Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part I, §§ 860D, 860F, 860G, 1001; 1.856-6, 1.860G–2, 1.1001–3, 301.7701–2, 301.7701-3, 301.7701-4.)

Rev. Proc. 2021-12

SECTION 1. PURPOSE

In light of the continuing Coronavirus Disease 2019 (COVID-19) pandemic, this revenue procedure extends the expiration dates relevant to the application of the safe harbors in Rev. Proc. 2020-26, 2020-18 I.R.B. 753. These safe harbors protect the Federal income tax status of real estate mortgage investment conduits (REMICs) and investment trusts that provide certain forbearances of mortgage loans they hold or that acquire mortgage loans that have received certain forbearances. Additionally, this revenue procedure extends the expiration dates relevant to the application of the safe harbors in Rev. Proc. 2020-34, 2020-26 I.R.B. 990. These safe harbors protect the

Federal income tax status of certain investment trusts whose trustees request or agree to certain forbearances of mortgage loans, make certain modifications of real property leases, or accept certain cash contributions.

SECTION 2. BACKGROUND — COVID-19 and the CARES ACT

On March 27, 2020, the President signed into law the Coronavirus, Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (CARES Act). The CARES Act provides, among other things, that borrowers with Federally backed mortgage loans and multifamily borrowers with Federally backed multifamily mortgage loans experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request and obtain forbearance on their loans. See sections 4022 and 4023 of the CARES Act.

SECTION 3. BACKGROUND — REVENUE PROCEDURE 2020-26

.01 On April 13, 2020, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued Rev. Proc. 2020-26. Rev. Proc. 2020-26 provided safe harbors for determining the Federal income tax status of REMICs and investment trusts that hold mortgage loans. Under the safe harbors, certain modifications of mortgage loans in connection with forbearances described in Rev. Proc. 2020-26 are not treated as replacing the unmodified obligation with a newly issued obligation, as giving rise to prohibited transactions, as resulting in a deemed reissuance of the REMIC regular interests, or as manifesting a power to vary. In addition, under another safe harbor in the revenue procedure, REMICs are not treated as having improper knowledge of an anticipated default on the grounds that they acquired a mortgage loan with respect to which the borrower had requested or agreed to a forbearance described in Rev. Proc. 2020-26.

.02 The forbearances described in Rev. Proc. 2020-26 are—

> (1) Forbearances of any Federally backed mortgage loans or Federally backed multifamily mortgage loans provided under sections 4022 or 4023 of the CARES Act, respectively, and all related modifications [(CARES Act Forbearances)], and
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> (2) Forbearances (and all related modifications) that are not [CARES Act Forbearances], that are provided by a holder or servicer, that are agreed to by the borrower of any Federally backed or non-Federally backed mortgage loan, and that are made under forbearance programs for borrowers experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency. For this purpose, forbearance programs are programs that are identical or similar to those described in section 2.07 of [Rev. Proc. 2020-26] pursuant to which, between March 27, 2020, and December 31, 2020, inclusive, the borrower requests or agrees to the forbearance (and all related modifications).

2020–18 I.R.B. 755.

.03 In light of the continuing COVID-19 pandemic, the Treasury Department and the IRS have decided to extend the expiration dates relevant to the application of the safe harbors in Rev. Proc. 2020-26.

SECTION 4. BACKGROUND — REVENUE PROCEDURE 2020-34

.01 On June 4, 2020, the Treasury Department and the IRS issued Rev. Proc. 2020-34. Rev. Proc. 2020-34 provided safe harbors for determining the Federal income tax status of certain investment trusts that hold real property. Under the safe harbors, certain modifications of mortgage loans in connection with forbearance programs described in Rev. Proc. 2020-26 are not treated as manifesting a power to vary. Additionally, certain modifications of real property leases and the acceptance of additional cash contributions related to the COVID-19 emergency are not treated as manifesting a power to vary.

.02 The SCOPE section of Rev. Proc. 2020-34 provides—

> .01 [Rev. Proc. 2020–34] applies to arrangements that are trusts under § 301.7701-4(c) and Rev. Rul. 2004-86 and that hold real property and engage in one or more of the actions described in sections 6.02, 6.03, or 6.04 of [Rev. Proc. 2020–34]. Although Rev. Rul. 2004–86 describes a trust that had been formed under a specific Delaware statute, [Rev. Proc. 2020–34] applies to trusts formed under the equivalent law (if any) of other States or the District of Columbia.
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> .02 Modification of one or more mortgage loans that secure the trust's real property in—
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> (1) A CARES Act Forbearance (and all related modifications); or
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> (2) A forbearance (and all related modifications)—
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> (a) That are described in section 2.07 of Rev. Proc. 2020-26;
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> (b) That the trust requested, or agreed to, between March 27, 2020, and December 31, 2020; and
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> (c) That were granted as a result of the trust experiencing a financial hardship due to the COVID-19 emergency.
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> .03 Modifications of one or more real property leases (including modifications to the specific allocations of fixed rent in the lease agreements as described in § 467 of the Code and the regulations under § 467; see section 9.01 of [Rev. Proc. 2020–34]). The lease must have been entered into by the trust on or before March 13, 2020, and the modifications must have been requested and agreed to on or after March 27, 2020, and on or before December 31, 2020. The reason for the modifications must be—
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> (1) To coordinate the lease cash flows with the cash flows that result from [the forbearances described in section 6.02 of Rev. Proc. 2020–34]; or
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> (2) To defer or waive one or more tenants' rental payments for any period between March 27, 2020, and December 31, 2020 (and all related modifications), because the tenants are experiencing a financial hardship due to the COVID-19 emergency.
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> .04 Acceptance of cash contributions that are made between March 27, 2020, and December 31, 2020, as a result of the trust experiencing financial hardship due to the COVID-19 emergency, provided the

> contribution must be needed to increase permitted trust reserves, to maintain trust property, to fulfill obligations under mortgage loans, or to fulfill obligations under real property leases. See section 10 of [Rev. Proc. 2020–34] regarding the tax treatment of non-pro rata contributions or contributions from new investors for an interest in the trust.

2020–26 I.R.B. 992.

.03 In light of the continuing COVID-19 pandemic, the Treasury Department and the IRS have decided to extend the expiration dates relevant to the application of the safe harbors in Rev. Proc. 2020-34.

SECTION 5. EXTENSION OF TIME PERIODS

.01 The time periods described in sections 5.01(2), 5.02(2), and 6.02(2) of Rev. Proc. 2020-26 are extended until September 30, 2021. Accordingly, in sections 5.01(2), 5.02(2), and 6.02(2) of Rev. Proc. 2020-26, “September 30, 2021” is substituted for “December 31, 2020” in each place it appears.

.02 The time periods described in sections 6.02(2)(b), 6.03, 6.03(2), and 6.04 of Rev. Proc. 2020-34 are extended until September 30, 2021. Accordingly, in sections 6.02(2)(b), 6.03, 6.03(2) and 6.04 of Rev. Proc. 2020-34, “September 30, 2021” is substituted for “December 31, 2020” each place it appears.

SECTION 6. EFFECT ON OTHER DOCUMENTS

This revenue procedure amplifies Rev. Proc. 2020-26 and Rev. Proc. 2020-34.

SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue procedure are Diana Imholtz and Michael Chin of the Office of Associate Chief Counsel (Financial Institutions & Products), with respect to the amplification of Rev. Proc. 2020–26, and Christiaan Cleary of the Office of

Associate Chief Counsel (Passthroughs and Special Industries), with respect to the amplification of Rev. Proc. 2020–34. For further information regarding this revenue procedure, contact Mr. Chin at (202) 317-6842 (not a toll-free number) or Mr. Cleary at (202) 317-6850 (not a toll-free number).