

Part III - Administrative, Procedural, and Miscellaneous

Guidance regarding reporting for WHFITs

Notice [XXXX-XX]

SECTION I: PURPOSE

This notice informs trustees and middlemen of widely held fixed investment trusts (WHFITs) that the IRS will not assert penalties under § 1.671-5(m) of the Income Tax Regulations as a result of a failure to comply with the WHFIT reporting rules in §1.671-5 with respect to the 2008 calendar year. This notice also informs trustees and middlemen of widely held mortgage trusts (WHMTs) that certain modifications of mortgages held by a WHMT that has entered into a guarantee arrangement are not required to be reported under the WHFIT reporting rules.

SECTION II: BACKGROUND

A WHFIT is an arrangement classified as a trust under § 301.7701-4(c), provided that: (i) the trust is a United States person under § 7701(a)(30)(E); (ii) the beneficial owners of the trust are treated as owners under subpart E, part I, subchapter J, chapter 1 of the Code; and (iii) at least one interest in the trust is held by a middleman. See

§ 1.671-5(b)(22). A WHMT is a WHFIT, the assets of which consist only of mortgages, regular interests in a REMIC, interests in another WHMT, reasonably required reserve funds, amounts received with respect to these assets, and during a brief initial funding period, cash and short term contracts to purchase these assets. See § 1.671-5(b)(23).

On January 24, 2006, the IRS and Treasury Department published T.D. 9241, 2006-1 C.B. 427 [71 FR 4002], providing the WHFIT reporting rules under § 1.671-5. On December 29, 2007, the IRS and Treasury Department published T.D. 9308, 2007-8 I.R.B. 523 [71 FR 78351], amending the WHFIT reporting rules in response to comments received following the publication of T.D. 9241.

SECTION III: PENALTY RELIEF

Section 1.671-5(n) provides that the WHFIT reporting rules are applicable January 1, 2007. The preamble to T.D. 9308 indicates that the IRS and the Treasury Department are aware that some trustees and middlemen were unable to complete updates to their computer and information reporting systems to comply with the WHFIT reporting rules until the amendments to the WHFIT reporting rules included in T.D. 9308 were finalized. The preamble informed trustees and middlemen that the IRS would not impose any penalties that would otherwise apply as a result of a failure to comply with the WHFIT reporting rules as amended by T.D. 9308 with respect to the 2007 calendar year in cases where the trustee or middleman was unable to change its information reporting systems to comply with the WHFIT reporting rules.

Recent comments received by the IRS indicate that while WHFIT trustees and middlemen have taken steps to implement the WHFIT reporting rules, additional time is

needed to update the computer and information systems of trustees and middlemen to fully comply with them. These commentators have requested that the IRS not assert penalties under the WHFIT reporting rules with respect to the 2008 calendar year.

Accordingly, this notice informs middlemen and trustees of WHFITs that the IRS will not assert penalties as a result of failure to comply with the WHFIT reporting rules in § 1.671-5 with respect to 2008.

SECTION IV: REPORTING EXCEPTION FOR CERTAIN MORTGAGE MODIFICATIONS

Section 1.671-5(c)(2)(iv)(A) of the WHFIT reporting rules requires the trustee of a WHFIT, in general, to report information sufficient for a beneficial owner of a trust interest to properly determine the tax consequences of any sale or disposition of a trust asset. Sections 1.671-5(c)(2)(iv)(B), (C), (E), (F) and (G), however, except certain transactions from this general rule, in whole or in part, because the IRS and the Treasury Department determined that reporting detailed information regarding these transactions will not sufficiently benefit the IRS or the beneficial owner to warrant imposing the burden of the additional reporting. It has come to the attention of the IRS and Treasury Department that an additional exception to the general rule in § 1.671-5(c)(iv) may be appropriate for certain modifications made to mortgage loans held by a WHMT where the WHMT has a guarantee arrangement that nullifies the economic effect of the modification to trust interest holders.

Accordingly, this notice informs trustees and middlemen that a modification (whether or not the modification is a significant modification under § 1.1001-3) made to

mortgage loans held by a WHMT under the circumstances described below will be excepted from reporting under § 1.671-5(c)(iv) of the WHFIT rules:

(1) the WHMT directly holds mortgage loans that are secured by real property (including a condominium) that is an owner-occupied residence that contains fewer than five dwelling units;

(2) the modification of the mortgage loan does not result in there being a power to vary the investment of the trust interest holders under § 301.7701-4(c);

(3) the WHMT has entered into a guarantee arrangement that grants the WHMT or the beneficial owners of the WHMT the right to receive payments from the guarantor to the extent that payments with respect to the mortgage loans held by the WHMT are insufficient to make the payments of interest and principal required to be made to trust interest holders under the governing document of the WHMT; and

(4) the modification and the guarantee arrangement are such that any modification of the interest rate of the mortgage loan does not alter the interest rate paid to the trust interest holder with respect to the outstanding principal balance of the trust interest and a modification made to either the amount of the outstanding principal balance of a mortgage loan or to the timing of payments made with respect to the outstanding principal balance of the mortgage loan do not alter the aggregate amount of the principal payments to be paid to a trust interest holder with respect to its trust interest over the life of the trust.

Pending the issuance of subsequent published guidance, trustees and middlemen may report consistent with the reporting exception in this notice. Any

subsequently issued published guidance eliminating or modifying this exception will allow reasonable time for WHFIT trustees and middlemen to alter their computer and information reporting systems to comply with the change.

SECTION V: REQUEST FOR COMMENTS

The IRS and Treasury Department request comments regarding the scope and description of the reporting exception described in SECTION IV. Comments should be submitted on or before [insert date], and should include a reference to Notice 2008-XX. Send submissions to CC:PA:LPD:PR (Notice 2008—XX), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (Notice 2008—XX), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically via the following email address: *Notice 2008-XX. Comments@irs.counsel.treas.gov*. Please include the notice number 2008—XX in the subject line of any electronic communication. All materials submitted will be available for public inspection and copying.

SECTION VI. EFFECTIVE DATE

The effective date of this notice is September 12, 2008. The reporting exception for mortgage modifications described in Section IV may be applied January 1, 2007.

SECTION VII. DRAFTING INFORMATION

The principal author of this notice is Faith P. Colson of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding

this notice contact Faith P. Colson on (202) 622-3060 (not a toll-free call).