]

**Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the

proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the below table.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2903.

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new

buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act.** This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act.** The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification.** This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism.** This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform.** This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § 67.4.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet •(NVAD)		Communities affected
		Effective	Modified	
<b>Sioux County, and Incorporated Areas</b>				
Cannonball River .....	Approximately 4,300 feet downstream of Rice Street .....	None	•1,658	Standing Rock Indian Reservation, ND and City of Solen
	Approximately 7,700 feet upstream of Rice Street .....	None	•1,668	