

Brownsville, TX, Brownsville South Padre Island Intl, ILS OR LOC RWY 13R, Amdt 1
 Dallas, TX, Dallas Love Field, ILS OR LOC RWY 31L, Amdt 21
 Dallas, TX, Dallas Love Field, RNAV (GPS) RWY 31L, Amdt 1
 Port Isabel, TX, Port Isabel-Cameron County, RNAV (GPS) RWY 13, Amdt 1
 Port Isabel, TX, Port Isabel-Cameron County, Takeoff Minimums and Obstacle DP, Amdt 2
 Moses Lake, WA, Grant County Intl, MLS RWY 32R, Orig-B, CANCELLED
 Juneau, WI, Dodge County, RNAV (GPS) RWY 2, Amdt 1
 Juneau, WI, Dodge County, RNAV (GPS) RWY 20, Amdt 1
 Beckley, WV, Raleigh County Memorial, RNAV (GPS) RWY 1, Orig
 Beckley, WV, Raleigh County Memorial, VOR/DME OR GPS RWY 1, Amdt 3A, CANCELLED

Effective 28 AUG 2008

Grand Forks, ND, Grand Forks Intl, RNAV (GPS) RWY 26, Amdt 1A
 Ithaca, NY, Ithaca Tompkins Regional, Takeoff Minimums and Obstacle DP, Amdt 4
 Waynesburg, PA, Greene County, Takeoff Minimums and Obstacle DP, Orig

Effective 25 SEP 2008

Fort Pierce, FL, St. Lucie County Intl, GPS RWY 9, Orig-B, CANCELLED
 Fort Pierce, FL, St. Lucie County Intl, ILS OR LOC RWY 9, Amdt 2
 Fort Pierce, FL, St. Lucie County Intl, NDB RWY 27, Amdt 1
 Fort Pierce, FL, St. Lucie County Intl, RNAV (GPS) RWY 9, Orig
 Fort Pierce, FL, St. Lucie County Intl, RNAV (GPS) RWY 14, Orig
 Fort Pierce, FL, St. Lucie County Intl, RNAV (GPS) RWY 27, Orig
 Fort Pierce, FL, St. Lucie County Intl, VOR/DME RWY 14, Amdt 8
 Pahokee, FL, Palm Beach County Glades, RNAV (GPS) RWY 17, Orig
 Pahokee, FL, Palm Beach County Glades, RNAV (GPS) RWY 35, Orig
 St Petersburg, FL, Albert Whitted, RNAV (GPS) RWY 7, Amdt 1
 St Petersburg, FL, Albert Whitted, RNAV (GPS) RWY 18, Orig-A
 St Petersburg, FL, Albert Whitted, RNAV (GPS) RWY 36, Amdt 1
 Thomasville, GA, Thomasville Regional, RNAV (GPS) RWY 22, Orig
 Bloomington/Normal, IL, Central IL Rgnl Arpt at Bloomington-Normal, VOR RWY 11, Amdt 13, CANCELLED

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9415]

RIN 1545-BB84

REMIC Residual Interests—Accounting for REMIC Net Income (Including Any Excess Inclusions) (Foreign Holders)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The foreign persons covered by these regulations include partners in domestic partnerships, shareholders of real estate investment trusts, shareholders of regulated investment companies, participants in common trust funds, and patrons of subchapter T cooperatives. These regulations are necessary to prevent inappropriate avoidance of current income tax liability by foreign persons to whom income from REMIC residual interests is allocated.

DATES: *Effective Date:* These regulations are effective on July 14, 2008.

Dates of Applicability: For dates of applicability, see §§ 1.860A-1(b)(5), 1.863-1(f) and 1.1441-2(f).

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

Background

This document contains amendments to 26 CFR part 1 under sections 860A, 860G(b), 863, 1441, and 1442 of the Internal Revenue Code (Code). On August 1, 2006, temporary regulations (TD 9272) were published in the **Federal Register** (71 FR 43363). A notice of proposed rulemaking (REG-159929-02) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (71 FR 43398). The preamble to the temporary regulations contains an explanation of these provisions. No comments were received from the public in response to the notice of proposed rule making. Accordingly, this Treasury Decision adopts the proposed regulations without any substantive changes. No public hearing was requested or held.

Dates of Applicability

The regulations regarding the timing of REMIC income inclusions apply to REMIC net income of a foreign person with respect to REMIC residual interests with respect to which the first REMIC net income allocation to the foreign person under section 860C occurs on or after August 1, 2006. The regulations regarding the source of excess inclusions are applicable for taxable years ending after August 1, 2006.

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 has also been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it has also been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations because these regulations do not have a significant economic impact on a substantial number of small entities. According to the Small Business Administration definition of a “small business,” 13 CFR 121.201, a REMIC is classified as an “Other Financial Vehicle,” NAICS code 525990, and is considered a small entity if it accumulates less than 6.5 million dollars in annual receipts. It has been determined that REMICs affected by these regulations generally will have greater than 6.5 million dollars in annual receipts and therefore will not generally be classified as small business entities. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Dale Collinson, formerly with the 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.

Adoption of 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 removing the entries for §§ 860A–1T and 860G–3T to read as follows:

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

■ **Par. 2.** Section 1.860A–0 is amended by adding entries for §§ 1.860A–1(b)(5) and 1.860G–3(b) and removing the entries for §§ 1.860A–1T and 1.860G–3T to read as follows:

§ 1.860A–0 Outline of REMIC provisions.

* * * * *

§ 1.860A–1 Effective dates and transition rules.

* * * * *

(b) * * *

(5) Accounting for REMIC net income of foreign persons.

* * * * *

§ 1.860G–3 Treatment of foreign persons.

* * * * *

(b) Accounting for REMIC net income

(1) Allocation of partnership income to a foreign partner.

(2) Excess inclusion income allocated by certain pass-through entities to a foreign person.

■ **Par. 3.** Section 1.860A–1(b)(5) is revised to read as follows:

§ 1.860A–1 Effective dates and transition rules.

* * * * *

(b) * * *

(5) Accounting for REMIC net income of foreign persons. Section 1.860G–3(b) is applicable to REMIC net income (including excess inclusions) of a foreign person with respect to a REMIC residual interest if the first net income allocation under section 860C(a)(1) to the foreign person with respect to that interest occurs on or after August 1, 2006.

§ 1.860A–1T [Removed]

■ **Par. 4.** Section 1.860A–1T is removed.

■ **Par. 5.** Section 1.860G–3 (b) is revised to read as follows:

§ 1.860G–3 Treatment of foreign persons.

* * * * *

(b) *Accounting for REMIC net income—(1) Allocation of partnership income to a foreign partner.* A domestic partnership shall separately state its allocable share of REMIC taxable income or net loss in accordance with § 1.702–1(a)(8). If a domestic partnership allocates all or some portion of its allocable share of REMIC taxable income to a partner that is a foreign person, the amount allocated to the foreign partner shall be taken into account by the foreign partner for purposes of sections 871(a), 881, 1441,

and 1442 as if that amount was received on the last day of the partnership's taxable year, except to the extent that some or all of the amount is required to be taken into account by the foreign partner at an earlier time under section 860G(b) as a result of a distribution by the partnership to the foreign partner or a disposition of the foreign partner's indirect interest in the REMIC residual interest. A disposition in whole or in part of the foreign partner's indirect interest in the REMIC residual interest may occur as a result of a termination of the REMIC, a disposition of the partnership's residual interest in the REMIC, a disposition of the foreign partner's interest in the partnership, or any other reduction in the foreign partner's allocable share of the portion of the REMIC net income or deduction allocated to the partnership. See § 1.871–14(d)(2) for the treatment of interest received on a regular or residual interest in a REMIC. For a partnership's withholding obligations with respect to excess inclusion amounts described in this paragraph (b)(1), see §§ 1.1441–2(b)(5), 1.1441–2(d)(4), 1.1441–5(b)(2)(i)(A), and §§ 1.1446–1 through 1.1446–7.

(2) *Excess inclusion income allocated by certain pass-through entities to a foreign person.* If an amount is allocated under section 860E(d)(1) to a foreign person that is a shareholder of a real estate investment trust or a regulated investment company, a participant in a common trust fund, or a patron of an organization to which part I of subchapter T applies and if the amount so allocated is governed by section 860E(d)(2) (treating it “as an excess inclusion with respect to a residual interest held by” the taxpayer), the amount shall be taken into account for purposes of sections 871(a), 881, 1441, and 1442 at the same time as the time prescribed for other income of the shareholder, participant, or patron from the trust, company, fund, or organization.

§ 1.860G–3T [Removed]

■ **Par. 6.** Section 1.860G–3T is removed.

■ **Par. 7.** Section 1.863–0 is amended by adding an entry for 1.863–1(f) and removing the entries for § 1.863–1T to read as follows:

§ 1.863–1 Allocation of gross income under section 863(a).

* * * * *

(f) *Effective/applicability date.*

■ **Par. 8.** Section 1.863–1 paragraphs (e)(2) and (f) are revised to read as follows:

§ 1.863–1 Allocation of gross income under section 863(a).

* * * * *

(e) * * *

(1) * * *

(2) *Excess inclusion income and net losses.* An excess inclusion (as defined in section 860E(c)) shall be treated as income from sources within the United States. To the extent of excess inclusion income previously taken into account with respect to a residual interest (reduced by net losses previously taken into account under this paragraph), a net loss (described in section 860C(b)(2)) with respect to the residual interest shall be allocated to the class of gross income and apportioned to the statutory grouping(s) or residual grouping of gross income to which the excess inclusion income was assigned.

(f) *Effective/applicability date.* Paragraph (e)(2) of this section applies for taxable years ending after August 1, 2006.

§ 1.863–1T [Removed]

■ **Par. 9.** Section 1.863–1T is removed.

■ **Par. 10.** Section 1.1441–0 is amended by revising the entry for § 1.1441–2(f) and removing the entries for § 1.1441–2T to read as follows:

§ 1.1441–0 Outline of regulation provisions for section 1441.

* * * * *

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(f) *Effective/applicability date.*

■ **Par. 11.** Section 1.1441–2(b)(5), (d)(4) and (f) are revised to read as follows:

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(b) * * *

(5) *REMIC residual interests.* Amounts subject to withholding include an excess inclusion described in § 1.860G–3(b)(2) and the portion of an amount described in § 1.860G–3(b)(1) that is an excess inclusion.

* * * * *

(d) * * *

(4) *Withholding exemption inapplicable.* The exemption in § 1.1441–2(d) from the obligation to withhold shall not apply to amounts described in § 1.860G–3(b)(1) (regarding certain partnership allocations of REMIC net income with respect to a REMIC residual interest).

* * * * *

§ 1.1441–2T [Removed]

■ **Par. 12.** Section 1.1441–2T is removed.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–15940 Filed 7–11–08; 8:45 am]

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 20**

[TD 9414]

RIN 1545–BE52

**Grantor Retained Interest Trusts—
Application of Sections 2036 and 2039**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on the portion of property transferred to a trust or otherwise, that is properly includible in a grantor's gross estate under Internal Revenue Code (Code) sections 2036 and 2039 if the grantor has retained the use of the property or the right to an annuity, unitrust, or other payment from such property for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death. The final regulations affect estates that are required to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

DATES: *Effective Date:* These regulations are effective on July 14, 2008.

Applicability Date: For dates of applicability, see § 20.2036–1(c)(3) and § 20.2039–1(f).

FOR FURTHER INFORMATION CONTACT:

Theresa M. Melchiorre at (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background and Explanation of Provisions**

On June 7, 2007, proposed regulations (REG–119097–05) were published in the *Federal Register* [72 FR 31487]. The proposed regulations contain proposed amendments to the Estate Tax Regulations [26 CFR part 20] providing guidance on the portion of a trust properly includible in a grantor's gross

estate under sections 2036 and 2039 if the grantor retained the use of property in the trust or the right to an annuity, unitrust, or other payment from the trust for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death. The trusts that were the subject of the proposed regulations include without limitation certain charitable remainder trusts (collectively CRTs) such as charitable remainder annuity trusts (CRATs) within the meaning of section 664(d)(1), charitable remainder unitrusts (CRUTs) within the meaning of section 664(d)(2) or (d)(3), and charitable remainder trusts that do not qualify under section 664, as well as other trusts established by a grantor (collectively GRTs) such as grantor retained annuity trusts (GRATs), grantor retained unitrusts (GRUTs), and various forms of grantor retained income trusts (GRITs), such as qualified personal residence trusts (QPRTs) and personal residence trusts (PRTs). A CRT was within the scope of the proposed regulations whether or not the CRT met the qualifications of section 664(d)(1), (d)(2), or (d)(3) because either the CRT was created prior to 1969, there was a defect in the drafting of the CRT, there was no intention to qualify the CRT for the charitable deduction, or for any other reason. A GRT was within the scope of the proposed regulations whether or not the grantor's retained interest was a "qualified interest" as defined in section 2702(b).

The proposed regulations incorporate the guidance provided in Rev. Rul. 76–273, 1976–2 CB 268, and Rev. Rul. 82–105, 1982–1 CB 133, by proposing to amend § 20.2036–1 to provide that the portion of the corpus of a CRT and GRT includible in the decedent's gross estate under section 2036 is that portion of the trust corpus necessary to generate a return sufficient to provide the decedent's retained annuity, unitrust, or other payment. See § 601.601(d)(2)(ii)(b). The proposed regulations provide that, in cases where both section 2036 and section 2039 could apply to a retained annuity, unitrust, or other payment in a CRT or a GRT, section 2036 (and therefore, when applicable, section 2035), rather than section 2039, will be applied. Accordingly, the proposed regulations also amend § 20.2039–1 by providing that section 2039 generally shall not be applied to an annuity, unitrust, or other payment retained by a deceased grantor in a CRT or GRT.

Written comments were received on the proposed regulations, and a public hearing was held on September 26, 2007. The proposed regulations, with

certain changes made in response to the written and oral comments received, are adopted as final regulations. Although the final regulations provide guidance as to the Code section (specifically, section 2036 or 2039) to be applied in certain circumstances when each of those sections applies to the same trust, the final regulations are not to be construed to foreclose the possibility that any applicable section of the Code (sections 2035 through 2039, or any other section) properly may be applied in the future by the IRS in appropriate circumstances beyond those described in the final regulations.

Summary of Comments and Explanation of Provisions*References to the Terms GRAT and GRUT*

A commentator recommended that the terms "GRAT" (grantor retained annuity trust) and "GRUT" (grantor retained unitrust) in the proposed regulations be replaced with references to § 25.2702–3(b) and (c) because the terms GRAT and GRUT are not statutory or regulatory terms in the Code. In response, the final regulations include both the Treasury Regulation citations and the terms GRAT and GRUT.

Application of Section 2036 to a Retained Interest in a GRAT or a GRUT

A commentator suggested that section 2036 is not applicable to a retained annuity interest in a GRAT to the extent the retained annuity interest is not payable from trust income. The commentator takes the position that the retained annuity interest is payable from principal and/or income, in kind or in cash, and the size of the annuity payment is not defined in relation to trust income. Instead, the commentator suggests that the annuity is defined as a fraction or percentage of the value of the GRAT's original principal, and accordingly, pursuant to section 2033, only the present value of any unpaid annuity payments as of a particular date or event, valued using section 7520, should be includible in the deceased grantor's gross estate. The commentator opined that section 2036 includes a portion of the trust in the gross estate only to the extent that the trust's income must be used to pay the retained annuity.

Another commentator suggested that the method in the proposed regulations for calculating the portion of GRAT or GRUT corpus includible in the deceased grantor's gross estate under section 2036 results in an overstatement of the property required to produce the retained annuity because the method