

(7) Waiver

The Secretary may waive the tax imposed by paragraph (1) on any transfer if—

(A) within a reasonable time after discovery that the transfer was subject to tax under paragraph (1), steps are taken so that the interest is no longer held by the disqualified organization, and

(B) there is paid to the Secretary such amounts as the Secretary may require.

(8) Administrative provisions

For purposes of subtitle F, the taxes imposed by this subsection shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.

(f) Treatment of variable insurance contracts

Except as provided in regulations, with respect to any variable contract (as defined in section 817), there shall be no adjustment in the reserve to the extent of any excess inclusion.

(Added Pub. L. 99-514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2311; amended Pub. L. 100-647, title I, § 1006(t)(13), (15), (16)(B), (17), (23), (26), (27), Nov. 10, 1988, 102 Stat. 3423, 3426, 3427; Pub. L. 104-188, title I, §§ 1616(b)(10), 1704(h)(1), Aug. 20, 1996, 110 Stat. 1857, 1881.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-188, § 1616(b)(10)(A), substituted “The” for “Except as provided in paragraph (2), the”.

Subsec. (a)(2). Pub. L. 104-188, § 1616(b)(10)(B), (C), redesignated par. (3) as (2), struck out “, except that paragraph (2) shall be applied separately with respect to each corporation which is a member of such group and to which section 593 applies” after “of this subsection”, and struck out former par. (2) which read as follows: “EXCEPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—Paragraph (1) shall not apply to any organization to which section 593 applies. The Secretary may by regulations provide that the preceding sentence shall not apply where necessary or appropriate to prevent avoidance of tax imposed by this chapter.”

Subsec. (a)(3). Pub. L. 104-188, § 1616(b)(10)(B), redesignated par. (5) as (3). Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 104-188, § 1616(b)(10)(B), (D), redesignated par. (6) as (4), struck out at end “The preceding sentence shall not apply to any organization to which section 593 applies, except to the extent provided in regulations prescribed by the Secretary under paragraph (2).”, and struck out former par. (4) which related to certain subsidiaries being treated as single corporations to which section 593 applied.

Subsec. (a)(5). Pub. L. 104-188, § 1616(b)(10)(B), redesignated par. (5) as (3).

Subsec. (a)(6). Pub. L. 104-188, § 1616(b)(10)(B), redesignated par. (6) as (4).

Pub. L. 104-188, § 1704(h)(1), added par. (6).

1988—Subsec. (a)(3), (4). Pub. L. 100-647, § 1006(t)(15), added pars. (3) and (4).

Subsec. (a)(5). Pub. L. 100-647, § 1006(t)(27), added par. (5).

Subsec. (c)(2)(B). Pub. L. 100-647, § 1006(t)(13), (17), substituted “issue price of the residual interest (adjusted for contributions)” for “issue price of residual interest” in introductory text, and in cl. (ii) inserted “(but not below zero)” after “decreased”.

Subsec. (d). Pub. L. 100-647, § 1006(t)(23), inserted at end “Rules similar to the rules of the preceding sentence shall apply also in the case of regulated investment companies, common trust funds, and organizations to which part I of subchapter T applies.”

Subsec. (e). Pub. L. 100-647, § 1006(t)(16)(B), added subsec. (e).

Subsec. (f). Pub. L. 100-647, § 1006(t)(26), added subsec. (f).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1616(b)(10) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, but not applicable to any residual interest held by a taxpayer if such interest has been held by such taxpayer at all times since Oct. 31, 1995, see section 1616(c)(1), (4) of Pub. L. 104-188, set out as a note under section 593 of this title.

Pub. L. 104-188, title I, § 1704(h)(2), Aug. 20, 1996, 110 Stat. 1881, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 671 of the Tax Reform Act of 1986 [Pub. L. 99-514] unless the taxpayer elects to apply such amendment only to taxable years beginning after the date of the enactment of this Act [Aug. 20, 1996].”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, § 1006(t)(16)(D)(ii)-(iv), Nov. 10, 1988, 102 Stat. 3425, provided that:

“(ii) The amendments made by subparagraphs (B) and (C) [amending this section and section 26 of this title] (except to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as added by such amendments) shall apply to transfers after March 31, 1988; except that such amendments shall not apply to any transfer pursuant to a binding written contract in effect on such date.

“(iii) Except as provided in clause (iv), the amendments made by subparagraphs (B) and (C) (to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as so added) shall apply to excess inclusions for periods after March 31, 1988 but only to the extent such inclusions are—

“(I) allocable to an interest in a pass-thru entity acquired after March 31, 1988, or

“(II) allocable to an interest in a pass-thru entity acquired on or before March 31, 1988, but attributable to a residual interest acquired by the pass-thru entity after March 31, 1988.

For purposes of the preceding sentence, any interest in a pass-thru entity (or residual interest) acquired after March 31, 1988, pursuant to a binding written contract in effect on such date shall be treated as acquired before such date.

“(iv) In the case of any real estate investment trust, regulated investment company, common trust fund, or publicly traded partnership, no tax shall be imposed under section 860E(e)(6) of the 1986 Code (as added by the amendment made by subparagraph (B)) for any taxable year beginning before January 1, 1989.”

Amendment by section 1006(t)(13), (15), (17), (23), (26), (27) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

§ 860F. Other rules**(a) 100 percent tax on prohibited transactions****(1) Tax imposed**

There is hereby imposed for each taxable year of a REMIC a tax equal to 100 percent of the net income derived from prohibited transactions.

(2) Prohibited transaction

For purposes of this part, the term “prohibited transaction” means—

(A) Disposition of qualified mortgage

The disposition of any qualified mortgage transferred to the REMIC other than a disposition pursuant to—

- (i) the substitution of a qualified replacement mortgage for a qualified mortgage (or the repurchase in lieu of substitution of a defective obligation),
- (ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage,
- (iii) the bankruptcy or insolvency of the REMIC, or
- (iv) a qualified liquidation.

(B) Income from nonpermitted assets

The receipt of any income attributable to any asset which is neither a qualified mortgage nor a permitted investment.

(C) Compensation for services

The receipt by the REMIC of any amount representing a fee or other compensation for services.

(D) Gain from disposition of cash flow investments

Gain from the disposition of any cash flow investment other than pursuant to any qualified liquidation.

(3) Determination of net income

For purposes of paragraph (1), the term “net income derived from prohibited transactions” means the excess of the gross income from prohibited transactions over the deductions allowed by this chapter which are directly connected with such transactions; except that there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss.

(4) Qualified liquidation

For purposes of this part—

(A) In general

The term “qualified liquidation” means a transaction in which—

- (i) the REMIC adopts a plan of complete liquidation,
- (ii) such REMIC sells all its assets (other than cash) within the liquidation period, and
- (iii) all proceeds of the liquidation (plus the cash), less assets retained to meet claims, are credited or distributed to holders of regular or residual interests on or before the last day of the liquidation period.

(B) Liquidation period

The term “liquidation period” means the period—

- (i) beginning on the date of the adoption of the plan of liquidation, and
- (ii) ending at the close of the 90th day after such date.

(5) Exceptions

Notwithstanding subparagraphs (A) and (D) of paragraph (2), the term “prohibited transaction” shall not include any disposition—

- (A) required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages, or
- (B) to facilitate a clean-up call (as defined in regulations).

(b) Treatment of transfers to the REMIC

(1) Treatment of transferor

(A) Nonrecognition gain or loss

No gain or loss shall be recognized to the transferor on the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC.

(B) Adjusted bases of interests

The adjusted bases of the regular and residual interests received in a transfer described in subparagraph (A) shall be equal to the aggregate adjusted bases of the property transferred in such transfer. Such amount shall be allocated among such interests in proportion to their respective fair market values.

(C) Treatment of nonrecognized gain

If the issue price of any regular or residual interest exceeds its adjusted basis as determined under subparagraph (B), for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

- (i) in the case of a regular interest, such excess shall be included in gross income (as determined under rules similar to rules of section 1276(b)), and
- (ii) in the case of a residual interest, such excess shall be included in gross income ratably over the anticipated period during which the REMIC will be in existence.

(D) Treatment of nonrecognized loss

If the adjusted basis of any regular or residual interest received in a transfer described in subparagraph (A) exceeds its issue price, for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

- (i) in the case of a regular interest, such excess shall be allowable as a deduction under rules similar to the rules of section 171, and
- (ii) in the case of a residual interest, such excess shall be allowable as a deduction ratably over the anticipated period during which the REMIC will be in existence.

(2) Basis to REMIC

The basis of any property received by a REMIC in a transfer described in paragraph (1)(A) shall be its fair market value immediately after such transfer.

(c) Distributions of property

If a REMIC makes a distribution of property with respect to any regular or residual interest—

- (1) notwithstanding any other provision of this subtitle, gain shall be recognized to such REMIC on the distribution in the same manner as if it had sold such property to the distributee at its fair market value, and
- (2) the basis of the distributee in such property shall be its fair market value.

(d) Coordination with wash sale rules

For purposes of section 1091—

(1) any residual interest in a REMIC shall be treated as a security, and

(2) in applying such section to any loss claimed to have been sustained on the sale or other disposition of a residual interest in a REMIC—

(A) except as provided in regulations, any residual interest in any REMIC and any interest in a taxable mortgage pool (as defined in section 7701(i)) comparable to a residual interest in a REMIC shall be treated as substantially identical stock or securities, and

(B) subsections (a) and (e) of such section shall be applied by substituting “6 months” for “30 days” each place it appears.

(e) Treatment under subtitle F

For purposes of subtitle F, a REMIC shall be treated as a partnership (and holders of residual interests in such REMIC shall be treated as partners). Any return required by reason of the preceding sentence shall include the amount of the daily accruals determined under section 860E(c). Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection.

(Added Pub. L. 99-514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2313; amended Pub. L. 100-647, title I, § 1006(t)(3), (4), (14), (18)(A), (22)(B)-(E), Nov. 10, 1988, 102 Stat. 3419, 3420, 3423, 3426; Pub. L. 104-188, title I, § 1704(t)(74), Aug. 20, 1996, 110 Stat. 1891.)

AMENDMENTS

1996—Subsec. (a)(5). Pub. L. 104-188 substituted “paragraph (2)” for “paragraph (1)” in introductory provisions.

1988—Subsec. (a)(2)(A). Pub. L. 100-647, § 1006(t)(3)(B)(i), struck out at end “Notwithstanding the preceding sentence, the term ‘prohibited transaction’ shall not include any disposition required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages.”

Subsec. (a)(2)(A)(i). Pub. L. 100-647, § 1006(t)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “the substitution of a qualified replacement mortgage for a qualified mortgage.”

Subsec. (a)(2)(A)(iii), (C). Pub. L. 100-647, § 1006(t)(22)(B), (C), substituted “REMIC” for “real estate mortgage pool”.

Subsec. (a)(2)(D). Pub. L. 100-647, § 1006(t)(3)(C), struck out “described in subsection (b)” before period at end.

Subsec. (a)(5). Pub. L. 100-647, § 1006(t)(3)(B)(ii), added par. (5).

Subsec. (b)(1)(A). Pub. L. 100-647, § 1006(t)(4), substituted “the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC” for “the transfer of any property to a REMIC”.

Subsec. (b)(1)(C)(ii). Pub. L. 100-647, § 1006(t)(22)(D), substituted “REMIC” for “real estate mortgage pool”.

Subsec. (b)(1)(D)(ii). Pub. L. 100-647, § 1006(t)(14), (22)(E), amended cl. (ii) identically, substituting “REMIC” for “real estate mortgage pool”.

Subsec. (e). Pub. L. 100-647, § 1006(t)(18)(A), inserted at end “Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection.”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, § 1006(t)(18)(B), Nov. 10, 1988, 102 Stat. 3426, provided that: “Unless the REMIC other-

wise elects, the amendment made by subparagraph (A) [amending this section] shall not apply to any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before the date of the enactment of this Act.”

Amendment by section 1006(t)(3), (4), (14), (22)(B)-(E) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

§ 860G. Other definitions and special rules**(a) Definitions**

For purposes of this part—

(1) Regular interest

The term “regular interest” means any interest in a REMIC which is issued on the start-up day with fixed terms and which is designated as a regular interest if—

(A) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

(B) interest payments (or other similar amount), if any, with respect to such interest at or before maturity—

(i) are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate), or

(ii) consist of a specified portion of the interest payments on qualified mortgages and such portion does not vary during the period such interest is outstanding.

The interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments. An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.

(2) Residual interest

The term “residual interest” means an interest in a REMIC which is issued on the start-up day, which is not a regular interest, and which is designated as a residual interest.

(3) Qualified mortgage

The term “qualified mortgage” means—

(A) any obligation (including any participation or certificate of beneficial ownership therein) which is principally secured by an interest in real property and which—

(i) is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC,

(ii) is purchased by the REMIC within the 3-month period beginning on the start-