

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9279]

RIN 1545-BF86

Reporting Rules for Widely Held Fixed Investment Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and Temporary regulations

SUMMARY: This document contains final and temporary regulations amending §1.671-5, a provision which provides reporting rules for widely held fixed investment trusts (WHFITs). These regulations clarify and simplify reporting for trustees and middlemen of non-mortgage widely held fixed investment trusts (NMWHFITs). The text of these final and temporary regulations also serves, in part, as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG-125071-06) on this subject in this issue of the **FEDERAL REGISTER**.

DATES: Effective Date: These regulations are effective July 28, 2006.

For dates of applicability see § 1.671-5(m).

FOR FURTHER INFORMATION CONTACT: Faith Colson, 202-622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These final and temporary regulations amend §1.671-5. The collection of information contained in these regulations is in §1.671-5 and has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1540. Response to this collection of information is mandatory. This information is required to be reported to beneficial owners of trust interests to enable them to correctly report their share of the items of income, deduction, and credit of the WHFIT in which they have invested. This information is also required to be reported to the IRS to enable the IRS to verify that trustees and middlemen are accurately reporting information to beneficial owners of trust interests and that beneficial owners are properly reporting their ownership of a trust interest.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1. On January 24, 2006, the Internal Revenue Service (IRS) and the Treasury Department

published final regulations (TD 9241) (final regulations) under §1.671-5 in the **Federal Register** (71 FR 4002) providing reporting rules for WHFITs. On February 23, 2006, in response to comments received subsequent to the publication of the final regulations, the IRS and the Treasury Department issued Notice 2006-29 (2006-12 I.R.B. 644). Notice 2006-29 informed trustees and middlemen of NMWHFITs that §1.671-5 would be amended to extend the availability of the qualified NMWHFIT exception (discussed in section I) beyond February 23, 2006, the cut-off date provided in the final regulations for funding a NMWHFIT that satisfied the exception, and to clarify the application of certain provisions in the final regulations to NMWHFITs. On May 25, 2006, the IRS and Treasury Department issued Notice 2006-30 (2006-24 I.R.B. 1044) stating that the IRS and the Treasury Department expected to issue the additional guidance under § 1.671-5 discussed in Notice 2006-29 in the near future but that such guidance would not be issued prior to the expiration of the extended cut-off date for the qualified NMWHFIT exception in Notice 2006-29. Accordingly, Notice 2006-30 extended the cut-off date for the availability of the qualified NMWHFIT exception in Notice 2006-29 for an additional 60 days. These temporary regulations extend the availability of the qualified NMWHFIT exception to the dates provided in Notice 2006-30 and clarify the NMWHFIT reporting rules as described in Notice 2006-29. These temporary regulations also simplify the application of §1.671-5 as it applies to NMWHFIT sales and dispositions as well as sales or redemptions of trust interests in an equity trust (a trust, substantially all of whose income is comprised of dividends).

Summary and Explanation of Revisions

I. The Qualified NMWHFIT Exception

In general, under the final regulations, trustees and middlemen of NMWHFITs are required to report information regarding market discount, bond premium, sales and dispositions of trust assets, redemptions, and sales of trust interests. Trustees and middlemen of NMWHFITs that satisfy the qualified NMWHFIT exception in §1.671-5(c)(2)(iv)(E) are, however, excepted from reporting market discount and bond premium and are permitted to use the simplified reporting rules for sales and dispositions of trust assets in §1.671-5(c)(2)(iv)(B) and the simplified reporting rules for sales or redemptions of trust interests in §1.671-5(c)(2)(v)(C). As provided in Notice 2006-29 and subsequently modified in Notice 2006-30, §1.671-5T(c)(2)(iv)(E) of these final and temporary regulations provides that the qualified NMWHFIT exception is satisfied if the calendar year for which the trustee is reporting begins before January 1, 2011, and the NMWHFIT meets any of the following requirements: (1) the NMWHFIT has a start-up date as defined in §1.671-5(b)(19) before February 23, 2006; (2) the registration statement for the NMWHFIT becomes effective under the Securities Act of 1933 (15 U.S.C. 77a) (Securities Act of 1933) and trust interests are offered for sale to the public before February 23, 2006; or (3) the registration statement of the NMWHFIT becomes effective under the Securities Act of 1933 and trust interests are offered for sale to the public on or after February 23 and before July 31, 2006, and the NMWHFIT is fully funded before October 1, 2006. The IRS and the Treasury Department have also

received comments suggesting that the January 1, 2011 cut-off date be extended or eliminated. The IRS and the Treasury Department are not adopting that suggestion.

II. Availability of the NMWHFIT Safe Harbor

Section 1.671-5(f) provides a reporting safe harbor for NMWHFITs. If trustees and middlemen report consistently with the safe harbor, trustees and middlemen are deemed to have provided information in a manner that enables a trust interest holder to reasonably accurately report the items of income, deduction, and credit of the trust on the trust interest holder's own federal income tax return. Section 1.671-5(f)(1)(i) provides that if substantially all of a NMWHFIT's income is from dividends (as defined in section 6042(b) and the regulations thereunder) or interest (as defined in section 6049(b) and the regulations thereunder) and all trust interests have identical value and rights, a NMWHFIT may report under the safe harbor in §1.671-5(f). Commentators have expressed concern that, if a trustee of a NMWHFIT must sell or dispose of a significant number of trust assets and trust sales proceeds are included in the determination of whether "substantially all" of a trust's income is from interest or dividends, the NMWHFIT will be ineligible for the safe harbor reporting rules in §1.671-5(f). To address this concern, §1.671-5T(f)(1)(i) of the final and temporary regulations provides that trust sales proceeds are to be ignored in determining whether a NMWHFIT is eligible to report under the NMWHFIT safe harbor in §1.671-5(f). Accordingly, a NMWHFIT may be eligible to report under

the NMWHFIT safe harbor even if it has significant trust sales proceeds from the sale or disposition of trust assets.

Commentators also noted that §1.671-5(f)(1)(i)(1) refers to section 6049(b) and the definition of interest in section 6049(b) does not include interest that is exempt from tax under section 103 of the Internal Revenue Code. These commentators were concerned that if a NMWHFIT's income is from tax-exempt interest, the NMWHFIT would not be eligible to report under the NMWHFIT safe harbor reporting rules. To address this concern, §1.671-5T(f)(1)(i)(A)(1) of the final and temporary regulations does not refer to sections 6042(b) and 6049(b) and the regulations thereunder. Accordingly, NMWHFITs whose income is from tax-exempt interest, may be eligible to report under the NMWHFIT safe harbor reporting rules.

III. Simplified Reporting of Sales and Redemptions of Trust Interests for Equity Trusts

Section 1.671-5(c)(2)(v) requires trustees and middlemen to provide information regarding the income that is attributable to a redeeming, selling or purchasing beneficial owner up to the date of the sale or redemption of a trust interest. Section 1.671-5(c)(2)(v)(C) provides an exception to this rule for NMWHFITs if substantially all their income is comprised of dividends (equity trusts) and the NMWHFIT is required by its governing document to distribute income at least monthly. Commentators reported that some equity trusts do not receive significant dividend income and that it would not be feasible for these trusts to make monthly distributions. These commentators suggested that there

be a de minimis exception to the requirement that the trust make monthly distributions.

Accordingly, §1.671-5T(c)(2)(v)(C) provides that a NMWHFIT will be considered to have satisfied the requirement that it make monthly distributions notwithstanding the fact that, although the governing document requires monthly distributions, the governing document of the NMWHFIT also permits the trustee to forego making its normally required monthly distribution if the cash held for distribution is less than 0.1% of the net asset value of the trust (aggregate fair market value of the trust's assets less the trust's liabilities) as of the date that the amount of the monthly distribution is required to be determined. Commentators suggested various other modifications to the §1.675(c)(2)(v)(C) exception; however, the IRS and Treasury Department believe that the modification adopted above addresses the majority of the commentators' concerns while maintaining the integrity of the reporting information to be provided under §1.671-5.

Similar to the "substantially all" test for eligibility to use the NMWHFIT safe harbor discussed in section II above, commentators have expressed concern that if a NMWHFIT has significant sales and dispositions and trust sales proceeds are included for the purpose of determining if "substantially all" of the NMWHFIT's income is from dividends, then the NMWHFIT will not qualify for this exception even though the NMWHFIT only holds assets that produce dividend income. To address this concern, §1.671-5T(c)(2)(v)(C) of the final and temporary regulations provides that proceeds received by a NMWHFIT from the sale or

disposition of trust assets are to be ignored for the purpose of determining whether an equity trust is eligible to report under that paragraph.

IV. Simplified Reporting for Certain NMWHFIT Sales and Dispositions

In addition to the qualified NMWHFIT exception, the final regulations provide that the trustees of NMWHFITs that meet the general de minimis test in §1.671-5(c)(2)(iv)(D)(1) are only required, under §1.671-5(c)(2)(iv)(B), to provide information regarding the amount of trust sales proceeds distributed to a trust interest holder. The reason for the de minimis exception, as stated in the preamble to the final regulations, is that the IRS and the Treasury Department believe that if a NMWHFIT only sells or disposes of assets infrequently, although there will be some deferral of gains and losses if sales and dispositions are not fully reported, the deferral is acceptable, in light of the burden of fully, accurately reporting the sales and dispositions.

Commentators reported that trustees of NMWHFITs frequently have to sell trust assets to obtain cash to effect redemptions. These commentators indicated that because of certain securities laws, trustees of many NMWHFITs must redeem trust interests every time an interest is tendered for redemption. Trustees have no control over the number of trust interests tendered for redemption and as a result, have no control over the number of corresponding sales of trust assets to obtain cash for these redemptions. Because of these sales to effect redemptions, many NMWHFITs will also not be able to meet the general de minimis test in §1.671-5(c)(2)(iv)(D)(1). If a NMWHFIT does not meet the general de minimis test, trustees and middlemen must provide information

regarding the amount of trust sales proceeds that are attributable to a trust interest holder, and information that will enable a trust interest holder to allocate with reasonable accuracy a portion of its basis and a portion of its market discount or premium to the assets sold. Commentators indicated that, under the final regulations, a significant number of NMWHFITs do not qualify for the reduced reporting in §1.671-5(c)(2)(iv)(B) and that as a result, many investors will be provided with more information than they can accurately process and trustees and middlemen will be subject to the significant reporting costs of supplying this information. These commentators requested that the final regulations be amended to provide for reduced reporting for other situations in which it will have little or no compliance impact. In response to these comments, the IRS and the Treasury Department provide the following modifications to the sales and disposition reporting rules for NMWHFITs in the final regulations:

1. NMWHFIT final calendar year exception

Commentators requested that the IRS and Treasury Department extend the simplified reporting in §1.671-5(c)(2)(iv)(B) to the final calendar year of a NMWHFIT regardless of whether the de minimis test or the qualified NMWHFIT exception is satisfied. The commentators reported that for a significant number of NMWHFITs, 95% of a trustee's sales of assets to effect redemptions occur during the last three months of the NMWHFIT. The commentators asserted that there would not be significant deferral of gains or losses on sales or dispositions of assets by NMWHFITs in their final calendar year if information regarding the sales and dispositions of trust assets during these final months were not

communicated to non-redeeming trust interest holders because the non-redeeming trust interest holders would be cashing out their investment during that calendar year. Accordingly, §1.671-5T(c)(2)(iv)(F) of the final and temporary regulations provide that all NMWHFITs qualify for the simplified reporting in §1.671-5T(c)(2)(iv)(B) in the final calendar year of the NMWHFIT, regardless of whether the NMWHFIT has otherwise satisfied the de minimis test, provided that a trust interest holder cannot roll-over its investment in the NMWHFIT to another WHFIT.

2. Pro-rata sale exception

Commentators also requested that pro-rata sales of trust assets be excepted from reporting. The commentators contended that trustees generally sell a redeeming trust interest holder's pro-rata share of the trust assets to effect a redemption so that there is no change in the investments of the non-redeeming trust interest holders and therefore little or no compliance benefit of reporting to the non-redeeming trust interest holders. Accordingly, the commentators requested that pro-rata sales of trust assets to effect redemptions be excepted from the reporting requirements of §1.671-5(c)(2)(iv).

In response to this request, §1.671-5T(c)(2)(iv)(G) of the final and temporary regulations provides that a pro-rata sale of a trust asset to effect a redemption is not required to be reported under §1.671-5. A pro-rata sale of a trust asset occurs when (1) a trust interest holder tenders one or more trust interests for redemption; (2) the trustee sells the pro-rata share of a trust asset that is deemed to be owned by the trust interest holder as a result of the trust

interest holder's ownership of the trust interest or interests tendered for redemption; (3) the trustee engages in the sale solely to obtain cash that is immediately distributed to the redeeming trust interest holder as a result of the redemption; and (4) the redemption is reported as required under §1.671-5(c)(2)(v).

Commentators strongly urged the IRS and the Treasury Department to except NMWHFITs with a duration of no more than 15 months and that span no more than two calendar years (short-term NMWHFITs) from all reporting of sales and dispositions of trust assets. The IRS and the Treasury Department believe that the NMWHFIT final year exception, discussed in section IV(1) above, adequately provides reporting relief for most short-term NMWHFITs for the sales and dispositions of trust assets to effect redemptions that a trustee must make during the final three months of the NMWHFIT. Further, section 1.671-5T(b)(21) provides an amended definition of trust sales proceeds excluding the gross proceeds paid to a NMWHFIT for a pro-rata sale of a trust asset to effect a redemption from the definition of trust sales proceeds. The effect of this change in the definition of trust sales proceeds is to exclude the proceeds from a pro-rata sale of a trust asset to effect a redemption when determining whether a trust has met the de minimis test. Since only the proceeds from non pro-rata sales of trust assets are considered for purposes of determining whether a NMWHFIT meets the de minimis test, more trusts will meet the de minimis test and qualify for the reduced reporting in §1.671-5T(c)(2)(iv)(B). The IRS and the Treasury Department believe that the combined application of the pro-rata sales exception,

the revised definition of trust sales proceeds, and the de minimis test adequately address the commentators' concerns regarding sales and dispositions of trust assets by trustees of short-term NMWHFITs during the first year of the trust.

Commentators also suggested that there be a reporting exception for when a trustee engages in a non pro-rata sale of a trust asset because the redeeming trust interest holder is only deemed to own a fractional share of a trust asset or because market conditions or restrictions prevent a pro-rata sale of a trust asset. The IRS and the Treasury Department believe that this issue is also adequately addressed by the combined application of the pro-rata sale exception, the revised definition of trust sales proceeds and the de minimis test.

Effective Date

These amendments are effective July 28, 2006. The amendments are applicable to the reporting required under §1.671-5 as of January 1, 2007 (see §1.671-5(m)) and will be applied as though these amendments were included in TD 9241.

Special Analysis

These regulations are necessary to provide trustees and middlemen of NMWHFITs with immediate guidance on the application of the final regulations so they can take measures necessary to be able to comply with the final regulations on their January 1, 2007, effective date. Additionally, the IRS and the Treasury Department have published Notice 2006-29 and Notice 2006-30 indicating that §1.671-5 would be amended as provided in these temporary regulations and received comments regarding the application of §1.671-5 from

trustees and middlemen of NMWHFITs. Accordingly, good cause is found for dispensing with notice and public comment pursuant to 5 U.S.C. 553(b)(B)(3). The final and temporary regulations are applicable more than 30 days after they are published in the Federal Register and accordingly, no exemption is required under 5 U.S.C. 553(d). For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analysis section of the preamble to the cross-referenced notice of proposed rulemaking published in this issue of the **Federal Register**. Pursuant section 7805(f) of the Code, these final and temporary regulations will be submitted to the Chief Counsel for Advocacy of Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Faith Colson, Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and the 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 continues to read, in part, as follows:

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

Par. 2. Section 1.671-5 is amended by:

1. Revising paragraphs (b)(5), (b)(8), and (b)(21)
2. Revising paragraphs (c)(2)(iv), (v)(C), (vi), and (vii)
3. Revising paragraphs (f)(1)(i)(A) and (viii)(A)

The revisions read as follows:

§1.671-5 Reporting for widely held fixed investment trusts.

* * * * *

(b) * * *

(5) [Reserved.] For further guidance, see §1.671-5T(b)(5).

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(8) [Reserved.] for further guidance, see §1.671-5T(b)(8).

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(21) [Reserved.] For further guidance, see §1.671-5T(b)(21).

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(c) * * *

(2) * * *

(iv) [Reserved.] For further guidance, see §1.671-5T(c)(2)(iv).

(v) * * *

(C) [Reserved.] For further guidance, see §1.671-5T(c)(2)(v)(C).

(vi) [Reserved.] For further guidance, see §1.671-5T(c)(2)(vi).

(vii) [Reserved.] For further guidance, see §1.671-5T(c)(2)(vii).

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(f) * * *

(1) * * *

(i) * * *

(A) [Reserved] For further guidance, see §1.671-5T(f)(1)(i)(A).

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(viii) * * *

(A) [Reserved.] For further guidance, see §1.671-5T(f)(1)(viii).

Par. 3. Section 1.671-5T is added to read as follows:

§1.671-5T Reporting for widely held fixed investment trusts.

(a) through (b)(4) [Reserved.] For further guidance, see §1.671-5(a) through (b)(4).

(5) The cash held for distribution is the cash held by the WHFIT (other than trust sales proceeds and proceeds from sales described in paragraph (c)(2)(iv)(G) of this section) less reasonably required reserve funds as of the date that the amount of a distribution is required to be determined under the WHFIT's governing document.

(b)(6) and (b)(7) [Reserved.] For further guidance, see §1.671-5(b)(6) and (b)(7).

(8) An in-kind redemption is a redemption in which a beneficial owner receives a pro-rata share of each of the assets of the WHFIT that the beneficial owner is deemed to own under section 671. For example, for purposes of this paragraph (b)(8), if beneficial owner A owns a one percent interest in a WHFIT that holds 100 shares of X corporation stock, so that A is considered to own a

one percent interest in each of the 100 shares, A's pro-rata share of the X corporation stock for this purpose is one share of X corporation stock.

(b)(9) through (b)(20) [Reserved.] For further guidance, see §1.671-5(b)(9) through (b)(20).

(21) Trust sales proceeds equal the amount paid to a WHFIT for the sale or disposition of an asset held by the WHFIT, including principal payments received by the WHFIT that completely retire a debt instrument (other than a final scheduled principal payment) and pro-rata partial principal prepayments described under §1.1275-2(f)(2). Trust sales proceeds do not include amounts paid for any interest income that would be required to be reported under §1.6045-1(d)(3). Trust sales proceeds also do not include amounts paid to a NMWHFIT as the result of a pro-rata sales of trust assets to effect a redemption described in paragraph (c)(2)(iv)(G) of this section.

(b)(22) through (c)(2)(iii) [Reserved .] For further guidance, see §1.671-5(b)(22) through (c)(2)(iii).

(iv) Asset sales and dispositions. The trustee must report information regarding sales and dispositions of WHFIT assets as required in this paragraph (c)(2)(iv). For purposes of this paragraph (c)(2)(iv), a payment (other than a final scheduled payment) that completely retires a debt instrument (including a mortgage held by a WHMT) or a pro-rata prepayment on a debt instrument (see §1.1275-2(f)(2)) held by a WHFIT must be reported as a full or partial sale or disposition of the debt instrument. A pro-rata sale of a trust asset to effect a

redemption, as defined in paragraph (c)(2)(iv)(G) of this section, is not reported as a sale or disposition under this paragraph (c)(2)(iv).

(A) General rule. Except as provided in paragraph (c)(2)(iv)(B) (regarding the exception for certain NMWHFITs) or paragraph (c)(2)(iv)(C) (regarding the exception for certain WHMTs) of this section, the trustee must report with respect to each sale or disposition of a WHFIT asset--

(1) The date of each sale or disposition;

(2) Information that enables a requesting person to determine the amount of trust sales proceeds (as defined in paragraph (b)(21) of this section) attributable to a beneficial owner as a result of each sale or disposition; and

(3) Information that enables a beneficial owner to allocate, with reasonable accuracy, a portion of the owner's basis in its trust interest to each sale or disposition.

(B) Exception for certain NMWHFITs. If a NMWHFIT meets either the general WHFIT de minimis test of paragraph (c)(2)(iv)(D)(1) of this section for a calendar year, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final calendar year exception of paragraph (c)(2)(iv)(F) of this section, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report sufficient information to enable a requesting person to determine the amount of trust sales proceeds distributed to a beneficial owner during the calendar year with respect to each sale or disposition of a trust asset. The trustee also must provide requesting persons

with a statement that the NMWHFIT is permitted to report under this paragraph (c)(2)(iv)(B).

(C) Exception for certain WHMTs. If a WHMT meets either of the de minimis tests of paragraph (c)(2)(iv)(D) of this section for the calendar year, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report information to enable a requesting person to determine the amount of trust sales proceeds attributable to a beneficial owner as a result of the sale or disposition. The trustee also must provide requesting persons with a statement that the WHMT is permitted to report under this paragraph (c)(2)(iv)(C).

(D) De minimis tests--(1) General WHFIT de minimis test. The general WHFIT de minimis test applies to a NMWHFIT or to a WHMT that does not meet the requirements for the special WHMT de minimis test in paragraph (c)(2)(iv)(D)(2) of this section. The general WHFIT de minimis test is satisfied if trust sales proceeds for the calendar year are not more than five percent of the net asset value of the trust (aggregate fair market value of the trust's assets less the trust's liabilities) as of the later of January 1 of that year or the trust's start-up date (as defined in §1.671-5(b)(19)).

(2) Special WHMT de minimis test. A WHMT that meets the asset requirement of §1.671-5(g)(1)(ii)(E) satisfies the special WHMT de minimis test in this paragraph (c)(2)(iv)(D)(2) if trust sales proceeds for the calendar year are not more than five percent of the aggregate outstanding principal balance of the WHMT (as defined in §1.671-5(g)(1)(iii)(D)) as of the later of January 1 of that

year or the trust's start-up date. For purposes of applying the special WHMT de minimis test in this paragraph (c)(2)(iv)(D)(2), amounts that result from the complete or partial payment of the outstanding principal balance of the mortgages held by the trust are not included in the amount of trust sales proceeds.

(3) Effect of clean-up call. If a WHFIT fails to meet either de minimis test described in this paragraph (c)(2)(iv)(D) solely as the result of a clean-up call, as defined in §1.671-5(b)(6), the WHFIT will be treated as having met the de minimis test.

(E) Qualified NMWHFIT exception. The qualified NMWHFIT exception is satisfied if the calendar year for which the trustee is reporting begins before January 1, 2011 and --

(1) The NMWHFIT has a start-up date (as defined in §1.671-5(b)(19)) before February 23, 2006;

(2) The registration statement of the NMWHFIT becomes effective under the Securities Act of 1933, as amended (15 U.S.C. 77a, et. seq.) and trust interests are offered for sale to the public before February 23, 2006; or

(3) The registration statement of the NMWHFIT become effective under the Securities Act of 1933 and trust interests are offered for sale to the public on or after February 23, 2006, and before July 31, 2006, and the NMWHFIT is fully funded before October 1, 2006.

(F) NMWHFIT final calendar year exception. The NMWHFIT final calendar year exception is satisfied if--

(1) The NMWHFIT terminates on or before December 31 of the year for which the trustee is reporting;

(2) A trust interest holder may not roll-over its investment in the NMWHFIT to another WHFIT; and

(3) The trustee makes reasonable efforts to engage in pro-rata sales of trust assets to effect redemptions.

(G) Pro-rata sales of trust assets to effect a redemption--(1) Definition. A pro-rata sale of a trust asset to effect a redemption is not required to be reported under this paragraph (c)(2)(iv). A pro-rata sale of a trust asset to effect a redemption occurs when a --

(i) A trust interest holder tenders one or more trust interests for redemption;

(ii) The trustee sells the pro-rata share of the trust asset that is deemed to be owned by the trust interest holder under section 671 as a result of the trust interest holder's ownership of the trust interest or interests tendered for redemption (See paragraph (b)(8) of this section for a description of how pro-rata is to be applied for purposes of this paragraph (c)(2)(iv)(G)) ;

(iii) The trustee engages in the sale solely to obtain cash that is immediately distributed to the redeeming trust interest holder as a result of the redemption; and

(iv) The redemption is reported as required under §1.671-5(c)(2)(v) by the trustee.

(2) Example. The following example illustrates the definition of a pro-rata sale of a trust asset to effect a redemption:

Example: Trust has two hundred trust interests and all interests have equal value and rights. Trust owns two hundred shares of stock in corporation X, two hundred shares of stock in corporation Y, and one hundred shares of stock in corporation Z. C owns one trust interest and tenders it for redemption. To obtain cash for the redemption, the trustee of Trust sells one share of each of the X and Y stock and one share of Z stock. Trustee immediately distributes the proceeds from the sale of the X and the Y stock, as well as 50% of the proceeds from the sale of the Z stock to C as redemption proceeds. Trustee will report the redemption under §1.671-5(c)(2)(v). The sale of the share of X stock and the sale of the share of Y stock are each a pro-rata sale of a trust asset to effect a redemption and are not required to be reported under this paragraph (c)(2)(iv) (G). The proceeds from the sale of the X stock and the Y stock are not trust sales proceeds under paragraph (b)(21) of this section and are not included for the purpose of determining whether Trust meets the de minimis test. The sale of the Z stock, because it was not a sale of the pro-rata share of the trust asset that is treated as owned by C is not a pro-rata sale of a trust asset to effect a redemption and is required to be reported as provided under paragraph (c)(2)(iv) (A) or (B) of this section, whichever is applicable. The proceeds from the sale of the Z stock are trust sales proceeds under paragraph (b)(21) of this section and included for the purpose of determining whether Trust meets the de minimis test in paragraph (c)(2)(iv)(D)(1) of this section.

(c)(2)(v)(A) and (B) [Reserved.] For further guidance, see §1.671-5(c)(2)(v)(A) and (B).

(C) Exception for certain NMWHFITs with dividend income--(1) In general. The trustee of a NMWHFIT described in paragraph (c)(2)(v)(C)(2) of this section is not required to report the information described in §1.671-5(c)(2)(v)(A) (regarding redemptions) or (c)(2)(v)(B) (regarding sales). However, the trustee must report to requesting persons, for each date on which the amount of redemption proceeds to be paid for the redemption of a trust interest is determined, information that will enable requesting persons to determine the redemption proceeds per trust interest on that date. The trustee also must

provide requesting persons with a statement that this paragraph applies to the NMWHFIT.

(2) NMWHFITs that qualify for the exception. This paragraph (c)(2)(v)(C) applies to a NMWHFIT if substantially all the income of the NMWHFIT consists of dividends (as defined in section 6042(b) and the regulations thereunder) and the NMWHFIT satisfies either paragraph (c)(2)(v)(C)(2)(i) or (ii) of this section. Trust sales proceeds and gross proceeds from a sale described in paragraph (c)(2)(iv)(G) of this section are ignored for the purpose of determining if substantially all of a NMWHFITs income consists of dividends.

(i) The trustee is required by the governing document of the NMWHFIT to determine and distribute all cash held for distribution (as defined in paragraph (b)(5) of this section) no less frequently than monthly. A NMWHFIT will be considered to have satisfied this paragraph (c)(2)(v)(C)(2)(i) notwithstanding that the governing document of the NMWHFIT permits the trustee to forego making a required monthly or more frequent distribution, if the cash held for distribution is less than 0.1% of the aggregate net asset value of the trust as of the date specified in the governing document for calculating the amount of the monthly distribution.

(ii) The qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section is satisfied.

(vi) Information regarding bond premium. The trustee generally must report information that enables a beneficial owner to determine, in any manner that is reasonably consistent with section 171, the amount of the beneficial

owner's amortizable bond premium, if any, for each calendar year. However, if a NMWHFIT meets the general de minimis test of paragraph (c)(2)(iv)(D)(1) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final calendar year exception of paragraph (c)(2)(iv)(F) of this section, the trustee of such NMWHFIT is not required to report information regarding bond premium.

(vii) Information regarding market discount. The trustee generally must report information that enables a beneficial owner to determine, in any manner reasonably consistent with section 1276 (including section 1276(a)(3)), the amount of market discount that has accrued during the calendar year. However, if a NMWHFIT meets the general de minimis test of paragraph (c)(2)(iv)(D)(1) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, NMWHFIT final calendar year exception of paragraph (c)(2)(iv)(F) of this section, the trustee of such NMWHFIT is not required to provide information regarding market discount.

(c)(3) through (f)(1)(i) [Reserved.] For further guidance, see §1.671-5(c)(3) through (e)(4).

(f) Safe harbor for providing information for certain NMWHFITs--(1) Safe harbor for trustee reporting of NMWHFIT information. The trustee of a NMWHFIT that meets the requirements of paragraph (f)(1)(i) of this section is deemed to satisfy paragraph (c)(1)(i) of this section, if the trustee calculates and provides WHFIT information in the manner described in this paragraph (f) and

provides a statement to a requesting person giving notice that information has been calculated in accordance with this paragraph (f)(1).

(i) In general--(A) Eligibility to report under this safe harbor. Only NMWHFITs that meet the requirements set forth in paragraphs (f)(1)(i)(A)(1) and (2) of this section may report under this safe harbor. For purposes of determining whether paragraph (f)(1)(i)(A)(1) is met, trust sales proceeds and gross proceeds from sales described in paragraph (c)(2)(iv)(G) of this section are ignored.

(1) Substantially all of the NMWHFIT's income is from dividends or interest; and

(2) All trust interests have identical value and rights.

(f)(1)(i)(B) through (f)(vii) [Reserved.] For further guidance, see §1.671-5(f)(1)(i)(B) through (f)(vii).

(viii) Reporting market discount information under the safe harbor--(A) In general. If the trustee of a NMWHFIT is required to provide information regarding market discount under paragraph (c)(2)(vii) of this section, the trustee must provide the information required under §1.671-5(f)(1)(iv)(A)(1)(iii) of this section. If the trustee is not required to provide market discount information under paragraph (c)(2)(vii) of this section (because paragraph (c)(2)(iv) of this section applies to the NMWHFIT), the trustee is not required under this paragraph (f) to provide any information regarding market discount.

(f)(1)(viii)(B) through (m) [Reserved.] For further guidance, see §1.671-5(f)(1)(viii)(B) through (m).

Deputy Commissioner for Services and Enforcement.

Approved:

Acting Deputy Assistant Secretary (Tax Policy)