

(b) of § 1.6012-1 of this chapter must attach the statement described in paragraph (b) of this section to their return for the taxable year for which the statement is relevant. An individual who is not required to file either Form 1040 or 1040NR must file the statement with the Internal Revenue Service Center, Philadelphia, PA 19255 on or before the date prescribed by law (including extensions) for making an income tax return as a nonresident for the calendar year for which the statement applies. The statement may be signed and filed for the taxpayer by the taxpayer's agent in accordance with § 1.6061-1 of this chapter.

(d) *Penalty for failure to file statement*—(1) *General rule.* If an individual is required to file a statement pursuant to paragraph (a)(1), (a)(2)(ii), (a)(2)(iii) or (a)(3) of this section and fails to file such statement on or before the date prescribed by paragraph (c) of this section, the individual will not be eligible for the closer connection exception described in § 301.7701(b)-2 and will be required to include all days of presence in the United States (calculated without the benefit of §§ 301.7701(b)-3(b)(5), 301.7701(b)-3(c), and 301.7701(b)-4(c)(1)) for purposes of the substantial presence test and for determining the individual's residency starting and termination dates. If an individual is considered to be a resident because of this paragraph and the individual is also a resident of a country with which the United States has an income tax convention pursuant to that convention, the individual shall be treated in the manner provided in § 301.7701(b)-7 (a) (relating to the treatment of individuals who are dual residents).

(2) *Exception.* The penalty described in paragraph (d)(1) of this section shall not apply if the individual can show by clear and convincing evidence that he or she took reasonable actions to become aware of the filing requirements and significant affirmative steps to comply with those requirements.

(e) *Filing requirement disregarded.* Notwithstanding paragraph (d) of this section, the Secretary or his or her delegate may in their sole discretion, when it is in the best interest of the government to do so and based on all of the facts and circumstances, disregard the

individual's failure to file timely the statement described in paragraph (a) of this section in determining the individual's days of presence in the United States.

[T.D. 8411, 57 FR 15252, Apr. 27, 1992; 57 FR 28612, June 26, 1992; 57 FR 37190, Aug. 18, 1992; as amended by T.D. 8733, 62 FR 53387, Oct. 14, 1997]

**§ 301.7701(b)-9 Effective/applicability dates of §§ 301.7701(b)-1 through 301.7701(b)-7.**

(a) *In general.* Except as indicated in paragraph (b) of this section, §§ 301.7701(b)-1 through 301.7701(b)-7 apply to taxable years beginning after December 31, 1984. For the rules applicable to earlier taxable years, see §§ 1.871-2 through 1.871-5 of this chapter.

(b) *Special rules*—(1) *Green card test-residency starting date.* If an alien was a lawful permanent resident throughout 1984 (regardless of whether the individual was physically present in the United States), or was physically present in the United States at any time during 1984 while a lawful permanent resident, the individual will be considered to have been a resident of the United States during 1984 for purposes of applying the provisions of section 7701(b)(2)(A) and § 301.7701(b)-4 such that the individual will, if he meets the substantial presence or green card test in 1985, be considered a resident of the United States as of January 1, 1985, regardless of when the individual was first present in the United States in 1985.

(2) *Substantial presence test-years included.* For purposes of applying the substantial presence test for calendar years 1985 and 1986, days of presence in 1984 will only be counted for aliens who had been residents under prior law (§§ 1.871-2 through 1.871-5 of this chapter) at the end of calendar year 1984. Days of presence in 1983 will only be counted for aliens who had been residents under prior law at the end of both calendar year 1983 and 1984.

(3) *Professional athletes.* For purposes of applying the substantial presence test, only days of presence in the United States after October 22, 1986,

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shall be excluded for individuals described in § 301.7701(b)-3(b)(5) (professional athletes).

(4) *Procedural rules and filing requirements.* The procedural rules and filing requirements described in §§ 301.7701(b)-7(b) and 301.7701(b)-8 shall apply to taxable years beginning after December 31, 1991.

(5) *Possessions and territories.* For purposes of applying section 7701(b) and the regulations under that section, § 301.7701(b)-1(d) applies to taxable years ending after April 9, 2008.

[T.D. 8411, 57 FR 15253, Apr. 27, 1992, as amended by T.D. 9391, 73 FR 19377, Apr. 9, 2008]

### § 301.7701(i)-0 Outline of taxable mortgage pool provisions.

This section lists the major paragraphs contained in §§ 301.7701(i)-1 through 301.7701(i)-4.

#### § 301.7701(i)-1 Definition of a taxable mortgage pool.

- (a) Purpose.
- (b) In general.
- (c) Asset composition tests.
  - (1) Determination of amount of assets.
  - (2) Substantially all.
    - (i) In general.
    - (ii) Safe harbor.
  - (3) Equity interests in pass-through arrangements.
  - (4) Treatment of certain credit enhancement contracts.
    - (i) In general.
    - (ii) Credit enhancement contract defined.
  - (5) Certain assets not treated as debt obligations.
    - (i) In general.
    - (ii) Safe harbor.
  - (A) In general.
  - (B) Payments with respect to a mortgage defined.
  - (C) Entity treated as not anticipating payments.
  - (d) Real estate mortgages or interests therein defined.
    - (1) In general.
    - (2) Interests in real property and real property defined.
      - (i) In general.
      - (ii) Manufactured housing.
    - (3) Principally secured by an interest in real property.
      - (i) Tests for determining whether an obligation is principally secured.
        - (A) The 80 percent test.
        - (B) Alternative test.
      - (ii) Obligations secured by real estate mortgages (or interests therein), or by com-

binations of real estate mortgages (or interests therein) and other assets.

- (A) In general.
- (B) Example.
- (e) Two or more maturities.
  - (1) In general.
  - (2) Obligations that are allocated credit risk unequally.
- (3) Examples.
- (f) Relationship test.
  - (1) In general.
  - (2) Payments on asset obligations defined.
  - (3) Safe harbor for entities formed to liquidate assets.
- (g) Anti-avoidance rules.
  - (1) In general.
  - (2) Certain investment trusts.
  - (3) Examples.

#### § 301.7701(i)-2 Special rules for portions of entities.

- (a) Portion defined.
- (b) Certain assets and rights to assets disregarded.
  - (1) Credit enhancement assets.
  - (2) Assets unlikely to service obligations.
  - (3) Recourse.
  - (c) Portion as obligor.
    - (1) In general.
    - (2) Example.

#### § 301.7701(i)-3 Effective dates and duration of taxable mortgage pool classification.

- (a) Effective dates.
- (b) Entities in existence on December 31, 1991.
  - (1) In general.
  - (2) Special rule for certain transfers.
  - (3) Related debt obligation.
  - (4) Example.
- (c) Duration of taxable mortgage pool classification.
  - (1) Commencement and duration.
  - (2) Testing day defined.

#### § 301.7701(i)-4 Special rules for certain entities.

- (a) States and municipalities.
  - (1) In general.
  - (2) Governmental purpose.
  - (3) Determinations by the Commissioner.
- (b) REITs. [Reserved]
- (c) Subchapter S corporations.
  - (1) In general.
  - (2) Portion of an S corporation treated as a separate corporation.

[T.D. 8610, 60 FR 40088, Aug. 7, 1995]

### § 301.7701(i)-1 Definition of a taxable mortgage pool.

(a) *Purpose.* This section provides rules for applying section 7701(i), which defines taxable mortgage pools. The purpose of section 7701(i) is to prevent income generated by a pool of real estate mortgages from escaping Federal