



TaxNewsFlash

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Notice 2025-63: Intent to issue proposed regulations providing source of certain borrow fees determined based on residence of recipient

The IRS today released [Notice 2025-63](#), announcing that the Treasury Department and IRS intend to issue proposed regulations under section 863(a) providing that the source of certain “borrow fees” paid with respect to “securities lending transactions” or “sale-repurchase transactions” is determined based on the residence of the recipient.

Under the forthcoming proposed regulations:

- A securities lending transaction and a sale-repurchase transaction would have the meanings provided under Treas. Reg. §§1.861-2(a)(7) (transactions with respect to debt securities) and 1.861-3(a)(6) (transactions with respect to equity securities).
- A borrow fee (including negative rebate) would be a fee that is (1) paid pursuant to a securities lending transaction or sale-repurchase transaction that is (i) documented on an industry-standard master agreement and confirmation (or electronic equivalent thereof) with standard market terms and (ii) entered into in the ordinary course of the taxpayer's and counterparty's trades or businesses or pursuant to their normal investment activities or objectives, and (2) paid in substance to compensate the lender of the securities (including a cash borrower in a sale-repurchase transaction) for making its securities available to the borrower of the securities (including a cash lender in a sale-repurchase transaction).
- The residence of the recipient would be determined in the same manner as under section 988(a)(3)(B).

The proposed regulations would provide that they apply prospectively to tax years ending after the proposed regulations are published in the Federal Register, but would allow taxpayers to apply the regulations, once finalized, before the applicability date. In addition, taxpayers may rely on the rules described in the notice with respect to securities lending transactions and sale-repurchase transactions entered into before the proposed regulations are published in the Federal Register.

Notice 2025-63 explicitly states that it does not address the source of any other payments with respect to securities lending transactions, sale-repurchase transactions, or substantially similar transactions, including a payment described as a borrow fee that is not within the scope of the notice, such as an amount paid with respect to a one-off or structured transaction or a transaction that does not have standard market business

terms. The notice notes that the label given to a payment does not govern the determination of source, and whether a fee labeled as a borrow fee is treated as such for federal income tax purposes is determined based on the substance of the fee.

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