

procedures to disputes regarding the ownership of residual interests in a Real Estate Mortgage Investment Conduit (REMIC). These regulations will affect taxpayers that invest in REMIC residual interests.

**DATES:** These regulations apply after December 31, 1986.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

This regulation amends 26 CFR Part 1 under section 860F of the Internal Revenue Code (Code) relating to the application of the unified partnership audit procedures of subchapter C of chapter 63 of the Code to REMICs and the holders of residual interests. Section 860F(e) provides that a REMIC is treated as a partnership (and holders of residual interests in that REMIC shall be treated as partners) for purposes of subtitle F of the Code, which includes the unified partnership audit procedures. The taxable income of a holder of a REMIC residual interest is determined under the REMIC provisions of part IV of subchapter M, which require the holder to take into account its daily portion of the REMIC's taxable income or net loss for each day during the taxable year on which the holder holds its interest. Section 860C(a)(1). The provisions of subchapter K relating to the determination of the taxable income of a partnership and its partners do not apply to REMICs or the holders of REMIC residual interests. Section 860A(a).

Questions have arisen regarding whether the identity of the holder of a REMIC residual interest is treated as a partnership item for purposes of the unified partnership audit procedures. Questions also have arisen regarding the applicability of the unified partnership audit procedures when a determination is made under the REMIC regulations to disregard certain transfers of REMIC residual interests and continue to treat the transferor as the holder of the transferred REMIC residual interests. See §§ 1.860E-1(c) and 1.860G-3.

The IRS and Treasury Department have determined that the identity of a holder of a REMIC residual interest is more appropriately determined at the residual interest holder level than at the REMIC entity level.

**Explanation of Provisions**

The regulations provide that the determination of the identity of a holder of a REMIC residual interest is not a partnership item for purposes of the

unified partnership audit procedures as applied to REMICs, whether or not such determination involves the application of a disregarded transfer rule. Unlike the identity of a partner in a partnership subject to subchapter K, the identity of the holder of a REMIC residual interest does not affect the calculation of the REMIC's taxable income or net loss.

**Effective Date**

These regulations apply after December 31, 1986. See § 1.860A-1(b)(1)(ii).

**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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this Treasury decision has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

**Drafting Information**

The principal author of these regulations is Arturo Estrada, 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.

**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 adding an entry in numerical order to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 860F-4 issued under 26 U.S.C. 860G(e) and 26 U.S.C. 6230(k). \* \* \*

■ **Par. 2.** In § 1.860F-4, paragraph (a) is amended by adding a sentence at the end of the paragraph to read as follows:

**§ 1.860F-4 REMIC reporting requirements and other administrative rules.**

(a) \* \* \* The identity of a holder of a residual interest in a REMIC is not treated as a partnership item with respect to the REMIC for purposes of subchapter C of chapter 63.

\* \* \* \* \*

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 15, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury (Tax Policy).*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9182]

**RIN 1545-BD31**

**Reorganizations Under Section 368(a)(1)(E) and Section 368(a)(1)(F)**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations regarding reorganizations under section 368(a)(1)(E) and section 368(a)(1)(F) of the Internal Revenue Code. The regulations affect corporations and their shareholders.

**DATES:** *Effective Date:* These regulations are effective on February 25, 2005.

*Applicability Date:* These regulations apply to transactions occurring on or after February 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Gray, at (202) 622-7550 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

**Background and Explanation of Provisions**

On August 12, 2004, the IRS and Treasury Department published a notice of proposed rulemaking (REG-106889-04) in the **Federal Register** (69 FR 49836) proposing regulations regarding the requirements for a reorganization under section 368(a)(1)(E) and section 368(a)(1)(F) of the Internal Revenue Code (Code). Generally, a transaction must satisfy the continuity of interest and continuity of business enterprise requirements to qualify as a reorganization under section 368(a). The notice proposed amending § 1.368-1(b) to provide that a continuity of interest

and a continuity of business enterprise are not required for a transaction to qualify as a reorganization under section 368(a)(1)(E) (E reorganization) or section 368(a)(1)(F) (F reorganization). The notice also proposed amending § 1.368-2 to include rules regarding the requirements for a transaction to qualify as an F reorganization and regarding the effects of an F reorganization.

The IRS and Treasury Department have received oral comments urging that the rule providing that the continuity of interest and continuity of business enterprise requirements do not apply to E and F reorganizations be finalized quickly. For the reasons expressed in the preamble to the proposed regulations, this Treasury decision adopts that rule for transactions on or after February 25, 2005. The IRS and Treasury Department continue to study the other issues addressed in the notice of proposed rulemaking, and welcomes further comment on those issues.

#### Effect on Other Documents

The following publications are obsolete as of February 25, 2005:

Rev. Rul. 69-516 (1969-2 C.B. 56).  
Rev. Rul. 77-415 (1977-2 C.B. 311).  
Rev. Rul. 77-479 (1977-2 C.B. 119).  
Rev. Rul. 82-34 (1982-1 C.B. 59).

#### 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were 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 Robert B. Gray of the Office of Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendment to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.368-1(b) is amended by adding a sentence after the seventh sentence to read as follows:

#### § 1.368-1 Purpose and scope of exception of reorganization exchanges.

(b) *Purpose.* \* \* \* Notwithstanding the requirements of this paragraph (b), for transactions occurring on or after February 25, 2005, a continuity of the business enterprise and a continuity of interest are not required for the transaction to qualify as a reorganization under section 368(a)(1)(E) or (F). \* \* \*

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 14, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury.*

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#### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service

#### 26 CFR Parts 1 and 301

[TD 9183]

**RIN 1545-BA59**

#### Modification of Check the Box

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations that clarify that qualified REIT subsidiaries, qualified subchapter S subsidiaries, and single owner eligible entities that are disregarded as entities separate from their owners are treated as separate entities for purposes of any Federal tax liability for which the entity is liable. These regulations affect disregarded entities that are liable for Federal taxes with respect to tax periods during which they were not disregarded or because they are successors or transferees of taxable entities.

**DATES:** *Effective Date:* These regulations are effective April 1, 2004.

*Applicability Dates:* For dates of applicability, see §§ 1.856-9(c), 1.1361-4(a)(6)(iii), and 301.7701-2(e).

#### FOR FURTHER INFORMATION CONTACT:

Martin Schäffer, (202) 622-3070 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

This document contains amendments to 26 CFR parts 1 and 301. The amendments to 26 CFR part 1 are under sections 856 and 1361 of the Internal Revenue Code (Code). Section 856(i) was added by the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085). Section 1361(b)(3) was added by the Small Business Job Protection Act of 1996 (Pub. L. 104-188, 110 Stat. 1755). The amendments to 26 CFR part 301 are to § 301.7701-2, first promulgated by TD 8697, 61 FR 66584 (December 18, 1996). On April 1, 2004, a notice of proposed rulemaking (REG-106681-02) relating to the taxation of disregarded entities was published in the **Federal Register** (69 FR 17117). A notice of correction was published in the **Federal Register** (69 FR 22463) on April 26, 2004. No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested, and accordingly, no hearing was held. This Treasury decision adopts the language of the proposed regulations with only minor clarifying changes.

#### 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were 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 James M. Gergurich of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.