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[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9588]

RIN 1545-BH84

Allocation of Mortgage Insurance Premiums

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final 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. The final regulations reflect changes to the law made by the Tax Relief and Health Care Act of 2006, the Mortgage Forgiveness Debt Relief Act of 2007, and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. The regulations affect taxpayers who pay prepaid qualified mortgage insurance premiums.

DATES: Effective Date: These regulations are effective on May 4, 2012.

Applicability Dates: For dates of applicability, see §1.163-11(d).

FOR FURTHER INFORMATION CONTACT: Charles Kim, (202) 622-5020 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Background**

This document contains amendments to 26 CFR part 1. On May 7, 2009, the Treasury Department and IRS published temporary regulations (TD 9449) under section 163 of the Internal Revenue Code (Code) in the **Federal Register** (74 FR 21256) 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. On the same day, the Treasury Department and IRS published a notice of proposed rulemaking (REG-107271-08) cross-referencing the temporary regulations in the **Federal Register** (74 FR 21295). No public hearing was requested or held. No comments responding to the notice of proposed rulemaking were received. The proposed regulations under section 163 are adopted as amended by this Treasury decision, and the corresponding temporary regulations under section 163 are removed.

TD 9449 also contained temporary regulations under section 6050H(h) that require persons who receive premiums, including prepaid premiums, for mortgage insurance to make a return setting forth the amount of premiums received. A notice of proposed rulemaking (REG-107271-08) cross-referencing the temporary regulations was published in the **Federal Register** on the same day (74 FR 21295). Because the deduction for mortgage insurance premiums currently does not apply to amounts paid or accrued after December 31, 2011, the Treasury Department and the IRS are not taking any action at this time with respect to the temporary regulations or the proposed regulations under section 6050H(h). The temporary regulations will expire on May 4, 2012.

Section 419 of the Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2967) (2006), 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). Section 759(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111-312 (124 Stat. 3296) (2010), further amended section 163(h)(3)(E)(iv). In general, these new provisions treat certain qualified mortgage insurance premiums as qualified residence interest. This treatment only applies to certain qualified mortgage insurance premiums paid or accrued on or after January 1, 2007, and on or before December 31, 2011, 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),<sup>1</sup> 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 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) (or fraction thereof) that the taxpayer's adjusted gross income exceeds \$100,000 (\$50,000 in the case of a married individual filing a separate return).

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<sup>1</sup> 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.

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. Section 163(h)(4)(F) provides that the allocation rules under 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, 2011.

### **Explanation of Provisions**

These final regulations provide rules regarding the allocation of 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).

These final regulations apply to prepaid qualified mortgage insurance premiums paid or accrued on or after January 1, 2011. The treatment of mortgage insurance premiums as interest described in these final regulations is limited to prepaid qualified mortgage insurance premiums that are paid or accrued on or after January 1, 2011, and during periods to which section 163(h)(3)(E) is applicable. The temporary regulations are applicable to prepaid qualified mortgage insurance premiums paid or accrued on or after January 1, 2008, and on or before December 31, 2010.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

#### **Drafting Information**

The principal author of these regulations is Charles Kim, Office of the Associate Chief Counsel (Income Tax and Accounting). 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.

#### **Adoption of 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 1.163-11 is added to read as follows:

§1.163-11 Allocation of certain prepaid qualified mortgage insurance premiums.

(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 in which the premium is paid, 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) Limitation on the treatment of mortgage insurance premiums as interest. This section applies to prepaid qualified mortgage insurance premiums described in paragraph (a) of this section that are paid or accrued on or after January 1, 2011, and during periods to which section 163(h)(3)(E) is applicable. This section does not apply to any amount of prepaid qualified mortgage insurance premiums that are allocable to any periods to which section 163(h)(3)(E) is not applicable.

(d) Effective/applicability date. This section is applicable on and after January 1, 2011. For regulations applicable before January 1, 2011, see §1.163-11T in effect prior to January 1, 2011 (§1.163-11T as contained in 26 CFR part 1 edition revised as of April 1, 2011).

**§1.163-11T [Removed]**

Par. 3. Section 1.163-11T is removed.

Steven T. Miller  
Deputy Commissioner for Services and Enforcement.

Approved: April 24, 2012

Emily S. McMahon  
Acting Assistant Secretary of the Treasury (Tax Policy).

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