

TD 9449
Allocation and Reporting of Mortgage Insurance Premiums

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1
[TD 9449]
RIN 1545-BH84
Allocation and Reporting of Mortgage Insurance Premiums
AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that explain how to allocate prepaid qualified mortgage insurance premiums to determine the amount of the prepaid premium that is treated as qualified residence interest each taxable year under section 163(h)(4)(F) of the Internal Revenue Code (Code). The temporary regulations also provide guidance to reporting entities receiving premiums, including prepaid premiums, for mortgage insurance. The temporary regulations reflect changes to the law made by the Tax Relief and Health Care Act of 2006 and the Mortgage Forgiveness Debt Relief Act of 2007. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

DATES: Effective Date: These regulations are effective on May 7, 2009.
Applicability Dates: For dates of applicability, see §§1.163-11T(d) and 1.6050H-3T(e).

FOR FURTHER INFORMATION CONTACT: Concerning §1.163-11T, Angela Warren, (202) 622-4950; concerning §1.6050H-3T, Stephen Coleman (202) 622-4910 (not tollfree numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 419 of the Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2967) (2006 Act), added sections 163(h)(3)(E), (h)(4)(E), and (h)(4)(F) to the Code. Section 3 of the Mortgage Forgiveness Debt Relief Act of 2007, Public Law 110-142 (121 Stat. 1803) (2007), amended section 163(h)(3)(E)(iv). In general, these new provisions treat certain qualified mortgage insurance premiums as qualified residence interest. This treatment applies only to certain qualified mortgage insurance premiums paid or accrued on or after January 1, 2007, and on or before December 31, 2010, on mortgage insurance contracts issued on or after January 1, 2007.

Section 163(h)(3)(E)(i) provides that premiums paid or accrued for qualified mortgage insurance in connection with acquisition indebtedness for a qualified residence are treated as qualified residence interest for purposes of section 163. Section 163(h)(4)(E) defines qualified mortgage insurance as (i) mortgage insurance provided by the Veterans Administration (VA), the Federal Housing Administration (FHA), or the Rural Housing Administration (Rural Housing)¹, and (ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901) as in effect on December 20, 2006). The amount treated as qualified residence interest may be reduced or eliminated under section 163(h)(3)(E)(ii), which

¹ References in section 163(h)(4)(E)(i) to the Veterans Administration and Rural Housing Administration are interpreted to mean their respective successors, the Department of Veterans Affairs and Rural Housing Service.

provides that the amount allowed as a deduction is phased out ratably by 10 percent for each \$1,000 (\$500 in the case of a married individual filing a separate return) that the taxpayer's adjusted gross income exceeds \$100,000 (\$50,000 in the case of a married individual filing a separate return).

Section 163(h)(4)(F) states that any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which the amount is paid shall be chargeable to capital account and shall be treated as paid in the periods to which the amount is allocated. No deduction shall be allowed for the unamortized balance of the account if the mortgage is satisfied before the end of its term. The allocation rules in section 163(h)(4)(F) do not apply to amounts paid for qualified mortgage insurance provided by the VA or Rural Housing. Additionally, section 163(h)(3)(E)(iv)(II) disallows a deduction for amounts allocable to any period after December 31, 2010.

Section 419 of the 2006 Act also added section 6050H(h) to the Code, which generally provides that any person who, in the course of a trade or business, receives from an individual premiums for mortgage insurance aggregating \$600 or more for any calendar year, shall make an information return in the form prescribed by the Secretary. As defined in section 6050H(h)(3)(B), the term mortgage insurance has the same meaning as qualified mortgage insurance in section 163(h)(4)(E). See also Tax Technical Corrections Act of 2007, Public Law 110-172 (121 Stat. 2473) §11(b)(2).

On January 8, 2008, the IRS and the Treasury Department published Notice 2008-15 (2008-4 IRB 4) (see §601.601(d)(2)(ii)(b)) to provide guidance to individual taxpayers in determining the amount of prepaid qualified mortgage insurance premiums that is treated as qualified residence interest under section 163(h)(3)(E) that may be deducted in 2007, and to reporting entities receiving premiums, including prepaid premiums, for mortgage insurance in 2007. The notice provides that an individual taxpayer may allocate the prepaid premium ratably over the shorter of (1) the stated term of the mortgage, or (2) 84 months, beginning with the month in which the insurance was obtained. The notice also provides that reporting entities that receive mortgage insurance premiums of \$600 or more in 2007 may report either the portion of the amount received that is allocable to 2007, the amount actually received, or the amount determined under an 84-month allocation method. The notice requested comments regarding the appropriate allocation method and reporting requirements that should apply to future years.

Summary of Comments on Notice 2008-15 and Explanation of Provisions

In response to Notice 2008-15, the Treasury Department and the IRS received several comments concerning the appropriate allocation methodology for prepaid qualified mortgage insurance premiums that are treated as qualified residence interest under section 163(h)(3)(E). One commenter recommended adopting the rule from Notice 2008-15 permitting taxpayers to allocate a prepaid premium ratably over the shorter of (1) the stated term of the mortgage, or (2) 84 months. According to this commenter, an 84-month allocation rule closely approximates the actual duration of the average mortgage insurance contract. Another commenter suggested adopting a three-year allocation period to coincide with the Department of Housing and Urban Development's (HUD) policy of refunding prepaid premiums on FHA loans. Under this policy, HUD refunds prepaid FHA mortgage insurance premiums if the borrower refinances the mortgage through another FHA loan within the first three years of the original loan term.

After consideration of these comments, the Treasury Department and the IRS are adopting the rule from Notice 2008-15 concerning allocation of prepaid qualified mortgage insurance premiums based on the understanding that the average life of a mortgage insurance contract on home mortgages generally is seven years (84 months). Accordingly, the temporary regulations add a new provision to the regulations under section 163. Notwithstanding the general rules for the treatment of qualified residence interest (for example, the period over which certain points paid to refinance a mortgage are allocable), §1.163-11T provides that an individual taxpayer may allocate prepaid qualified mortgage insurance premiums that are treated as qualified residence interest under section 163(h)(3)(E) over the shorter of (a) the stated term of the mortgage, or (b) a period of 84 months. Instructions for calculating the portion of prepaid qualified mortgage insurance premiums that are deductible in a particular taxable year are in Publication 936, "Home Mortgage Interest Deduction."

The Treasury Department and the IRS received several comments in response to Notice 2008-15 concerning the appropriate reporting requirement. Some commenters suggested that mortgage servicers be required to report all mortgage insurance premiums received during the taxable year, including prepayments. Others suggested allowing mortgage servicers to report either (1) the amount of mortgage insurance premiums received, or (2) the amount disbursed during the taxable year to the issuer of the mortgage insurance policy.

After consideration of these comments, the Treasury Department and the IRS are adopting a rule requiring mortgage servicers to report the amount of all mortgage insurance premiums, including prepaid mortgage insurance premiums, received in the calendar year. The temporary regulations accordingly add a new provision to the regulations under section 6050H. Section 1.6050H-3T provides that a reporting entity that receives mortgage insurance premiums of \$600 or more from an individual taxpayer during a calendar year shall make an information return setting forth the total amount received from that individual during the calendar year pursuant to the forms and instructions prescribed by the Secretary (currently reported in Box 4 of Form 1098 "Mortgage Interest Statement").

Several commenters suggested clarifying that there are separate \$600 thresholds for reporting mortgage interest under section 6050H(a) and mortgage insurance premiums under section 6050H(h). Several commenters also requested inclusion of a separate standard for penalty relief for reporting mortgage insurance premiums in compliance with section 6050H(h). Such guidance is unnecessary, as sections 6050H(a) and 6050H(h) set forth separate \$600 reporting thresholds for mortgage interest received and mortgage insurance premiums received, and the good faith standard for penalty relief in §301.6724-1(a)(2)(i) applies to the reporting of mortgage insurance premiums.

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. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 5), please refer to the Special Analyses section in the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the Federal Register. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Angella Warren, Office of the Associate Chief Counsel (Income Tax and Accounting), and Stephen Coleman, Office of the Associate Chief Counsel (Procedure and Administration). 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 1.163-11T is added to read as follows:

§1.163-11T Allocation of certain prepaid qualified mortgage insurance premiums (temporary).

(a) Allocation--(1) In general. As provided in section 163(h)(3)(E), premiums paid or accrued for qualified mortgage insurance during the taxable year in connection with acquisition indebtedness with respect to a qualified residence (as defined in section 163(h)(4)(A)) of the taxpayer shall be treated as qualified residence interest (as defined in section 163(h)(3)(A)). If an individual taxpayer pays such a premium that is properly allocable to a mortgage the payment of which extends to periods beyond the close of the taxable year (prepaid premium), the taxpayer must allocate the premium to determine the amount treated as qualified residence interest for each taxable year. The premium must be allocated ratably over the shorter of--

(i) The stated term of the mortgage; or

(ii) A period of 84 months, beginning with the month in which the insurance was obtained.

(2) Limitation. If a mortgage is satisfied before the end of its stated term, no deduction as qualified residence interest shall be allowed for any amount of the premium that is allocable to periods after the mortgage is satisfied.

(b) Scope. The allocation requirement in paragraph (a) of this section applies only to mortgage insurance provided by the Federal Housing Administration or private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901) as in effect on December 20, 2006). It does not apply to mortgage insurance provided by the Department of Veterans Affairs or the Rural Housing Service. Paragraph (a) of this section applies whether the qualified mortgage insurance premiums are paid in cash or are financed, without regard to source.

(c) Cross reference. For rules concerning the information reporting of premiums, including prepaid premiums, for mortgage insurance, see §1.6050H-3T.

(d) Effective/applicability date. This section applies to prepaid qualified mortgage insurance premiums described in paragraph (a) of this section paid or accrued on or after January 1, 2008, and on or before December 31, 2010, for mortgage insurance provided by the Federal Housing Administration or private mortgage insurers issued on or after January 1, 2007.

(e) Expiration date. The applicability of this section expires on May 7, 2012.

Par. 3. Section 1.6050H-3T is added to read as follows:

§1.6050H-3T Information reporting of mortgage insurance premiums (temporary).

(a) Information reporting requirements. Any person who, in the course of a trade or business receives premiums, including prepaid premiums, for mortgage insurance (as described in paragraph (b) of this section) from any individual aggregating \$600 or more for any calendar year, shall make an information return setting forth the total amount received from that individual during the calendar year pursuant to the forms and instructions prescribed by the Secretary.

(b) Scope. Paragraph (a) of this section applies to mortgage insurance provided by the Federal Housing Administration, Department of Veterans Affairs, or the Rural Housing Service (or their successor organizations), or to private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901) as in effect on December 20, 2006). The rule stated in paragraph (a) of this section applies to the receipt of all payments of mortgage insurance premiums, by cash or financing, without regard to source.

(c) Aggregation. Whether a person receives \$600 or more of mortgage insurance premiums is determined on a mortgage-by-mortgage basis. A recipient need not aggregate mortgage insurance premiums received on all of the mortgages of an individual to determine whether the \$600 threshold is met. Therefore, a recipient need not report mortgage insurance premiums of less than \$600 received on a mortgage, even though it receives a total of \$600 or more of mortgage insurance premiums on all of the mortgages for an individual for a calendar year.

(d) Cross reference. For rules concerning the allocation of certain prepaid qualified mortgage insurance premiums, see §1.163-11T of this chapter.

(e) Effective/applicability date. This section applies to mortgage insurance premiums received on or after January 1, 2008.

(f) Expiration date. The applicability of this section expires on May 4, 1012.

Linda E. Stiff
Deputy Commissioner for Services and Enforcement.
Approved: April 23, 2009
Bernard J. Knight, Jr.
Acting General Counsel of the Treasury.