

TaxNewsFlash

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U.S. Tax Court: Securitization transaction failed to qualify as FASIT under sections 860H through 860L

The U.S. Tax Court on January 28, 2026, held that a taxpayer's securitization transaction failed to satisfy the requirements to qualify as a financial asset securitization investment trust (FASIT) under sections 860H through 860L. Although the FASIT regime was repealed in 2004, the rules continued to apply to FASITs that remained outstanding in accordance with their original terms on the effective date of the repeal. The court's decision focused on the taxpayer's failure to satisfy the statutory requirements to qualify as a FASIT and to meet the conditions of the repeal's grandfather provision.

The case is: *Aventis Inc. v. Commissioner*, 166 T.C. No. 1 (January 28, 2026). Read the Tax Court's [opinion](#)

Summary

The taxpayer was a subsidiary of a French parented pharmaceutical company. In 2000, the taxpayer created a FASIT to facilitate a cross-border financing arrangement with a French affiliate. At a high level, FASITs were a statutorily created type of securitization where a set of income or cashflow generating assets are pooled and provide investors economic exposure to the pooled assets through valid regular interests and an equity interest (an "ownership interest"). A regular interest is required to satisfy certain statutory requirements, including that (1) the regular interest unconditionally entitles the holder to receive a specific principal amount, and (2) interest payments on the regular interest are determined based on a fixed rate, or a permitted variable rate.

Under the FASIT rules, a valid regular interest is treated as debt for federal income tax purposes regardless of its form. In this case, the taxpayer structured its transaction so that amounts paid on a preferred stock instrument issued to its French affiliate were intended to meet the definition of a regular interest and therefore result in deductible interest in the United States. However, the same payments would be treated as exempt dividends in France under the participation exemption.

The Tax Court rejected this result, holding that the preferred stock designated as a regular interest failed to satisfy the statutory requirements discussed above. The court concluded that the instrument did not unconditionally entitle the holder to receive a specified principal amount because it was only entitled to a liquidation preference that was contingent on the fair market value of the FASIT's assets at the time of liquidation. The preferred stock also did not provide for interest at a fixed rate or permitted variable rate since, in the court's view, the amount and timing of dividends were at the discretion of the taxpayer's board of directors. Because the preferred stock was not a valid regular interest, the court held that the arrangement failed the requirement that all interests be either regular interests or the ownership interest and therefore was not a valid

FASIT from inception. Further, even if the structure had initially qualified under the FASIT rules, it would have ceased to qualify due to later deviations from the governing mechanics that resulted in the FASIT failing to satisfy the grandfather provisions of the FASIT regime.

Relying on the above conclusions, the court held that the taxpayer remained the beneficial owner of the underlying assets and therefore must recognize the income, and concluded that the preferred stock was in substance equity, so the taxpayer was not entitled to deduct the payments as interest. Finally, the court rejected the taxpayer's substantial compliance argument. More specifically, the court cited prior cases concluding that a defense of substantial compliance is unavailable when there is a failure to comply with the essential requirements of the governing statute.

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