Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and Regulations.
(Also: Part 1, § 851; 1.851-2)

Rev. Proc. 2009-42

SECTION 1. PURPOSE

This revenue procedure sets forth conditions under which a regulated investment company (RIC) that holds a partnership interest in a Public-Private Investment Partnership (PPIP) created under the Public-Private Investment Program (Program) is treated for purposes of section 851(b)(3) of the Internal Revenue Code as if it directly invested in the assets held by the PPIP.

SECTION 2. BACKGROUND – THE PROGRAM

.01 In response to the financial issues affecting the banking system and the financial markets due to the contraction in the economy, the Treasury Department, together with other governmental bodies, has implemented a series of initiatives as part of the Financial Stability Plan pursuant to the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (EESA).

.02 One program established by the EESA is the Troubled Asset Relief Program (TARP). TARP authorizes the Treasury Department to purchase troubled assets, including mortgage-backed securities. Pursuant to TARP, on March 23, 2009, the Treasury Department, in conjunction with the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, announced the creation of the Program to help the financial system by stimulating the extension of new credit.

.03 The Program includes the Legacy Securities Program. Through the Legacy Securities Program, Treasury will partner with private investors to form PPIPs. A PPIP will acquire certain commercial mortgage-backed securities and certain non-agency residential mortgage-backed securities (collectively, Legacy Securities). *See* Rev. Proc. 2009-38, 2009-37 I.R.B. 360 (prescribing conditions under which the Internal Revenue Service will not assert that certain entities created in connection with the Program constitute taxable mortgage pools for purposes of section 7701(i)).

SECTION 3. BACKGROUND – RICS

.01 Section 851(b) provides that certain requirements must be satisfied in order for a domestic corporation to be taxed as a RIC under subchapter M, part 1, of the Code.

.02 Section 851(b)(3)(A) requires that, in order for a corporation to qualify as a RIC, at the close of each quarter of the taxable year, at least 50 percent of the value of the corporation's total assets must be represented by cash and cash items (including receivables), Government securities and securities of other RICs, and other securities generally limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the corporation and to not more than 10 percent of the outstanding voting securities of such issuer.

.03 Section 851(b)(3)(B) requires that, in order for a corporation to qualify as a RIC, not more than 25 percent of the corporation's total assets may be invested in the securities (other than Government securities and the securities of other RICs) of any one issuer, or of two or more issuers that the corporation controls and which are determined, under regulations, to be engaged in the same or similar trades or businesses or related trades or businesses, or the securities of one or more publicly traded partnerships (as defined in section 851(h)).

.04 In certain situations, the Service treats a RIC that invests in certain partnerships as if it directly invested in the assets held by the partnership for purposes of the asset diversification tests of section 851(b)(3) (Look-Through Treatment). Rev. Proc. 2001-57, 2001-2 C.B. 577, extends Look-Through Treatment to certain RICs in a master-feeder structure. *See also* Rev. Proc. 2005-20, 2005-1 C.B. 990, *amplifying and superseding* Rev. Proc. 2003-32, 2003-1 C.B. 803 (extending Look-Through Treatment to certain RICs that invest in eligible tax-exempt bond partnerships).

SECTION 4. SCOPE

This revenue procedure applies to a RIC that meets the following requirements:

.01 It is registered as a management investment company under the Investment

Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, as amended, and elects to be treated as a RIC under subchapter M, part 1, of the Code.

.02 It invests at least 70 percent of its original assets (including seed capital and net proceeds from an initial public offering) as a partner in one or more PPIPs that hold Legacy Securities pursuant to the Program and that are treated as partnerships for federal income tax purposes.

.03 Except for certain special allocations agreed to by the Treasury Department and those allocations required under section 704, its allocable share of each item of the PPIP's income, gain, loss, deduction, and credit is proportionate to its percentage of ownership of the capital interests in the PPIP.

SECTION 5. APPLICATION

For purposes of qualifying as a RIC under section 851(b)(3), a RIC meeting the requirements of Section 4 of this revenue procedure is treated as if it directly invested in the assets held by the PPIP in which it invests. For these purposes, its interest in PPIP assets is determined in accordance with its percentage of ownership of the capital interests in the PPIP.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for asset determinations that are made as of dates after September 9, 2009.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Andrea Hoffenson of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Andrea Hoffenson on (202) 622-3930 (not a toll free call).