

**(b) Determination of taxable income or net loss**

For purposes of this section—

**(1) Taxable income**

The taxable income of a REMIC shall be determined under an accrual method of accounting and, except as provided in regulations, in the same manner as in the case of an individual, except that—

(A) regular interests in such REMIC (if not otherwise debt instruments) shall be treated as indebtedness of such REMIC,

(B) market discount on any market discount bond shall be included in gross income for the taxable years to which it is attributable as determined under the rules of section 1276(b)(2) (and sections 1276(a) and 1277 shall not apply),

(C) there shall not be taken into account any item of income, gain, loss, or deduction allocable to a prohibited transaction,

(D) the deductions referred to in section 703(a)(2) (other than any deduction under section 212) shall not be allowed, and

(E) the amount of the net income from foreclosure property (if any) shall be reduced by the amount of the tax imposed by section 860G(c).

**(2) Net loss**

The net loss of any REMIC is the excess of—

(A) the deductions allowable in computing the taxable income of such REMIC, over

(B) its gross income.

Such amount shall be determined with the modifications set forth in paragraph (1).

**(c) Distributions**

Any distribution by a REMIC—

(1) shall not be included in gross income to the extent it does not exceed the adjusted basis of the interest, and

(2) to the extent it exceeds the adjusted basis of the interest, shall be treated as gain from the sale or exchange of such interest.

**(d) Basis rules****(1) Increase in basis**

The basis of any person's residual interest in a REMIC shall be increased by the amount of the taxable income of such REMIC taken into account under subsection (a) by such person with respect to such interest.

**(2) Decreases in basis**

The basis of any person's residual interest in a REMIC shall be decreased (but not below zero) by the sum of the following amounts:

(A) any distributions to such person with respect to such interest, and

(B) any net loss of such REMIC taken into account under subsection (a) by such person with respect to such interest.

**(e) Special rules****(1) Amounts treated as ordinary**

Any amount taken into account under subsection (a) by any holder of a residual interest in a REMIC shall be treated as ordinary income or ordinary loss, as the case may be.

**(2) Limitation on losses****(A) In general**

The amount of the net loss of any REMIC taken into account by a holder under sub-

section (a) with respect to any calendar quarter shall not exceed the adjusted basis of such holder's residual interest in such REMIC as of the close of such calendar quarter (determined without regard to the adjustment under subsection (d)(2)(B) for such calendar quarter).

**(B) Indefinite carryforward**

Any loss disallowed by reason of subparagraph (A) shall be treated as incurred by the REMIC in the succeeding calendar quarter with respect to such holder.

**(3) Cross reference**

**For special treatment of income in excess of daily accruals, see section 860E.**

(Added Pub. L. 99-514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2309; amended Pub. L. 100-647, title I, §1006(t)(1), (8)(C), (21), Nov. 10, 1988, 102 Stat. 3419, 3421, 3426.)

## AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100-647, §1006(t)(21), substituted “and, except as provided in regulations, in the same manner” for “and in the same manner” in introductory provisions.

Subsec. (b)(1)(E). Pub. L. 100-647, §1006(t)(8)(C), added subpar. (E).

Subsec. (e)(1). Pub. L. 100-647, §1006(t)(1), substituted “ordinary” for “ordinary income” in heading and amended text generally. Prior to amendment, text read as follows: “Any amount included in the gross income of any holder of a residual interest in a REMIC by reason of subsection (a) shall be treated as ordinary income.”

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

**§ 860D. REMIC defined****(a) General rule**

For purposes of this title, the terms “real estate mortgage investment conduit” and “REMIC” mean any entity—

(1) to which an election to be treated as a REMIC applies for the taxable year and all prior taxable years,

(2) all of the interests in which are regular interests or residual interests,

(3) which has 1 (and only 1) class of residual interests (and all distributions, if any, with respect to such interests are pro rata),

(4) as of the close of the 3rd month beginning after the startup day and at all times thereafter, substantially all of the assets of which consist of qualified mortgages and permitted investments,

(5) which has a taxable year which is a calendar year, and

(6) with respect to which there are reasonable arrangements designed to ensure that—

(A) residual interests in such entity are not held by disqualified organizations (as defined in section 860E(e)(5)), and

(B) information necessary for the application of section 860E(e) will be made available by the entity.

In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not

apply during the liquidation period (as defined in section 860F(a)(4)(B)).

**(b) Election**

**(1) In general**

An entity (otherwise meeting the requirements of subsection (a)) may elect to be treated as a REMIC for its 1st taxable year. Such an election shall be made on its return for such 1st taxable year. Except as provided in paragraph (2), such an election shall apply to the taxable year for which made and all subsequent taxable years.

**(2) Termination**

**(A) In general**

If any entity ceases to be a REMIC at any time during the taxable year, such entity shall not be treated as a REMIC for such taxable year or any succeeding taxable year.

**(B) Inadvertent terminations**

If—

- (i) an entity ceases to be a REMIC,
- (ii) the Secretary determines that such cessation was inadvertent,
- (iii) no later than a reasonable time after the discovery of the event resulting in such cessation, steps are taken so that such entity is once more a REMIC, and
- (iv) such entity, and each person holding an interest in such entity at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such entity as a REMIC or a C corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding such terminating event, such entity shall be treated as continuing to be a REMIC (or such cessation shall be disregarded for purposes of subparagraph (A)) whichever the Secretary determines to be appropriate.

(Added Pub. L. 99-514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2311; amended Pub. L. 100-647, title I, § 1006(t)(2)(A), (16)(A), (19), Nov. 10, 1988, 102 Stat. 3419, 3423, 3426; Pub. L. 101-508, title XI, § 11704(a)(8), Nov. 5, 1990, 104 Stat. 1388-518.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-508 inserted closing parenthesis before period at end.

1988—Subsec. (a). Pub. L. 100-647, § 1006(t)(19), inserted at end “In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)).”

Subsec. (a)(4). Pub. L. 100-647, § 1006(t)(2)(A)(i), substituted “3rd month beginning after” for “4th month ending after”.

Pub. L. 100-647, § 1006(t)(2)(A)(ii), substituted “and at all times thereafter” for “and each quarter ending thereafter”.

Subsec. (a)(6). Pub. L. 100-647, § 1006(t)(16)(A), added par. (6).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, § 1006(t)(2)(B), Nov. 10, 1988, 102 Stat. 3419, provided that: “The amendment made by subparagraph (A)(ii) [amending this section] shall take effect on January 1, 1988.”

Pub. L. 100-647, title I, § 1006(t)(16)(D)(i), Nov. 10, 1988, 102 Stat. 3425, provided that: “The amendments made

by subparagraph (A) [amending this section] shall apply in the case of 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 after March 31, 1988; except that such amendments shall not apply in the case of a REMIC formed pursuant to a binding written contract in effect on such date.”

Amendment by section 1006(t)(2)(A)(i), (19) 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.

**§ 860E. Treatment of income in excess of daily accruals on residual interests**

**(a) Excess inclusions may not be offset by net operating losses**

**(1) In general**

The taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year.

**(2) Special rule for affiliated groups**

All members of an affiliated group filing a consolidated return shall be treated as 1 taxpayer for purposes of this subsection.

**(3) Coordination with section 172**

Any excess inclusion for any taxable year shall not be taken into account—

(A) in determining under section 172 the amount of any net operating loss for such taxable year, and

(B) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

**(4) Coordination with minimum tax**

For purposes of part VI of subchapter A of this chapter—

(A) the reference in section 55(b)(2) to taxable income shall be treated as a reference to taxable income determined without regard to this subsection,

(B) the alternative minimum taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year, and

(C) any excess inclusion shall be disregarded for purposes of computing the alternative tax net operating loss deduction.

**(b) Organizations subject to unrelated business tax**

If the holder of any residual interest in a REMIC is an organization subject to the tax imposed by section 511, the excess inclusion of such holder for any taxable year shall be treated as unrelated business taxable income of such holder for purposes of section 511.

**(c) Excess inclusion**

For purposes of this section—

**(1) In general**

The term “excess inclusion” means, with respect to any residual interest in a REMIC for any calendar quarter, the excess (if any) of—

(A) the amount taken into account with respect to such interest by the holder under section 860C(a), over