

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 61.—Gross Income Defined

26 CFR 1.61-1(a): *Gross income.*

Home Affordable Modification Program (HAMP). This ruling holds that Pay-for-Performance Success Payments that benefit a homeowner under the United States Government's Home Affordable Modification Program (HAMP) are excludable from the homeowner's income under the general welfare exclusion.

Rev. Rul. 2009-19

ISSUE

If a homeowner benefits from Pay-for-Performance Success Payments under the United States Government's Home Affordable Modification Program (HAMP), are those payments excludable from income under the general welfare exclusion?

FACTS

The deep contraction in the economy and in the housing market has created stress for homeowners throughout the country. Large numbers of homeowners are struggling to afford their current monthly mortgage payments and are at risk of losing their homes. In response, the United States Government announced the Homeowner Affordability and Stability Plan (the Plan), which helps at-risk homeowners modify their mortgages to avoid foreclosure.

HAMP, a key component of the Plan, helps homeowners who have defaulted, or are at risk of default, on their mortgages because, for example, they are suffering serious hardships, decreases in income, increases in expenses, and high mortgage debt compared to monthly income.

Under HAMP, homeowners that make timely payments on their modified loans are eligible to have incentive payments made on their behalf to lenders/investors. Each month that a homeowner makes a mortgage payment on time, the homeowner accrues an amount toward a Pay-for-Performance Success Payment. A payment of the accrued amounts is made annually, to reduce the principal balance on the homeowner's mortgage loan. Homeowners can receive principal reductions of up to \$1,000 per year for up to five years, subject to a *de minimis* threshold.

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation have a substantial role in administering HAMP.

LAW AND ANALYSIS

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Payments under governmental social benefit programs for the promotion of the general welfare and not for services rendered, however, are not includible in a recipient's gross income (general welfare exclusion). See Rev. Rul. 74-205, 1974-1 C.B. 20; Rev. Rul. 98-19, 1998-1 C.B. 840.

Pay-for-Performance Success Payments made under the United States Government's Home Affordable Modification Program promote the general welfare by helping homeowners who are at risk of losing their homes pay the mortgage loans on their primary residences and do not involve the performance of services. These payments meet the requirements of the general welfare exclusion.

HOLDING

If a homeowner benefits from Pay-for-Performance Success Payments under the United States Government's Home Affordable Modification Program, the payments are excludable from income under the general welfare exclusion.

DRAFTING INFORMATION

The principal author of this revenue ruling is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Iskow at (202) 622-4920 (not a toll-free number).

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rates is set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2009.

Rev. Rul. 2009-20

This revenue ruling provides various prescribed rates for federal income tax purposes for July 2009 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month

for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the blended annual rate for 2009 for purposes of section 7872.

REV. RUL. 2009-20 TABLE 1
Applicable Federal Rates (AFR) for July 2009

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.82%	.82%	.82%	.82%
110% AFR	.90%	.90%	.90%	.90%
120% AFR	.98%	.98%	.98%	.98%
130% AFR	1.07%	1.07%	1.07%	1.07%
<i>Mid-term</i>				
AFR	2.76%	2.74%	2.73%	2.72%
110% AFR	3.03%	3.01%	3.00%	2.99%
120% AFR	3.32%	3.29%	3.28%	3.27%
130% AFR	3.59%	3.56%	3.54%	3.53%
150% AFR	4.15%	4.11%	4.09%	4.08%
175% AFR	4.86%	4.80%	4.77%	4.75%
<i>Long-term</i>				
AFR	4.36%	4.31%	4.29%	4.27%
110% AFR	4.80%	4.74%	4.71%	4.69%
120% AFR	5.24%	5.17%	5.14%	5.12%
130% AFR	5.68%	5.60%	5.56%	5.54%

REV. RUL. 2009-20 TABLE 2
Adjusted AFR for July 2009

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.84%	.84%	.84%	.84%
Mid-term adjusted AFR	2.22%	2.21%	2.20%	2.20%
Long-term adjusted AFR	4.33%	4.28%	4.26%	4.24%

REV. RUL. 2009-20 TABLE 3
Rates Under Section 382 for July 2009

Adjusted federal long-term rate for the current month	4.33%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.58%

REV. RUL. 2009-20 TABLE 4
Appropriate Percentages Under Section 42(b)(1) for July 2009

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.82%
Appropriate percentage for the 30% present value low-income housing credit	3.35%

REV. RUL. 2009-20 TABLE 5
Rate Under Section 7520 for July 2009

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest

3.4%

REV. RUL. 2009-20 TABLE 6
Blended Annual Rate for 2009

Section 7872(e)(2) blended annual rate for 2009

0.82%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2009. See Rev. Rul. 2009-20, page 112.

Section 7874.—Rules Relating to Expatriated Entities and their Foreign Parents

26 CFR 1.7874-2T: Surrogate foreign corporation (temporary).

T.D. 9453

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Guidance Under Section 7874 Regarding Surrogate Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 7874 of the Internal Revenue Code (Code) concerning the determination of whether a foreign corporation shall be treated as a surrogate foreign corporation. The temporary regulations primarily affect domestic corporations or partnerships (and certain parties related thereto), and certain foreign corporations that acquire substantially all of the properties of such domestic corporations or partnerships. The text of these temporary regulations serves as the text of the proposed regulations (REG-112994-06) set forth in the notice of proposed rulemaking on this subject also published in this issue of the Bulletin.

DATES: *Effective Dates:* The regulations are effective on June 12, 2009.

Applicability Date: For dates of applicability, see §§1.7874-1T(g) and 1.7874-2T(o).

FOR FURTHER INFORMATION CONTACT: S. James Hawes, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A foreign corporation is generally treated as a surrogate foreign corporation under section 7874(a)(2)(B) if pursuant to a plan (or a series of related transactions) three conditions are satisfied. First, the foreign corporation completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation. Second, after the acquisition at least 60 percent of the stock (by vote or value) of the foreign corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation. Third, after the acquisition the expanded affiliated group (defined in section 7874(c)(1)) that includes the foreign corporation does not have substantial business activities in the foreign country in which, or under the law of which, the foreign corporation is created or organized, when compared to the total business activities of the expanded affiliated group. Similar provisions apply to transactions involving the acquisition by a foreign corporation of substantially all of the properties constituting a trade or business of a domestic partnership. The level of ownership in the surrogate foreign corporation by former shareholders of the