

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

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Refer Reply To:  
CC:PSI:B02  
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Date:  
December 17, 2008

Trustee =

Dear

This letter responds to a letter dated February 26, 2008, and subsequent correspondence, submitted on behalf of Trustee, by Trustee's authorized representative, requesting rulings regarding reporting for widely held fixed investment trusts (WHFITs) under § 1.671-5 of the Income Tax Regulations.

Trustee is the trustee of several non-mortgage widely held fixed investment trusts (NMWHFITs) as described in § 1.671-5(b)(12).

A NMWHFIT incurs expenses that relate to the organization of the trust and the sale of trust interests (organization expenses). The amount of these expenses for each trust interest is a fixed percentage of the initial fair market value of the trust interest in the NMWHFIT at the time that the NMWHFIT is created multiplied by the number of trust interests that are created during the NMWHFITs initial year.

Trust interest holders in these NMWHFITs have the right under the trust document and under applicable provisions of the Investment Company Act of 1940 to redeem their trust interests at any time for the redemption price of a trust interest. Trustee has indicated that the redemption price of a trust interest is frequently determined as the close of markets on the day that the trust interests are tendered for redemption. To obtain the needed cash, Trustee must sell securities held by a NMWHFIT. Trustee represents that it sells securities to obtain the cash to effect redemptions in a manner that maintains the proportionate relationship between the securities held by the NMWHFIT at the time of the redemption.

Trustee requests a ruling that it may calculate the net asset value (NAV) of a trust for purposes of applying the de minimis test under § 1.671-5(c)(2)(iv)(D)(1) in the NMWHFIT's initial year by multiplying the NAV of a trust interest as of the date of the initial deposit of assets by the number of trust interests issued as of the start-up date; or, alternatively, by the number of trust interests issued as of the measuring date. Additionally, Trustee requests a ruling that it may use the value of the securities held by the NMWHFIT at the time that Trustee enters the market to sell the securities for purposes of determining the securities that are deemed to be owned by the trust interest or interests tendered for redemption under § 1.671-5(c)(2)(iv)(G)(1).

Section 1.671-5(c)(2)(iv)(D)(1) provides that a WHFIT meets the de minimis test for the calendar year if trust sales proceeds for the calendar year are not more than five percent of the NAV of the trust (aggregate fair market value of the trust's assets less the trust's liabilities) as of the later of January 1 and the start-up date; or, if the trustee chooses, the later of January 1 and the measuring date. The start-up date is the date on which substantially all of the assets have been deposited with the trustee of the WHFIT. The measuring date is the date of the last deposit of assets into the WHFIT, not to exceed 90 days after the date the registration statement of the WHFIT becomes effective under the Securities Act of 1933.

Section 1.671-5(c)(2)(iv)(G)(1) provides that pro-rata sales to effect a redemptions are not required to be reported under §1.671-5(c)(2)(iv). Section 1.671-5(c)(2)(iv)(G)(2) provides that a pro-rata sale to effect a redemption occurs when (i) one or more trust interests are tendered for redemption; (ii) the trustee identifies the pro-rata shares of the trust assets that are deemed to be owned by the trust interest or interests tendered for redemption and sells those assets as soon as practicable; (iii) proceeds from the sales of the assets identified in § 1.671-5(c)(2)(iv)(G)(2)(ii) are used solely to effect redemptions; and (iv) the redemptions are reported as required under §1.671-5(c)(2)(v). Section 1.671-5(c)(2)(iv)(G)(3)(i) provides that the trustee may compare the aggregate pro-rata share of the assets deemed to be owned by the trust interests tendered for redemption during the calendar month with the aggregate sales to effect redemptions for the calendar month to determine the pro-rata sales of trust assets to effect redemptions for the calendar month.

Based on the information provided, we conclude that Trustee may determine whether a NMWHFIT has met the de minimis test in § 1.671-5(c)(2)(iv)(D)(1) in the NMWHFIT's initial year by utilizing an NAV determined by multiplying the NAV of a trust interest as of the initial date of deposit of assets in the NMWHFIT by the number of trust interests issued as of the start-up date, or, alternatively, if the trustee chooses, by the number of trust interests issued as of the measuring date. Additionally, for purposes of § 1.671-5(c)(2)(iv)(G), Trustee may use the value of the securities at the time that Trustee sells those securities to obtain cash to effect the redemption to determine the pro-rata share of the securities that are deemed to be owned by the trust interest or

interests tendered for redemption provided that Trustee sells those securities as soon as practicable after the trust interest or interests are tendered for redemption.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Trustee's authorized representative.

Sincerely,

Faith P. Colson  
Senior Counsel, Branch 1  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: