

Notice of Proposed Rulemaking and Notice of Public Hearing

Reporting Requirements for Widely Held Fixed Investment Trusts

REG-209813-96

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that define widely held fixed investment trusts, clarify the reporting obligations of the trustees of these trusts and the middlemen connected with these trusts, and provide for the communication of necessary tax information to beneficial owners of trust interests. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by, November 12, 1998. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Thursday, November 5, 1998 at 10 a.m. must be submitted by October 15, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-209813-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-209813-96), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Faith

Colson, (202) 622-3060; concerning submissions and the hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by, October 13, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in §1.671-4 of the Income Tax Regulations. This information is required to enable holders of trust interests to report items of income, deduction, and credit of a widely held fixed investment trust under section 671. This information will be used by the IRS to ensure that those items are reported accu-

rately by beneficial owners of trust interests. The collection of information is mandatory. The likely respondents are businesses and other for-profit institutions.

Estimated total annual reporting burden: 2,400 hours.

Estimated average annual burden hours per respondent: 2 hours.

Estimated number of respondents: 1,200.

Estimated annual frequency of responses: Annually (but more often for a trust providing information to certain persons on request).

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 the collection of information must be retained as long as their contents may 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 proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 671. The proposed amendments are to be issued under the authority of sections 671, 6034A, 6049(d)(7), and 7805.

A fixed investment trust is an arrangement classified as a trust under §301.7701-4(c). Beneficial interests in these trusts are divided into units. The Service treats these trusts as grantor trusts under section 671 and the owners of the beneficial interests, or units, as the grantors. See Rev. Rul. 84-10 (1984-1 C.B. 155); Rev. Rul. 70-545 (1970-2 C.B. 7); Rev. Rul. 70-544 (1970-2 C.B. 6); Rev. Rul. 61-175 (1961-2 C.B. 128). Under the proposed regulations, a *widely held fixed investment trust* is a fixed investment trust in which any interest is held by a middleman. For this purpose, the term *middleman* includes, but is not limited to, a custodian of a person's account, a nominee, and a broker holding an interest for a customer in street name. The IRS and Treasury request comments on the application and scope of these defi-

nitions, including the appropriateness of a de minimis rule as to the number of middlemen.

Interests in widely held fixed investment trusts are often held in the street name of a middleman, who holds such interests on behalf of the beneficial owners. Thus, trustees frequently do not know the identity of the beneficial owners and are not in a position to communicate necessary tax information directly to such owners. Currently, there are no tax information reporting rules specifically providing for the sharing of tax information among trustees, middlemen, and beneficial owners of these trusts.

On December 21, 1995, final regulations (T.D. 8633) under section 671, relating to the information reporting requirements of grantor trusts, were published in 1996-1 C.B. 119. See §1.671-4. While drafting the final regulations, the IRS and Treasury concluded that special reporting requirements were needed for widely held fixed investment trusts but that such guidance fell outside the scope of the final regulations. The preamble to the final regulations stated that the IRS and Treasury anticipated providing guidance for these trusts in a separate project and invited comments from interested taxpayers and practitioners regarding such guidance.

In developing these proposed regulations, the IRS and Treasury have continued to solicit comments from the public. Comments were received from various industry members and practitioners, and these proposed regulations take such comments into account. The proposed regulations are intended to clarify the reporting requirements of trustees and middlemen and to ensure that beneficial owners of trust interests receive accurate and timely tax reporting information. The IRS and Treasury welcome comments on specific instances of industry practice that differ significantly from the framework of these proposed regulations and on suggestions to tailor the reporting requirements to account for those differences.

Explanation of Provisions

A. General Framework of Reporting Rules

The information reporting framework in the proposed regulations is similar to that for regular interests in a real estate

mortgage investment conduit. See §1.6049-7.

Under the proposed regulations, the responsibility for information reporting lies primarily with the person in the ownership chain who holds a unit interest for a beneficial owner and is, therefore, in the best position to communicate with, and provide tax information to, the beneficial owner. Thus, a brokerage firm that holds a unit interest directly for an individual as a middleman will have the primary obligation to report to the IRS and to provide tax information to the individual. Similarly, if a unit interest is held directly by an individual and not through a middleman, the trustee is to report to the IRS and to provide tax information to the individual. Information reporting generally is not required for interests held by *exempt recipients*. Middlemen and trustees, however, are to make trust tax information available upon request to exempt recipients.

Appropriate adjustments may be necessary to other information reporting rules to make them compatible with these proposed regulations.

B. Trustee or Middleman to Report to the IRS on Form 1099

Under proposed §1.671-4(j)(2)(i)(A), a trustee must report to the IRS, on the appropriate Forms 1099, the gross amount of trust income (determined in accordance with proposed §1.671-4(j)(6)(i)) attributable to a unit interest holder who holds an interest in the trust directly and not through a middleman. Similarly, under proposed §1.671-4(j)(2)(i)(B), a middleman must report for any unit interest holder on whose behalf or account the middleman holds an interest. (To comply with this requirement, middlemen may request the necessary tax information from the trustee. See the discussion below.) In addition, the trustee or middleman is to report on the appropriate Form 1099 the gross proceeds from the sale or other disposition of a trust asset that is attributable to the unit interest holder. Forms 1099 are not required for any unit interest holder who is an *exempt recipient*, as defined in proposed §1.671-4(j)(1).

C. Statements to be Furnished to the Beneficial Owners of Unit Interests

Every middleman or trustee required to

file with the IRS a Form 1099 under these proposed regulations for a unit interest holder must furnish to the unit interest holder a written statement providing the holder with necessary tax reporting information including: (1) the items of income (determined in accordance with proposed §1.671-4(j)(6)(i)), deduction, and credit of the trust attributable to the unit interest holder; (2) if any trust asset has been sold or otherwise disposed of during the calendar year, the portion of the gross proceeds relating to the trust asset which is attributable to the unit interest holder, the date of sale or disposition of the trust asset, and the percentage of that trust asset that has been sold or disposed of; and (3) any other information necessary for the unit interest holder to accurately report the income, deductions, and credits of the trust attributable to the unit interest as required under section 671.

In addition, to enable unit interest holders to calculate gain or loss on the disposition of a trust asset, if a trust sells or disposes of a trust asset during a particular calendar year, the proposed regulations require the trustee or middleman to include, with the statement to the holder, a schedule showing the portion (expressed as a percentage) of the total fair market value of all the assets held by the trust that the trust asset sold or disposed of represented as of the last day of each quarter that the asset was held by the trust. It is contemplated that, in the absence of more accurate information, this information may be used by the unit interest holder to determine the percentage of the holder's basis in its unit interest that the disposed asset represents, so that the holder may calculate its gain or loss on the disposition of the asset.

The IRS and Treasury welcome comments on whether the approach taken in the proposed regulations to communicate information to enable the holder of a unit interest to calculate its basis in a trust asset is effective, or whether a different approach, which continues to be consistent with the taxation of grantor trusts, would be more effective. In addition, the IRS and Treasury invite comments on whether, for trusts consisting of fungible assets, an approach other than the proposed asset-by-asset approach for reporting sales and determining basis is administratively feasible or whether an

aggregate approach would be more appropriate and on the manner in which such an aggregate approach would be applied.

D. *Information to be Furnished to Middlemen by Trusts*

In general, information reporting is not required for unit interests held by *exempt recipients*. To enable such persons to receive necessary trust information, however, §1.671-4(j)(3)(iii) of the proposed regulations provides that middlemen, exempt recipients, and certain other persons may request from the trust tax information for a calendar quarter, computed as of the last day of the quarter specified, or for a calendar year, computed as of December 31 of the year specified. The tax reporting information the trust is to make available includes: (1) all items of income (determined in accordance with proposed §1.671-4(j)(6)(i)), deduction, and credit of the trust for the period specified; (2) if any trust asset has been sold or otherwise disposed of during the period specified, the gross proceeds received by the trust for the trust asset, the date of sale or disposition, and the percentage of that trust asset that has been sold or disposed of; (3) the number of units outstanding on the last business day of the period specified; and (4) any other information necessary for the unit interest holder to accurately report the income, deductions, and credits attributable to the portion of the trust treated as owned by the holder, as required under section 671. In addition, if a trust asset is sold or otherwise disposed of during the period specified, the trust must provide a schedule showing the portion (expressed in terms of a percentage) of the total fair market value of all the assets held by the trust that the asset sold or disposed of represented as of the last day of each calendar quarter that the trust held the asset.

E. *Special Rules*

A beneficial owner of a unit interest must report trust items consistent with the owner's method of accounting. See, e.g., Rev. Rul. 84-10. For administrative convenience, and with the intent of being consistent with industry practice, however, the proposed regulations require a trust to provide tax information as if the trust were a taxpayer using the cash re-

ceipts and disbursements method of tax accounting (cash method). Although a trust must provide tax information to unit holders as if the trust were a cash method taxpayer, the trust must provide information necessary for such holders to comply with the original issue discount rules and other provisions requiring the inclusion of accrued amounts regardless of the holder's method of accounting. The IRS and Treasury are continuing to study, and welcome comments on, whether to require trusts to provide tax reporting information to accommodate the different methods of accounting used by the beneficial owners of a trust.

In the case of a widely held fixed investment trust that holds a pool of debt instruments subject to section 1272(a)-(6)(C)(iii), the proposed regulations require that middlemen, unit interest holders, exempt recipients, and noncalendar-year taxpayers be provided with certain additional information that is necessary for compliance with the market discount rules and, where applicable, section 1272(a)(6) (as amended by section 1004 of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788, 911 (1997)). This additional information includes information necessary to compute (1) the accrual of market discount, including the type of information required under §1.6049-7(f)(2)(i)(G) in the case of a REMIC regular interest or a collateralized debt obligation not issued with original issue discount; and (2) the accrual of original issue discount and market discount, including the type of information required under §1.6049-7(f)(2)(ii)(E), (F), (I), and (K) in the case of a REMIC regular interest or a collateralized debt obligation that is issued with original issue discount. The IRS and Treasury request comments on whether similar information reporting requirements, for example, reporting of information necessary to compute the accrual of market discount, should be extended to widely held fixed investment trusts that hold instruments (or pools of instruments) not subject to section 1272(a)(6)(C).

To enable a beneficial owner to comply fully with section 671 and section 67 (where applicable), §1.671-4(j)(6)(i) of the proposed regulations requires the amount of trust income to be reported by the trustee to be the gross amount of in-

come generated by the trust assets (other than from the sale or other disposition of trust assets). Thus, in the case of a trust that receives a payment net of an expense, the payment must be grossed up to reflect the deducted expense. Trustees must also have, and make available, information regarding the trust's affected expenses (as defined in §1.67-2T(i)(1)) for the calendar year. In addition, in the case of a unit interest holder that is an affected investor (as defined in §1.67-2T(h)(1)), the trustee or middleman must provide such unit interest holder with information regarding the holder's proportionate share of the trust's affected expenses for the calendar year.

The proposed regulations also require the trust to separately state any other item that, if taken into account separately by any unit interest holder, could result in an income tax liability for that unit interest holder different from that which would result if the unit interest holder did not take the item into account separately. The IRS and Treasury request comments on whether this requirement is administratively feasible in the context of a widely held fixed investment trust or whether a different approach, also consistent with the taxation of grantor trusts, would be more appropriate.

F. *Coordination with Backup Withholding Rules*

Section 1.671-4(j)(7) of the proposed regulations contains provisions to coordinate these regulations with the backup withholding rules.

Proposed Effective Date

These regulations are proposed to apply to calendar years beginning on or after the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations generally clarify existing reporting

obligations and are expected, for the most part, to have a minimal impact on industry practice. Thus, the regulations will not result in a significant economic impact on any entity subject to the regulations. Further, the reporting burdens in these regulations will fall primarily on large brokerage firms, large banks, and other large entities acting as trustees or middlemen, most of which are not small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Thus, a substantial number of small entities will not be affected. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely (in the manner described in the ADDRESSES caption) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, November 5, 1998 at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by, November 12, 1998, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 15, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has

passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Faith Colson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.671-4 also issued under 26 U.S.C. 671, 26 U.S.C. 6034A, and 26 U.S.C. 6049(d)(7).

Par. 2. Section 1.671-4 is amended by revising paragraph (a) and adding paragraph (j) to read as follows:

§1.671-4 Method of reporting.

(a) *Portion of trust treated as owned by the grantor or another person.* Except as otherwise provided in paragraphs (b) and (j) of this section, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code, is treated as owned by the grantor or another person are not reported by the trust on Form 1041, but are shown on a separate statement to be attached to that form. Paragraph (j) of this section provides special reporting rules for widely held fixed investment trusts. Section 301.7701-4(e)(2) of this chapter provides guidance on how the reporting rules in this paragraph (a) apply to an environmental remediation trust.

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(j) *Special rules applicable to widely held fixed investment trusts.* The reporting rules contained in this paragraph (j) apply to any widely held fixed investment trust.

(1) *Definitions.* For purposes of this paragraph (j):

Affected expenses. The term *affected expenses* has the meaning given that term by §1.67-2T(i)(1).

Affected investor. The term *affected investor* has the meaning given that term by §1.67-2T(h)(1).

Exempt recipient. An *exempt recipient* is any person described in paragraphs (j)(2)(iv)(A) through (R) of this section.

Middleman. A *middleman* is any person who holds an interest in an arrangement classified as a trust under §301.7701-4(c) of this chapter, and subject to subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code, on behalf of, or for the account of, another person, or who otherwise acts in a capacity as an intermediary for the account of another person, at any time during the calendar year. A middleman includes, but is not limited to—

(i) A custodian of a person's account, such as a bank, financial institution, or brokerage firm acting as custodian of an account;

(ii) A nominee, including the joint owner of an account or instrument except if the joint owners are husband and wife; and

(iii) A broker (as defined in section 6045(c)(1) and §1.6045-1(a)(1)) holding an interest for a customer in street name.

Requesting person. A *requesting person* is a person specified in paragraph (j)(3)(iii)(A) of this section who is entitled to request from the trustee the information specified in paragraph (j)(3)(ii) of this section.

Trustee. *Trustee* means the trustee of a widely held fixed investment trust.

Unit interest holder. A *unit interest holder* is any person who holds a direct or indirect interest, including a beneficial interest, in a widely held fixed investment trust at any time during the calendar year.

Widely held fixed investment trust. A *widely held fixed investment trust* is an arrangement classified as a trust under §301.7701-4(c) of this chapter, and subject to subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code, in which any interest is held by a middleman.

(2) *Form 1099 requirement for trustees and middlemen—*(i) *Obligation to file*

Form 1099 with the Internal Revenue Service. Except as provided in paragraph (j)(2)(iv) of this section—

(A) Every trustee must file with the Internal Revenue Service the appropriate Forms 1099 reporting the information specified in paragraph (j)(2)(ii) of this section with respect to any unit interest holder who holds an interest in the trust directly and not through a middleman; and

(B) Every middleman must file with the Internal Revenue Service the appropriate Forms 1099, reporting the information specified in paragraph (j)(2)(ii) of this section with respect to any unit interest holder on whose behalf or account the middleman holds an interest in the trust or acts in a capacity as an intermediary.

(ii) *Information to be reported.* The following information must be reported to the Internal Revenue Service on the appropriate Forms 1099—

(A) The name, address, and taxpayer identification number of the unit interest holder;

(B) The name, address, and taxpayer identification number of the person required to file the form;

(C) The amount of trust income (determined in accordance with paragraph (j)(6)(i) of this section) attributable to the unit interest holder for the calendar year for which the return is made;

(D) In the case of the sale or other disposition of a trust asset during the calendar year, the portion of the gross proceeds relating to the trust asset that is attributable to the unit interest holder; and

(E) Any other information required by the Forms 1099.

(iii) *Time and place for filing Forms 1099.* The Forms 1099 required to be filed with the Internal Revenue Service by trustees or middlemen pursuant to paragraph (j)(2)(i) of this section must be filed on or before February 28 of the year following the year for which the Forms 1099 are being filed. The returns must be filed with the appropriate Internal Revenue Service Center, at the address listed in the instructions for the Forms 1099. For extensions of time for filing returns under this section, see §1.6081-1. For magnetic media filing requirements, see §301.6011-2 of this chapter.

(iv) *Forms 1099 not required.* A Form 1099 is not required for a unit interest

holder that is an exempt recipient. However, if the trustee or middleman backup withholds under section 3406 on payments made to a unit interest holder (because, for example, the unit interest holder has failed to furnish a Form W-9 on request), then the trustee or middleman is required to make a return under this section, unless the trustee or middleman refunds the amount withheld in accordance with §31.6413(a)-3 of this chapter. An exempt recipient is generally exempt from information reporting without filing a certificate claiming exempt status unless the provisions of this paragraph (j)(2)(iv) require the unit interest holder to file a certificate. A trustee or middleman may in any case require a unit interest holder not otherwise required to file a certificate under this paragraph (j)(2)(iv) to file a certificate in order to qualify as an exempt recipient. See §31.3406(h)-3(a)(1)(iii) and (c)(2) of this chapter for the certificate that a unit interest holder must provide if a trustee or middleman requires the certificate in order to treat the unit interest holder as an exempt recipient under this paragraph (j)(2)(iv). A trustee or middleman may treat a unit interest holder as an exempt recipient based upon a properly completed form as described in §31.3406(h)-3(e)(2) of this chapter, its actual knowledge that the unit interest holder is a person described in this paragraph (j)(2)(iv), or the indicators described in this paragraph (j)(2)(iv). Any unit interest holder who ceases to be an exempt recipient shall, no later than 10 days after such cessation, notify the trustee or middleman in writing when it ceases to be an exempt recipient. For purposes of this paragraph (j)—

(A) *Corporation.* A corporation, as defined in section 7701(a)(3), whether domestic or foreign, is an exempt recipient. In addition, for purposes of this paragraph (j)(2)(iv), the term corporation includes a partnership all of whose members are corporations described in this paragraph (j)(2)(iv), but only if the partnership files with the trustee or middleman a properly completed form as described in §31.3406(h)-3(e)(2) of this chapter. Absent actual knowledge otherwise, a trustee or middleman may treat a unit interest holder as a corporation (and, therefore, as an exempt recipient) if one of the requirements of paragraph (j)(2)(iv)(A)(1), (2),

(3), or (4), is met at the time a unit interest holder acquires an interest in the trust.

(1) The name of the unit interest holder contains an unambiguous expression of corporate status (that is, Incorporated, Inc., Corporation, Corp., P.C., (but not Company or Co.)) or contains the term *insurance company, indemnity company, reinsurance company, or assurance company*, or its name indicates that it is an entity listed as a per se corporation under §301.7701-2(b)(8)(i) of this chapter.

(2) The trustee or middleman has on file a corporate resolution or similar document clearly indicating corporate status. For this purpose, a similar document includes a copy of Form 8832, filed by the unit interest holder to elect classification as an association under §301.7701-3(c) of this chapter.

(3) The trustee or middleman receives a Form W-9 which includes an EIN and a statement from the unit interest holder that it is a domestic corporation.

(4) The trustee or middleman receives a withholding certificate described in §1.1441-1(e)(2)(i), that includes a certification that the person whose name is on the certificate is a foreign corporation.

(B) *Tax exempt organization.* Any organization that is exempt from taxation under section 501(a) is an exempt recipient. A custodial account under section 403(b)(7) shall be considered an exempt recipient under this paragraph. A trustee or middleman may treat an organization as an exempt recipient under this paragraph (j)(2)(iv)(B) without requiring a certificate if the organization's name is listed in the compilation by the Commissioner of organizations for which a deduction for charitable contributions is allowed, if the name of the organization contains an unambiguous indication that it is a tax-exempt organization, or if the organization is known to the trustee or middleman to be a tax-exempt organization.

(C) *Individual retirement plan.* An individual retirement plan as defined in section 7701(a)(37) is an exempt recipient. A trustee or middleman may treat any such plan of which it is the trustee or custodian as an exempt recipient under this paragraph (j)(2)(iv)(C) without requiring a certificate.

(D) *United States.* The United States Government and any wholly-owned agency or instrumentality thereof are ex-

empt recipients. A trustee or middleman may treat a person as an exempt recipient under this paragraph (j)(2)(iv)(D) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (j)(2)(iv)(D).

(E) *State.* A State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, a wholly-owned agency or instrumentality of any one or more of the foregoing, and a pool or partnership composed exclusively of any of the foregoing are exempt recipients. A trustee or middleman may treat a person as an exempt recipient under this paragraph (j)(2)(iv)(E) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (j)(2)(iv)(E) or if such person is known generally in the community to be a State, the District of Columbia, a possession of the United States or a political subdivision or a wholly-owned agency or instrumentality or any one or more of the foregoing (for example, an account held in the name of "Town of S" or "County of T" may be treated as held by an exempt recipient under this paragraph (j)(2)(iv)(E)).

(F) *Foreign government.* A foreign government, a political subdivision of a foreign government, and any wholly-owned agency or instrumentality of either of the foregoing are exempt recipients. A trustee or middleman may treat a foreign government or a political subdivision thereof as an exempt recipient under this paragraph (j)(2)(iv)(F) without requiring a certificate provided that its name reasonably indicates that it is a foreign government or provided that it is known to the trustee or middleman to be a foreign government or a political subdivision thereof (for example, an account held in the name of the "Government of V" may be treated as held by a foreign government).

(G) *International organization.* An international organization and any wholly-owned agency or instrumentality thereof are exempt recipients. The term *international organization* shall have the meaning ascribed to it in section 7701(a)(18). A trustee or middleman may treat a unit interest holder as an international organization without requiring a certificate if the unit interest holder is designated as an international organization by executive

order (pursuant to 22 U.S.C. 288 through 288f).

(H) *Foreign central bank of issue.* A foreign central bank of issue is an exempt recipient. A foreign central bank of issue is a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. See §1.895-1(b)(1). A trustee or middleman may treat a person as a foreign central bank of issue (and, therefore, as an exempt recipient) without requiring a certificate provided that such person is known generally in the financial community as a foreign central bank of issue or if its name reasonably indicates that it is a foreign central bank of issue.

(I) *Securities and commodities dealer.* A dealer in securities, commodities, or notional principal contracts that is registered as such under the laws of the United States or a State or under the laws of a foreign country is an exempt recipient. A trustee or middleman may treat a dealer as an exempt recipient under this paragraph (j)(2)(iv)(I) without requiring a certificate if the person is known generally in the investment community to be a dealer meeting the requirements set forth in this paragraph (j)(2)(iv)(I) (for example, a registered broker-dealer or a person listed as a member firm in the most recent publication of members of the National Association of Securities Dealers, Inc.).

(J) *Real Estate Investment Trust.* A real estate investment trust, as defined in section 856 and §1.856-1, is an exempt recipient. A trustee or middleman may treat a person as a real estate investment trust (and, therefore, as an exempt recipient) without requiring a certificate if the person is known generally in the investment community as a real estate investment trust.

(K) *Entity registered under the Investment Company Act of 1940.* An entity registered at all times during the taxable year under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1), (or during such portion of the taxable year that it is in existence), is an exempt recipient. An entity that is created during the taxable year will be treated as meeting the registration requirement of the preceding sentence provided that such entity is so registered at all times during the taxable year for which such entity is in existence.

A trustee or middleman may treat such an entity as an exempt recipient under this paragraph (j)(2)(iv)(K) without requiring a certificate if the entity is known generally in the investment community to meet the requirements of the preceding sentence.

(L) *Common trust fund.* A common trust fund, as defined in section 584(a), is an exempt recipient. A trustee or middleman may treat the fund as an exempt recipient without requiring a certificate provided that its name reasonably indicates that it is a common trust fund or provided that it is known to the trustee or middleman to be a common trust fund.

(M) *Financial institution.* A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization, whether organized in the United States or under the laws of a foreign country is an exempt recipient. A financial institution also includes a clearing organization defined in §1.163-5(c)(2)(i)(D)(8) and the Bank for International Settlements. A trustee or middleman may treat any person described in the preceding sentence as an exempt recipient without requiring a certificate if the person's name (including a foreign name, such as "Banco" or "Banque") reasonably indicates the unit interest holder is a financial institution described in the preceding sentence.

(N) *Trust.* A trust which is exempt from tax under section 664(c) (i.e., a charitable remainder annuity trust or a charitable remainder unitrust) or is described in section 4947(a)(1) (relating to certain charitable trusts) is an exempt recipient. A trustee or middleman which is a trustee of the trust may treat the trust as an exempt recipient without requiring a certificate.

(O) *Middlemen.* A middleman, as defined in paragraph (j)(1) of this section, is an exempt recipient.

(P) *Brokers.* A broker, as defined in section 6045(c) and §1.6045-1(a)(1), is an exempt recipient.

(Q) *Real estate mortgage investment conduit.* A real estate mortgage investment conduit, as defined in section 860D(a), is an exempt recipient.

(R) *A widely held fixed investment trust.* A widely held fixed investment trust, as defined in paragraph (j)(1) of this section, is an exempt recipient.

(3) *Trustee's requirement to furnish information to middlemen, exempt recipients, and noncalendar-year taxpayers—*
(i) *In general.* The trustee must cause to be printed in a publication generally read by and available to requesting persons, the name, address, and telephone number of a representative or official of the trust who will provide the information specified in paragraph (j)(3)(ii) of this section to such persons. The trustee must provide the information in the time and manner prescribed in paragraph (j)(3)(iii)(C) of this section to requesting persons who request the information in the manner prescribed in paragraph (j)(3)(iii)(B) of this section.

(ii) *Information required to be reported.* For each calendar quarter or calendar year specified, the trustee must have available and provide, upon request, the following information computed as of the last day of the quarter, or computed as of December 31 of the year specified—

(A) The name of the trust, the name and address of the trustee of the trust, and the employer identification number of the trust;

(B) The Committee on Uniform Security Identification Procedure (CUSIP) number, account number, serial number or other identifying number of the trust;

(C) All items of income (determined in accordance with paragraph (j)(6)(i) of this section), deduction, and credit of the trust, expressed both as a total dollar amount for the trust and as a dollar amount per unit outstanding on the last day of the period requested;

(D) If any trust asset has been sold or otherwise disposed of during the period requested, the gross proceeds received by the trust for the trust asset, the date of sale or disposition of the trust asset, and the percentage of that trust asset that has been sold or disposed of. The trust must also provide a schedule showing the portion (expressed in terms of a percentage) of the total fair market value of all the assets held by the trust that the asset sold or disposed of represented as of the last day of the quarter for each quarter that the asset was held by the trust;

(E) The amount of affected expenses of the trust expressed both as a total dollar amount and as a dollar amount per unit outstanding on the last day of the period requested;

(F) In the case of a widely held fixed investment trust that holds a pool of debt instruments subject to section 1272(a)-(6)(C)(iii), the information required by paragraph (j)(6)(ii) of this section;

(G) The number of units outstanding on the last business day of the period requested; and

(H) Any other information necessary for a unit interest holder that is the beneficial owner of a trust interest to properly report the income, deductions, and credits attributable to the portion of the trust treated as owned by the unit interest holder under section 671. For this purpose, the trustee shall separately state any trust item that, if taken into account separately by a unit interest holder, could result in an income tax liability for that unit interest holder different from that which would result if the unit interest holder did not take the item into account separately.

(iii) *Providing and requesting trust information—*(A) *Requesting persons.* The following persons that hold an interest in a trust may request the information specified in paragraph (j)(3)(ii) of this section from that trust—

(1) Any middleman;

(2) Any broker who holds a unit interest on its own behalf;

(3) Any other exempt recipient who holds an interest directly and not through a middleman;

(4) Any noncalendar-year unit interest holder who holds a trust interest directly and not through a middleman; and

(5) A representative or agent for a person specified in paragraphs (j)(3)(iii)(A)-(1) through (4) of this section.

(B) *Manner of requesting information from the trust.* A requesting person may request the information specified in paragraph (j)(3)(ii) of this section in writing or by telephone. The request must specify the calendar quarters or years for which the information is needed.

(C) *Time and manner of furnishing information—*(1) *Manner of furnishing information.* The information specified in paragraph (j)(3)(ii) of this section may be furnished as follows—

(i) By telephone;

(ii) By written statement sent by first class mail to the address provided by the requesting person;

(iii) By causing it to be printed in a publication generally read by and available to requesting persons and by notifying the requesting person in writing or by telephone of the publication in which it will appear, the date on which it will appear, and, if possible, the page on which it will appear; or

(iv) By any other method agreed to by the parties.

(2) *Time for furnishing the information.* The trustee must furnish, or cause to be furnished, the information specified in paragraph (j)(3)(ii) of this section on or before the later of—

(i) The 30th day after the close of the period for which the information was requested; or

(ii) The day that is 2 weeks after the receipt of the request.

(4) *Requirement of furnishing statement to unit interest holder—*(i) *In general.* Every trustee or middleman required to file appropriate Forms 1099 under paragraph (j)(2)(i) of this section with respect to a particular unit interest holder must furnish to that unit interest holder (the person whose identifying number is required to be shown on the form) a written statement showing the information required by paragraph (j)(4)(ii) of this section.

(ii) *Information required to be provided on written statement.* The written statement must specify for the calendar year for which the return is made the following information—

(A) The name of the trust and the CUSIP number, account number, serial number, or other identifying number for the trust or unit interest;

(B) The name, address, and taxpayer identification number of the person required to send the statement;

(C) All items of income (determined in accordance with paragraph (j)(6)(i) of this section), deduction, and credit of the trust attributable to the unit interest holder;

(D) If any trust asset is sold, or otherwise disposed of during the calendar year, the portion of the gross proceeds relating to the trust asset that is attributable to the unit interest holder, the date of sale or dis-

position of the trust asset, and the percentage of that trust asset that has been sold or otherwise disposed of. A schedule showing the portion (expressed in terms of a percentage) of the total fair market value of all the assets held by the trust that the asset sold or disposed of represented as of the last day of the quarter for each quarter that the asset was held by the trust must be included with the statement;

(E) In the case of a unit interest holder that is an affected investor, the affected expenses that are attributable to the unit interest holder;

(F) In the case of a widely held fixed investment trust that holds a pool of debt instruments subject to section 1272(a)(6)(C)(iii), the information required by paragraph (j)(6)(ii) of this section;

(G) Any other information necessary for a unit interest holder to properly report the income, deductions, and credit attributable to the unit interest holder under section 671. For this purpose, the trustee or middleman, as the case may be, shall separately state any trust item that, if taken into account separately by any unit interest holder, could result in an income tax liability for that unit interest holder different from that which would result if the unit interest holder did not take the item into account separately; and

(H) A statement that the items of income, deduction, and credit and other information shown on the statement must be taken into account in computing the taxable income and credits of the unit interest holder on the income tax return of the unit interest holder.

(iii) *Due date and other requirements with respect to statement required to be furnished to the unit interest holder.* The statement required to be furnished to the unit interest holder under this paragraph (j)(4) for a calendar year must be furnished to the holder after April 30 of that year and on or before March 15 of the year following the year for which the statement is being furnished. The person sending the statement must maintain in its records a copy of the statement furnished to the unit interest holder for a period of 3 years from the due date for furnishing such statement specified in this paragraph (j)(4).

(5) *Requirement that middlemen furnish information to exempt recipients and noncalendar-year taxpayers.* For each

calendar quarter or calendar year specified, any exempt recipient listed in paragraph (j)(2)(iv) of this section and any noncalendar-year unit interest holder may request from the middleman who holds the unit interest on behalf of, or for the account of, the unit interest holder, the information listed in paragraph (j)(4)(ii)(A) through (G) of this section computed as of the last day of the calendar quarter specified, or computed as of December 31 of the year specified. The middleman must provide in writing or by telephone the information listed in paragraph (j)(4)(ii)(A) through (G) of this section to any such requester on or before the later of the 45th day after the close of the period for which the information was requested, or that day that is 4 weeks after the receipt of the request.

(6) *Special rules.* For purposes of this paragraph (j):

(i) *Determination of trust income.* Trust income is to be determined in the following manner—

(A) The trust is to be treated as a calendar year taxpayer using the cash receipts and disbursements method of accounting; and

(B) The amount of trust income for the calendar year is the gross amount of income generated by the trust assets (other than from the sale or other disposition of trust assets). Thus, in the case of a trust that receives a payment net of an expense, the payment must be grossed up to reflect the deducted expense.

(ii) *Widely held fixed investment trust holding pool of debt instruments subject to section 1272(a)(6)(C)(iii).* In the case of a widely held fixed investment trust that holds a pool of debt instruments subject to section 1272(a)(6)(C)(iii), requesting persons, unit interest holders, exempt recipients, and noncalendar-year taxpayers must be provided, as required under paragraphs (j)(3)(ii)(F), (j)(4)(ii)(F), and (j)(5), respectively, of this section, information necessary to compute—

(A) The accrual of market discount, including the type of information required under paragraphs § 1.6049-7(f)(2)(i)(G) in the case of a REMIC regular interest or a collateralized debt obligation not issued with original issue discount; and

(B) The accrual of original issue discount and market discount, including the type of information required under

§ 1.6049-7(f)(2)(ii)(E), (F), (I), and (K) in the case of a REMIC regular interest or a collateralized debt obligation that is issued with original issue discount.

(7) *Backup withholding requirements.* Every trustee and middleman filing a Form 1099 under this section shall be considered a payor within the meaning of § 31.3406(a)-2 of this chapter. The obligation of a trustee or middleman as payor to backup withhold shall be determined pursuant to section 3406 and the regulations promulgated thereunder.

(8) *Penalties for failure to comply.* Every trustee and middleman who has a reporting obligation under this paragraph (j) and who fails to comply is subject to the penalties provided by sections 6721, 6722, and any other applicable penalty provisions.

(9) *Effective date.* Trustees and middlemen must report in accordance with this paragraph (j) for calendar years beginning on or after the date that the final regulations are published in the **Federal Register**.

Par. 3. Section 1.6049-7 is amended by adding a sentence to the end of paragraph (f)(4) to read as follows:

§ 1.6049-7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.

* * * * *

(f) * * *

(4) * * * For rules regarding a widely held fixed investment trust that holds a pool of debt instruments subject to section 1272(a)(6)(C)(iii), see § 1.671-4(j).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6109-1 is amended by revising the last sentence of paragraph (a)(2)(i) to read as follows:

§ 301.6109-1 Identifying numbers.

(a) * * *

(2) * * * (i) * * * If the trustee has not already obtained a taxpayer identification number for the trust, the trustee must obtain a taxpayer identification number for

the trust as provided in paragraph (d)(2) of this section in order to report pursuant to §1.671-4(a), (b)(2)(i)(B), (b)(3)(i), or (j) of this chapter.

Michael P. Dolan,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on August 12, 1998, 8:45 a.m., and published in the issue of the Federal Register for August 13, 1998, 63 F.R. 43354.)