

(Added Pub. L. 95-600, title III, §362(a), Nov. 6, 1978, 92 Stat. 2848; amended Pub. L. 96-222, title I, §103(a)(11)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 99-514, title VI, §667(b)(1), Oct. 22, 1986, 100 Stat. 2306; Pub. L. 108-357, title II, §243(f)(5), Oct. 22, 2004, 118 Stat. 1445; Pub. L. 111-325, title III, §301(a)(2), title V, §501(b), Dec. 22, 2010, 124 Stat. 3542, 3554; Pub. L. 115-141, div. U, title IV, §401(a)(149), (150), Mar. 23, 2018, 132 Stat. 1191.)

REFERENCES IN TEXT

Section 857(b)(3)(A), referred to in subsec. (d)(2)(B), relating to alternative tax in case of capital gains, was repealed by Pub. L. 115-97, title I, §13001(b)(2)(K)(i), Dec. 22, 2017, 131 Stat. 2096. Subsec. (b)(3)(B) of section 857, relating to treatment of capital gain dividends by shareholders, was redesignated subsec. (b)(3)(A) of that section.

PRIOR PROVISIONS

A prior section 860 was renumbered section 859 of this title.

AMENDMENTS

2018—Subsec. (f)(2)(A)(ii). Pub. L. 115-141, §401(a)(149), substituted “decrease” for “decreased”.

Subsec. (i). Pub. L. 115-141, §401(a)(150), substituted “willful” for “willfull”.

2010—Subsec. (f)(2)(B). Pub. L. 111-325, §301(a)(2), inserted “or reported (as the case may be)” after “designated”.

Subsec. (j). Pub. L. 111-325, §501(b), struck out subsec. (j). Text read as follows: “For assessable penalty with respect to liability for tax of a regulated investment company which is allowed a deduction under subsection (a), see section 6697.”

2004—Subsec. (e)(4). Pub. L. 108-357 added par. (4).

1986—Subsec. (j). Pub. L. 99-514 substituted “regulated investment company” for “qualified investment entity”.

1980—Subsec. (f). Pub. L. 96-222 substituted in heading “Deficiency” for “Efficiency” and in par. (2)(A)(i) “(computed without regard” for “computed without regard”.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(a)(2) of Pub. L. 111-325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111-325, set out as a note under section 852 of this title.

Pub. L. 111-325, title V, §501(c), Dec. 22, 2010, 124 Stat. 3554, provided that: “The amendments made by this section [amending this section and repealing section 6697 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to statements filed after Oct. 22, 2004, see section 243(g)(4)(E) of Pub. L. 108-357, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99-514, set out as a note under section 856 of this title.

EFFECTIVE DATE

Pub. L. 95-600, title III, §362(e), Nov. 6, 1978, 92 Stat. 2852, as amended by Pub. L. 96-222, title I, §103(a)(11)(A), Apr. 1, 1980, 94 Stat. 212; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [enacting this section, amending sections 316, 381, 852, 857, 6422, 6503, 6515, and 6697 of this title, repealing section 859 of this title, and redesignating prior section 860 as 859 of this title] shall apply with respect to determinations (as defined in section 860(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) after the date of the enactment of this Act [Nov. 6, 1978].”

ning prior section 860 as 859 of this title] shall apply with respect to determinations (as defined in section 860(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) after the date of the enactment of this Act [Nov. 6, 1978].”

PART IV—REAL ESTATE MORTGAGE INVESTMENT CONDUITS

Sec.	
860A.	Taxation of REMIC's.
860B.	Taxation of holders of regular interests.
860C.	Taxation of residual interests.
860D.	REMIC defined.
860E.	Treatment of income in excess of daily accruals on residual interests.
860F.	Other rules.
860G.	Other definitions and special rules.

§ 860A. Taxation of REMIC's

(a) General rule

Except as otherwise provided in this part, a REMIC shall not be subject to taxation under this subtitle (and shall not be treated as a corporation, partnership, or trust for purposes of this subtitle).

(b) Income taxable to holders

The income of any REMIC shall be taxable to the holders of interests in such REMIC as provided in this part.

(Added Pub. L. 99-514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2309; amended Pub. L. 100-647, title I, §1006(t)(20), Nov. 10, 1988, 102 Stat. 3426.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-647 substituted “this subtitle” for “this chapter” in two places.

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.

EFFECTIVE DATE

Pub. L. 99-514, title VI, §675(a)-(c), Oct. 22, 1986, 100 Stat. 2320, as amended by Pub. L. 100-647, title I, §1006(w)(1), Nov. 10, 1988, 102 Stat. 3427, provided that:

“(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle H (§§671-675) of title VI of Pub. L. 99-514, enacting this part and amending sections 582, 593, 856, 1272, 6049, and 7701 of this title] shall take effect on January 1, 1987.

“(b) RULES FOR ACCRUING ORIGINAL ISSUE DISCOUNT.—The amendment made by section 672 [amending section 1272 of this title] shall apply to debt instruments issued after December 31, 1986, in taxable years ending after such date.

“(c) TREATMENT OF TAXABLE MORTGAGE POOLS.—

“(1) IN GENERAL.—The amendment made by section 673 [amending section 7701 of this title] shall take effect on January 1, 1992.

“(2) TREATMENT OF EXISTING ENTITIES.—The amendment made by section 673 shall not apply to any entity in existence on December 31, 1991. The preceding sentence shall cease to apply with respect to any entity as of the 1st day after December 31, 1991, on which there is a substantial transfer of cash or other property to such entity.

“(3) SPECIAL RULE FOR COORDINATION WITH WASH-SALE RULES.—Notwithstanding paragraphs (1) and (2), for purposes of applying section 860F(d) of the Internal Revenue Code of 1986 (as added by this part [this

subtitle)], the amendment made by section 673 shall apply to taxable years beginning after December 31, 1986.”

STUDY OF AMENDMENTS BY PUB. L. 99-514

Pub. L. 99-514, title VI, §675(d), as added by Pub. L. 100-647, title I, §1006(w)(2), Nov. 10, 1988, 102 Stat. 3427, directed Secretary of the Treasury to conduct a study of the operation of the amendments made by this part [this subtitle] and their competitive impact on savings and loan institutions and similar financial institutions and, not later than Jan. 1, 1990, report to Congress, prior to repeal by Pub. L. 101-508, title XI, §11832(5), Nov. 5, 1990, 104 Stat. 1388-559.

§ 860B. Taxation of holders of regular interests

(a) General rule

In determining the tax under this chapter of any holder of a regular interest in a REMIC, such interest (if not otherwise a debt instrument) shall be treated as a debt instrument.

(b) Holders must use accrual method

The amounts includible in gross income with respect to any regular interest in a REMIC shall be determined under the accrual method of accounting.

(c) Portion of gain treated as ordinary income

Gain on the disposition of a regular interest shall be treated as ordinary income to the extent such gain does not exceed the excess (if any) of—

(1) the amount which would have been includible in the gross income of the taxpayer with respect to such interest if the yield on such interest were 110 percent of the applicable Federal rate (as defined in section 1274(d) without regard to paragraph (2) thereof) as of the beginning of the taxpayer's holding period, over

(2) the amount actually includible in gross income with respect to such interest by the taxpayer.

(d) Cross reference

For special rules in determining inclusion of original issue discount on regular interests, see section 1272(a)(6).

(Added Pub. L. 99-514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2309.)

§ 860C. Taxation of residual interests

(a) Pass-thru of income or loss

(1) In general

In determining the tax under this chapter of any holder of a residual interest in a REMIC, such holder shall take into account his daily portion of the taxable income or net loss of such REMIC for each day during the taxable year on which such holder held such interest.

(2) Daily portion

The daily portion referred to in paragraph (1) shall be determined—

(A) by allocating to each day in any calendar quarter its ratable portion of the taxable income (or net loss) for such quarter, and

(B) by allocating the amount so allocated to any day among the holders (on such day) of residual interests in proportion to their respective holdings on such day.

(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-