Agency Documents


(Also: §§141, 145, 1.141-3, 1.145-2 )


SECTION 1. PURPOSE

This revenue procedure provides safe harbor conditions under which a management contract does not result in private business use of property financed with governmental tax-exempt bonds under §141(b) of the Internal Revenue Code or cause the modified private business use test for property financed with qualified 501(c)(3) bonds under §145 (a)(2)(B) to be met. This revenue procedure modifies, amplifies, and supersedes Rev. Proc. 2016-44, 2016-36 I.R.B. 316, to address certain types of compensation, the timing of payment of compensation, the treatment of land, and methods of approval of rates. Sections 2.11 through 2.14 of this revenue procedure generally describe the modifications and amplifications made to Rev. Proc. 2016-44 by this revenue procedure.

SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in §103(b), gross income does not include interest on any State or local bond. Section 103(b)(1) provides that §103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of §141). Section 141(a) provides that the term "private activity bond" means any bond issued as part of an issue (1) that meets the private business use test and private security or payment test, or (2) that meets the private loan financing test.

.02 Section 141(b)(1) provides generally that an issue meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Section 141(b)(6) defines "private business use" as use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For this purpose, any activity carried on by a person other than a natural person must be treated as a trade or business.

.03 Section 1.141-3(a)(1) of the Income Tax Regulations provides, in part, that the 10 percent private business use test of §141(b)(1) is met if more than 10 percent of the proceeds of an issue is used in a trade or business of a nongovernmental person. For this purpose, the use of financed property is treated as the direct use of proceeds. Section 1.141-3(a)(2) provides that, in determining whether an issue meets the private business use test, it is necessary to look at both indirect and direct use of proceeds. Proceeds are treated as used in the trade or business of a nongovernmental person if a nongovernmental person, as a result of a single transaction or a series of related transactions, uses property acquired with the proceeds of an issue.

.04 Section 1.141-3(b)(1) provides that both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private business user as a result of
ownership; actual or beneficial use of property pursuant to a lease, a management contract, or an incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract.

0.05 Section 1.141-3(b)(3) provides generally that the lease of financed property to a nongovernmental person is private business use of that property. For this purpose, any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease. Section 1.141-3(b)(3) further provides that, in determining whether a management contract is properly characterized as a lease, it is necessary to consider all the facts and circumstances, including the following factors: (1) the degree of control over the property that is exercised by a nongovernmental person; and (2) whether a nongovernmental person bears the risk of loss of the financed property.

0.06 Section 1.141-3(b)(4)(i) provides generally that a management contract with respect to financed property may result in private business use of that property, based on all of the facts and circumstances. A management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operations of the facility. Section 1.141-3(b)(4)(iv) provides generally that a management contract with respect to financed property results in private business use of that property if the service provider is treated as the lessee or owner of financed property for federal income tax purposes.

0.07 Section 1.141-3(b)(4)(ii) defines "management contract" as a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion, or any function, of a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital, and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract.

0.08 Section 1.141-3(b)(4)(iii) provides that the following arrangements generally are not treated as management contracts that give rise to private business use: (A) contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing, or similar services); (B) the mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services if those privileges are available to all qualified physicians in the area, consistent with the size and nature of the hospital's facilities; (C) a contract to provide for the operation of a facility or system of facilities that consists primarily of public utility property, if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and (D) a contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

0.09 Section 141(e) provides, in part, that the term "qualified bond" includes a qualified 501(c)(3) bond if certain requirements stated therein are met. Section 145(a) provides generally that "qualified 501(c)(3) bond" means any private activity bond issued as part of an issue if (1) all property that is to be provided by the net proceeds of the issue is to be owned by a 501(c)(3) organization or a governmental unit, and (2) such bond would not be a private activity bond if (A) 501(c)(3) organizations were treated as governmental units with respect to their activities that do not constitute unrelated trades or businesses, determined by applying §§513(a), and (B) §§141(b)(1) and (2) were applied by substituting "5 percent" for "10 percent" each place it appears and by substituting "net proceeds" for "proceeds" each place it appears. Section 1.145-2 provides that, with certain exceptions and modifications, §§1.141-1 through 1.141-15 apply to §145(a).


11 Section 5.02 of Rev. Proc. 2016-44 sets forth general financial requirements for management compensation arrangements eligible for the safe harbor. Sections 5.02(1) and 5.02(3) of Rev. Proc. 2016-44 provide that the contract must neither provide to the service provider a share of net profits nor impose on the service provider the burden of bearing any share of net losses from the operation of the managed property. Before the publication of Rev. Proc. 2016-44, previously applicable revenue procedures expressly
treated certain types of compensation, including capitation fees, periodic fixed fees, and per-unit fees (as defined there), as not providing a share of net profits. Questions have arisen regarding whether these common types of compensation continue to be treated in a similar manner under Rev. Proc. 2016-44. Related questions have arisen about whether a service provider’s payment of expenses of the operation of the managed property without reimbursement from the qualified user (as defined in section 4.04 of Rev. Proc. 2016-44) affects the treatment of these types of compensation. To provide continuity with the previous safe harbors, this revenue procedure clarifies that these types of compensation and certain incentive compensation will not be treated as providing a share of net profits or requiring the service provider to bear a share of net losses.

.12 Sections 5.02(2) and 5.02(3) of Rev. Proc. 2016-44 also provide that the timing of payment of compensation cannot be contingent upon net profits or net losses from the operation of the managed property. Questions have arisen about the effect of these restrictions on the timing of payment of compensation. This revenue procedure clarifies that compensation subject to an annual payment requirement and reasonable consequences for late payments (such as interest; charges or late payment fees) will not be treated as contingent upon net profits or net losses if the contract includes a requirement that the qualified user will pay the deferred compensation within five years of the original due date of the payment.

.13 Section 5.03 of Rev. Proc. 2016-44 provides that the term of the contract, including all renewal options (as defined in 11.141-1(b)), must be no greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the managed property. For this purpose, under Rev. Proc. 2016-44, economic life is determined in the same manner as under §147(b), but without regard to §147(b)(3)(B)(ii), as of the beginning of the term of contract. Section 147(b)(3)(B)(ii) provides that generally land is not taken into account, but §147(b)(3)(B)(ii) provides that if 25 percent or more of the net proceeds of any issue is to be used to finance the acquisition of land, such land shall be taken into account and treated as having an economic life of 30 years. Questions have arisen about excluding land when the cost of the land accounts for a significant portion of the managed property. This revenue procedure provides that economic life is determined in the same manner as under §147(b) as of the beginning of the term of the contract. Thus, land will be treated as having an economic life of 30 years if 25 percent or more of the net proceeds of the issue that finances the managed property is to be used to finance the costs of such land.

.14 Section 5.04 of Rev. Proc. 2016-44 provides that the qualified user must exercise a significant degree of control over the use of the managed property. Section 5.04 of Rev. Proc. 2016-44 further provides that this requirement is met if the contract requires the qualified user to approve, among other things, the rates charged for use of the managed property. Section 5.04 of Rev. Proc. 2016-44 also provides that a qualified user may show approval of rates charged for use of the managed property by either expressly approving such rates (or the methodology for setting such rates) or by including in the contract a requirement that service provider charge rates that are reasonable and customary as specifically determined by an independent third party. Questions have arisen about the requirement to approve the rates in various circumstances in which it may not be feasible to approve each specific rate charged, such as for a physician’s professional services at a §501(c)(3) hospital or hotel room rates at a governmentally-owned hotel. This revenue procedure clarifies that a qualified user may satisfy the approval of rates requirement by approving a reasonable general description of the method used to set the rates or by requiring that the service provider charge rates that are reasonable and customary as specifically determined by, or negotiated with, an independent third party.

SECTION 3. SCOPE

This revenue procedure applies to a management contract (as defined in section 4.03 of this revenue procedure) involving managed property (as defined in section 4.04 of this revenue procedure) financed with the proceeds of an issue of governmental bonds (as defined in §144-1-f(b) or qualified §201(c)(3) bonds (as defined in §145).

SECTION 4. DEFINITIONS

For purposes of this revenue procedure, the following definitions apply:

.01 Capitation fee means a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to such persons varies substantially. For example, a capitation fee includes a fixed dollar amount payable per month to a medical service provider for each member of a health maintenance organization plan for whom the provider agrees to provide all needed services.
medical services for a specified period. A fixed periodic amount may include an automatic
increase according to a specified, objective, external standard that is not linked to the
output or efficiency of the managed property. For example, the Consumer Price Index and
similar external indices that track increases in prices in an area or increases in revenues or
costs in an industry are objective, external standards. A capitation fee may include a
variable component of up to 20 percent of the total capitation fee designed to protect the
service provider against risk such as risk of catastrophic loss.

.02 Eligible expense reimbursement arrangement means a management contract under
which the only compensation consists of reimbursements of actual and direct expenses
paid by the service provider to unrelated parties and reasonable related administrative
overhead expenses of the service provider.

.03 Management contract means a management, service, or incentive payment contract
between a qualified user and a service provider under which the service provider provides
services for a managed property. A management contract does not include a contract or
portion of a contract for the provision of services before a managed property is placed in
service (for example, pre-operating services for construction design or construction
management).

.04 Managed property means the portion of a project (as defined in §1.141-6(a)(3)) with
respect to which a service provider provides services.

.05 Periodic fixed fee means a stated dollar amount for services rendered for a specified
period of time. For example, a stated dollar amount per month is a periodic fixed fee. The
stated dollar amount may automatically increase according to a specified, objective,
external standard that is not linked to the output or efficiency of the managed property.
For example, the Consumer Price Index and similar external indices that track increases in
prices in an area or increases in revenues or costs in an industry are objective external
standards. Capitation fees and per-unit fees are not periodic fixed fees.

.06 Per-unit fee means a fee based on a unit of service provided specified in the contract or
otherwise specifically determined by an independent third party, such as the
administrator of the Medicare program, or the qualified user. For example, a stated dollar
amount for each specified medical procedure performed, car parked, or passenger mile is
a per-unit fee. Separate billing arrangements between physicians and hospitals are treated
as per-unit fee arrangements. A fee that is a stated dollar amount specified in the contract
does not fail to be a per-unit fee as a result of a provision under which the fee may
automatically increase according to a specified, objective, external standard that is not
linked to the output or efficiency of the managed property. For example, the Consumer
Price Index and similar external indices that track increases in prices in an area or
increases in revenues or costs in an industry are objective, external standards.

.07 Qualified user means, for projects (as defined in §1.141-6(a)(3)) financed with
governmental bonds, any governmental person (as defined in §1.141-1(b)) or, for projects
financed with qualified 501(c)(3) bonds, any governmental person or any 501(c)(3)
organization with respect to its activities which do not constitute an unrelated trade or
business, determined by applying §513(a).

.08 Service provider means any person other than a qualified user that provides services to,
or for the benefit of, a qualified user under a management contract.

.9 Unrelated parties means persons other than either: (1) a related party (as defined in
§1.150-1(b)) to the service provider or (2) a service provider's employee.

SECTION 5. SAFE HARBOR CONDITIONS UNDER WHICH MANAGEMENT CONTRACTS
DO NOT RESULT IN PRIVATE BUSINESS USE

.01 In general. If a management contract meets all of the applicable conditions of sections
5.02 through section 5.07 of this revenue procedure, or is an eligible expense
reimbursement arrangement, the management contract does not result in private
business use under §141(b) or 1461(a)(2)(B). Further, under section 5.08 of this revenue
procedure, use functionally related and subordinate to a management contract that meets
these conditions does not result in private business use.

.02 General financial requirements.

(1) In general. The payments to the service provider under the contract must be reasonable
compensation for services rendered during the term of the contract. Compensation
includes payments to reimburse actual and direct expenses paid by the service provider
and related administrative overhead expenses of the service provider.
(2) No net profits arrangements. The contract must not provide to the service provider a share of net profits from the operation of the managed property. Compensation to the service provider will not be treated as providing a share of net profits if no element of the compensation takes into account, or is contingent upon, either the managed property's net profits or both the managed property's revenues and expenses (other than any reimbursements of direct and actual expenses paid by the service provider to unrelated third parties) for any fiscal period. For this purpose, the elements of the compensation are the eligibility for, the amount of, and the timing of the payment of the compensation. Incentive compensation will not be treated as providing a share of net profits if the eligibility for the incentive compensation is determined by the service provider's performance in meeting one or more standards that measure quality of services, performance, or productivity, and the amount and the timing of the payment of the compensation meet the requirements of this section 5.02(2).

(3) No bearing of net losses of the managed property.

(a) The contract must not, in substance, impose upon the service provider the burden of bearing any share of net losses from the operation of the managed property. An arrangement will not be treated as requiring the service provider to bear a share of net losses if:

(i) The determination of the amount of the service provider's compensation and the amount of any expenses to be paid by the service provider (and not reimbursed), separately and collectively, do not take into account either the managed property's net losses or both the managed property's revenues and expenses for any fiscal period; and

(ii) The timing of the payment of compensation is not contingent upon the managed property's net losses.

(b) For example, a service provider whose compensation is reduced by a stated dollar amount (or one of multiple stated dollar amounts) for failure to keep the managed property's expenses below a specified target (or one of multiple specified targets) will not be treated as bearing a share of net losses as a result of this reduction.

(4) Treatment of certain types of compensation. Without regard to whether the service provider pays expenses with respect to the operation of the managed property without reimbursement by the qualified user, compensation for services will not be treated as providing a share of net profits or requiring the service provider to bear a share of net losses under sections 5.02(2) and 5.02(3) of this revenue procedure if the compensation for services is: (a) based solely on a capitation fee, a periodic fixed fee, or a per-unit fee; (b) incentive compensation described in the last sentence of section 5.02(2) of this revenue procedure; or (c) a combination of these types of compensation.

(5) Treatment of timing of payment of compensation. Deferral due to insufficient net cash flows from the operation of the managed property of the payment of compensation that otherwise meets the requirements of sections 5.02(2) and 5.02(3) of this revenue procedure will not cause the deferred compensation to be treated as contingent upon net profits or net losses under sections 5.02(2) and 5.02(3) of this revenue procedure if the contract includes requirements that:

(a) The compensation is payable at least annually;

(b) The qualified user is subject to reasonable consequences for late payment, such as reasonable interest charges or late payment fees; and

(c) The qualified user will pay such deferred compensation (with interest or late payment fees) no later than the end of five years after the original due date of the payment.

.03 Term of the contract and revisions. The term of the contract, including all renewal options (as defined in §1.141-1(b)), must not be greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the managed property. For this purpose, economic life is determined in the same manner as under §1471(b) as of the beginning of the term of the contract. A contract that is materially modified with respect to any matters relevant to this section 5 is retested under this section 5 as a new contract as of the date of the material modification.

.04 Control over use of the managed property. The qualified user must exercise a significant degree of control over the use of the managed property. This control requirement is met if the contract requires the qualified user to approve the annual budget of the managed property, capital expenditures with respect to the managed property, each disposition of property that is part of the managed property, rates charged for the use of the managed property, and the general nature and type of use of the managed property (for example,
the type of services). For this purpose, for example, a qualified user may show approval of
capital expenditures for a managed property by approving an annual budget for capital
expenditures described by functional purpose and specific maximum amounts; and a
qualified user may show approval of dispositions of property that is part of the managed
property in a similar manner. Further, for example, a qualified user may show approval of
rates charged for use of the managed property by expressly approving such rates or a
general description of the methodology for setting such rates (such as a method that
establishes hotel room rates using specified revenue goals based on comparable
properties), or by requiring that the service provider charge rates that are reasonable and
customary as specifically determined by, or negotiated with, an independent third party
(such as a medical insurance company).

.05 Risk of loss of the managed property. The qualified user must bear the risk of loss upon
damage or destruction of the managed property (for example, due to force majeure). A
qualified user does not fail to meet this risk of loss requirement as a result of insuring
against risk of loss through a third party or imposing upon the service provider a penalty
for failure to operate the managed property in accordance with the standards set forth in
the management contract.

.06 No inconsistent tax position. The service provider must agree that it is not entitled to
and will not take any tax position that is inconsistent with being a service provider to the
qualified user with respect to the managed property. For example, the service provider
must agree not to claim any depreciation or amortization deduction, investment tax credit,
or deduction for any payment as rent with respect to the managed property.

.07 No circumstances substantially limiting exercise of rights.

(1) In general. The service provider must not have any role or relationship with the qualified
user that, in effect, substantially limits the qualified user’s ability to exercise its rights
under the contract, based on all the facts and circumstances.

(2) Safe harbor. A service provider will not be treated as having a role or relationship
prohibited under section 5.07(1) of this revenue procedure if:

(a) No more than 20 percent of the voting power of the governing body of the qualified
user is vested in the directors, officers, shareholders, partners, members, and employees
of the service provider, in the aggregate;

(b) The governing body of the qualified user does not include the chief executive officer
of the service provider or the chairperson (or equivalent executive) of the service provider’s
governing body; and

(c) The chief executive officer of the service provider is not the chief executive officer of the
qualified user or any of the qualified user’s related parties (as defined in §1.150-1(b)).

(3) For purposes of section 5.07(2) of this revenue procedure, the phrase “service provider”
includes the service provider’s related parties (as defined in §1.150-1(b)) and the phrase
“chief executive officer” includes a person with equivalent management responsibilities.

.08 Functionally related and subordinate use. A service provider’s use of a project (as defined
in §1.141-6(a)(3)) that is functionally related and subordinate to performance of its
services under a management contract for managed property that meets the conditions of
this section 5 does not result in private business use of that project. For example, use of
storage areas to store equipment used to perform activities required under a
management contract that meets the requirements of this section 5 does not result in
private business use.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2016-44 is modified, amplified, and superseded.

SECTION 7. DATE OF APPLICABILITY

This revenue procedure applies to any management contract that is entered into on or
after January 17, 2017, and an issuer may apply this revenue procedure to any
management contract that was entered into before January 17, 2017. In addition, an issuer
may apply the safe harbors in Rev. Proc. 97-13, as modified by Rev. Proc. 2001-39 and
amplified by Notice 2014-67, to a management contract that is entered into before August
18, 2017 and that is not materially modified or extended on or after August 18, 2017 (other
than pursuant to a renewal option as defined in §1.141-1(b)).

SECTION 8. DRAFTING INFORMATION
The principal authors of this revenue procedure are Johanna Som de Cerff and David White of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact David White on (202) 317-6980 (not a toll free call).
Agency Documents

Department of the Treasury
Internal Revenue Service
Revenue Procedure

IRS Rev. Proc. 2018-26
(Also, 5554, 54A, 54AA, 141, 142, 1397E, 1400N, 1400U-2, 6431; 1.141-12, & 1.142-2 )
Rev. Proc. 2018-26
SECTION 1. PURPOSE

This revenue procedure provides certain remedial actions that issuers of State and local tax-exempt bonds and other tax-advantaged bonds (as defined in § 1.150-1(b) of the Income Tax Regulations) may take to preserve the tax-advantaged status of the bonds when nonqualified uses (as defined in section 4.04 of this revenue procedure) of the bond proceeds occur.

SECTION 2. BACKGROUND

.01 Various provisions of the Internal Revenue Code (the “Code”) provide tax benefits to facilitate lower borrowing costs for State and local governments and other qualified issuers if certain requirements are met. These benefits are in the form of a tax exemption under § 103 on the interest paid to holders of eligible State and local bonds (“tax-exempt bonds”), refundable tax credits under § 6431 payable to issuers of certain qualified bonds (“direct pay bonds”), or tax credits under § 54A and similar provisions to holders of qualified tax credit bonds (“tax credit bonds”). Eligibility requirements for these tax benefits include prescribed uses of the proceeds of the bonds.

.02 For some types of tax-advantaged bonds, existing regulations provide remedial actions to cure certain nonqualified uses. For example, for tax-exempt governmental bonds (as defined in § 1.150-1(b) ), § 1.141-12 provides remedial actions (including bond redemption or defeasance, alternative qualified use of disposition proceeds, and alternative qualified use of facilities) to cure violations of the private business use and private loan restrictions under § 141. Similarly, for certain types of tax-exempt private activity bonds (as defined in § 141), § 1.142-2 provides remedial actions (including bond redemption or defeasance) to cure violations of particular requirements for qualified private activity bonds under §§ 142, 144, and 147. In addition, for qualified zone academy bonds (“QZABs”) as defined in § 1397E, § 1.1397E-1(h)(8) provides remedial actions (including bond redemption or defeasance and alternative qualified use of disposition proceeds) to cure violations of requirements for QZABs under § 1397E.

.03 The existing remedial actions for tax-exempt governmental bonds do not include a remedial action to cure the nonqualified uses that generally result from longer-term leases of financed property to private businesses, other than the remedial action of bond redemption or defeasance. Taxpayers have recommended adding a remedial action for this purpose similar to the existing remedial action that allows curing nonqualified uses that result from sales of financed property to private businesses through alternative qualified uses of the disposition proceeds of those sales. Section 1.141-12(h) permits the Commissioner, by publication in the Internal Revenue Bulletin, to provide additional remedial actions for purposes of the private business use and private loan restrictions. Section 5 of this revenue procedure provides such a remedial action.

.04 For direct pay bonds, no existing remedial action allows adjustment of the refundable Federal tax credit for nonqualified uses. Such a remedial action would provide a simple and administrable method of preserving the tax-advantaged status of direct pay bonds. Section 6 of this revenue procedure provides such a remedial action.

.05 Finally, for certain types of tax credit bonds and for direct pay bonds, none of the existing remedial actions described in section 2.02 of this revenue procedure are available. Extending the availability of existing remedial actions to these types of bonds would allow issuers similarly to cure nonqualified uses of these bonds. Section 7 of this revenue procedure provides remedial actions for these bonds.

SECTION 3. SCOPE

This revenue procedure applies to tax-advantaged bonds to allow issuers to take certain remedial actions to protect the tax-advantaged status of the bonds when nonqualified uses of bond proceeds occur if the requirements of particular remedial actions under this revenue procedure are met.
SECTION 4. DEFINITIONS

The definitions in this section apply for purposes of this revenue procedure.

.01 Applicable Code section means the Code section that sets forth the qualification requirements for a particular type of bond.

.02 Defeasance escrow means an irrevocable escrow established to redeem nonqualified bonds on the earliest call date after the date on which a nonqualified use occurs in an amount that, together with investment earnings, is sufficient to pay all the principal of, interest on, and call premium, if any, on the nonqualified bonds from the date the escrow is established to that call date. No amount in a defeasance escrow may be invested in an investment the obligor of which is a user (or a related party as defined in § 1.150-1(b)) to a user of proceeds of the bonds. All purchases or sales of investments in a defeasance escrow must be made at the fair market value of the investment within the meaning of § 1.148-5(d)(6).

.03 Disposition proceeds means, except as otherwise provided in this section, disposition proceeds (as defined in § 1.141-12(c)(1)), plus investment earnings on those amounts. For property financed with different sources of funding, disposition proceeds are allocated among the sources under § 1.141-12(c)(3). For purposes of section 5 of this revenue procedure, the definition of disposition proceeds in § 1.141-12(c)(1) applies.

.04 Nonqualified use means a failure to spend proceeds of tax-advantaged bonds within any required expenditure period specified in the applicable Code section and any use of expended proceeds of tax-advantaged bonds for a purpose other than a qualified use (as defined in section 4.06 of this revenue procedure). A nonqualified use under § 141 occurs on the date of the deliberate action (as defined in § 141-2(d)(3)). For dates on which other nonqualified uses occur, see section 7.03 of this revenue procedure.

.05 Nonqualified bonds means the portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which nonqualified use of proceeds occurs, the proceeds of the remaining bonds would be used in a timely manner for a qualified use. Allocations of nonqualified bonds are made in accordance with § 142-2(e).

.06 Qualified use means a use required or permitted by the applicable Code section. For example, qualified uses include a qualified purpose under § 54A(d)(2)(C) for tax credit bonds under § 54A, capital expenditures for direct pay build America bonds under § 54AA(I), and a prescribed amount of governmental use for tax-exempt governmental bonds under § 141 and build America bonds under § 54AA.

SECTION 5. REMEDIAL ACTION FOR ELIGIBLE LEASES OF PROPERTY FINANCED WITH TAX-ADVANTAGED BONDS SUBJECT TO § 141 OR § 145(a)

.01 Modified alternative use of disposition proceeds remedy for eligible leases. In the case of a deliberate action (as defined in § 1.141-2(d)(3)) that consists of an eligible lease (as defined in section 5.02 of this revenue procedure) to a nongovernmental person (as defined in § 141-1(b)) of property financed with tax-advantaged bonds subject to the private activity bond restrictions under § 141 or § 145(a), provided the requirements of § 1.141-12(a) are met, the issuer may cure the nonqualified use resulting from the lease by applying the alternative use of disposition proceeds remedial action under § 1.141-12(e) in the same manner as to a disposition with the following modifications--

(1) Treating the eligible lease as a disposition for which the consideration is exclusively cash;
(2) Treating funds (excluding proceeds of tax-advantaged bonds) in an amount equal to the lease amount (as defined in section 5.03 of this revenue procedure) as disposition proceeds;
(3) Treating the leased property as transferred property; and
(4) Allocating proceeds of the issue that, under § 1.141-12(c)(2), are allocable to the funds treated as disposition proceeds, to those funds during the term of the lease only (and to the leased property thereafter).

.02 Eligible lease. A lease is an eligible lease if--

(1) The consideration for the lease consists exclusively of cash lease payments (regardless of when paid) that are not financed with proceeds of another issue of tax-advantaged bonds; and
(2) The term of the lease--

(a) is at least equal to the lesser of 20 years or 75 percent of the weighted average reasonably expected economic life of the leased property (determined in the same manner as under section 147(b)) as of the start of the term of the lease; or
(b) Runs through the end of the measurement period (as defined in § 1.141-3(g)(2)) during which the private business use restrictions are measured for compliance under § 141.

.03 Lease amount. The lease amount is an amount equal to the present value of all of the lease payments required to be made under the lease. For this purpose, present value is determined as of the start of the term of the lease by using the yield on the issue as of the start of the term as the discount rate.

SECTION 6. REMEDIAL ACTION FOR DIRECT PAY BONDS TO REDUCE THE REFUNDABLE FEDERAL TAX CREDIT

In the case of direct pay bonds, an issuer may cure a nonqualified use by reducing the amount of the refundable Federal tax credit to eliminate the amount allocable to the nonqualified bonds. Further, the issuer must treat any disposition proceeds as
described in section 7.02(3) of this revenue procedure. To effect this remedial action, beginning with the first Form 8038-CP (Return for Credit Payment to Issuers of Qualified Bonds) or successor form filed for any interest payment date for the bonds after the nonqualified use occurs, the issuer, in reporting the amount of the interest payable, must exclude the portion of that interest allocable to the nonqualified bonds that accrues on or after the date of the nonqualified use. For the first such Form 8038-CP (or successor form), the issuer must print or type across the top of the form "Remedial Action under Section 6 of Rev. Proc. 2018-26" and attach the required explanation for the difference in scheduled credit payment. The explanation must state that a nonqualified use occurred and the date of the nonqualified use and include a revised debt service schedule reflecting the exclusion of amounts allocable to the nonqualified bonds beginning with the date of the nonqualified use.

SECTION 7. CERTAIN GENERAL REMEDIAL ACTIONS FOR TAX-ADVANTAGED BONDS

.01 In general. In the case of tax credit bonds or direct pay bonds, except as otherwise provided in section 7.06 of this revenue procedure, an issuer may cure a nonqualified use by taking a remedial action of redemption or defeasance of nonqualified bonds under section 7.02 of this revenue procedure or alternative use of disposition proceeds under section 7.05 of this revenue procedure. In the case of tax-exempt bonds, issuers may apply section 7.02(2) of this revenue procedure to defeasance escrows established under § 1.141-12(d) or § 1.142-2(c).

.02 Redemption or defeasance of nonqualified bonds. The requirements for redemption or defeasance of nonqualified bonds under this section 7.02 are met if--

(1) Amount and timing of redemption or defeasance. Within 90 days after the date on which the nonqualified use occurs, the issuer redeems the nonqualified bonds of the issue or establishes a defeasance escrow for any nonqualified bonds that are not so redeemed; and

(2) Yield restriction or rebate requirement. The issuer either restricts the investments in the defeasance escrow to investments that are not higher yielding investments (as defined in § 148(b)) or the issuer makes rebate payments to the United States, at the same time and in the same manner as arbitrage rebate amounts are required to be paid, in amounts equal to any earnings on investments in the defeasance escrow that are higher than the yield on the issue with respect to which the defeasance escrow was established. For this purpose, the first computation period begins on the date on which the defeasance escrow is established. Further, for purposes of this section 7.02(2), § 148 and the regulations thereunder (as modified by the applicable Code section and this section 7.02(2)) apply, and compliance with the rebate requirement in this section 7.02(2) is treated as satisfying applicable arbitrage investment restrictions under § 148 for the defeasance escrow.

(3) Treatment of disposition proceeds. The issuer treats the disposition proceeds as gross proceeds for purposes of § 148 and modified by the applicable Code section (the arbitrage requirements) and as proceeds for purposes of the applicable Code section. For purposes of applying the temporary period and spending exceptions to the arbitrage requirements, the issuer may treat the date of the receipt of the disposition proceeds as if it were the issue date of the nonqualified bonds and disregard the receipt of disposition proceeds for the spending exceptions under § 1.148-7 for which the requirements were met before the receipt of the disposition proceeds.

.03 When a nonqualified use occurs. For unspent proceeds of bonds, a nonqualified use occurs on the earlier of the first date on which the issuer fails to have a reasonable expectation to spend the proceeds for a qualified use (within the required expenditure period, if any) or the last day of the required expenditure period, if any. For proceeds of bonds that have been spent, a nonqualified use occurs on the first date on which an action causes proceeds to be used for other than a qualified use.

.04 Reissuance. For purposes of determining whether the establishment of a defeasance escrow under section 7.02 of this revenue procedure results in an exchange under § 1.1001-1(e), the defeased bonds are treated as tax-exempt bonds for purposes of § 1.1001-3(a)(5)(ii)(B)(1).

.05 Alternative use of disposition proceeds. The requirements for alternative use of disposition proceeds under this section 7.05 are met if--

(1) Disposition for cash. The nonqualified use consists of a disposition for which the consideration is exclusively cash;

(2) Reasonably expected use of disposition proceeds. The issuer reasonably expects to spend the disposition proceeds within two years after the date of the disposition on alternative qualified uses or, to the extent the issuer does not expect to so spend the disposition proceeds, the issuer takes a remedial action under section 7.02 of this revenue procedure for such disposition proceeds within 90 days after the date of disposition;

(3) Unspent disposition proceeds. If the issuer fails to spend all of the disposition proceeds that it reasonably expected to spend within the prescribed two-year period in the manner described in section 7.05(2) of this revenue procedure, the issuer takes a remedial action under section 7.02 of this revenue procedure for the remaining disposition proceeds within 90 days after the end of that two-year period; and

(4) Treatment of disposition proceeds. The issuer treats the disposition proceeds as described in section 7.02(3) of this revenue procedure.

.06 Certain special rules on applicability. For QZABs under § 1397F, the remedial actions under § 1.1397-1(h)(8) apply in lieu of this section 7. For tax-advantaged bonds subject to § 141, the remedial action provisions under § 1.141-12 apply in lieu of this section 7 for purposes of curing violations of the private business use and private loan restrictions; however, for
defeasance escrows established under § 1.141-12(d), section 7.04 of this revenue procedure applies and issuers may apply section 7.02(2) of this revenue procedure.

SECTION 8. EFFECTIVE DATE

This revenue procedure applies to a nonqualified use that occurs on or after April 11, 2018, and may be applied to a nonqualified use that occurs before April 11, 2018.

SECTION 9. DRAFTING INFORMATION

The principal authors of this revenue procedure are Timothy L. Jones, Johanne Som de Cerff, and Zoran Stojanovic of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Zoran Stojanovic at 202-317-6980 (not a toll-free call).

In Public Law No. 115-97, § 13404, 131 Stat. 2138 (2017), repealed the Code provisions related to tax credit bonds and direct pay bonds effective for bonds issued after December 31, 2017. References in this revenue procedure to these Code sections refer to those sections as in effect prior to repeal.
Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION
13 CFR Parts 115, 121, 125, and 126
RIN 3245-AG38
Small Business HUBZone Program; Government Contracting Programs

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 31, 2018, the U.S. Small Business Administration (SBA or Agency) published a notice of proposed rulemaking in the Federal Register to solicit public comments on proposed comprehensive revisions to the regulations governing the Historically Underutilized Business Zone (HUBZone) Program. This document announces the extension of the current comment period until February 14, 2019.

DATES: The comment period for the notice of proposed rulemaking published on October 31, 2018 (83 FR 54812) is extended until February 14, 2019.

ADDRESSES: You may submit comments, identified by RIN 3245-AG38, by any of the following methods:

• Federal eRulemaking Portal: http://www.regulations.gov; follow the instructions for submitting comments; or

• Mail/Hand Delivery/Courier: U.S. Small Business Administration, Attn: Arthur E. Collins, Jr., Deputy Director, HUBZone Program, 409 Third Street SW, 8th Floor, Washington, DC 20416.

Instructions: All submissions received must include the Agency name and Regulatory Information Number (RIN) for this rulemaking. SBA will post all comments to this notice of proposed rulemaking on http://www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at http://www.regulations.gov, please submit such information to the U.S. Small Business Administration, Attn: Arthur E. Collins, Jr., Deputy Director, HUBZone Program, 409 Third Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the information will be published or not.

FOR FURTHER INFORMATION CONTACT:
Arthur E. Collins, Jr., Deputy Director, HUBZone Program, 409 Third Street SW, 8th Floor, Washington, DC 20416; telephone: 202-205-6285; email: huzone@sba.gov.

SUPPLEMENTARY INFORMATION: On October 31, 2018, SBA published a notice of proposed rulemaking at 83 FR 54812 to solicit comments on its proposal to amend its regulations for the HUBZone Program to reduce the regulatory burdens imposed on HUBZone small business concerns and government agencies, to implement new statutory provisions, and to eliminate ambiguities in the regulations. SBA also proposed comprehensive revisions to the HUBZone regulations to clarify current HUBZone Program policies and procedures and to make changes that will benefit the small business community by making the HUBZone program more efficient and effective. This proposed rulemaking, which is identified by RIN 3245-AG38, is also available at https://www.regulations.gov/document?D=SBA-2018-0065-0001.

The Agency requested comments on specific approaches for the changes contemplated in the proposed rulemaking. Initially, SBA established a 60-day comment period for the proposed rule, with a closing date of December 31, 2018. Due to the scope and significance of the changes contemplated by the proposed rule, SBA believes that affected businesses need more time to review the changes and prepare their comments. The Agency is therefore extending the comment period until February 14, 2019.

Robb N. Wong,
Associate Administrator, Government Contracting and Business Development.

[FR Doc. 2018-28320 Filed 12-20-18; 8:45 am]
BILLING CODE 3056-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service
26 CFR Part 1
[REG-141739-08]
RIN 1545-BI22

Reissuance of State or Local Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that address when tax-exempt bonds are treated as retired for purposes of section 103 and sections 141 through 150 of the Internal Revenue Code (Code). The proposed regulations are necessary to unify and to clarify existing guidance on this subject. The proposed regulations affect State and local governments that issue tax-exempt bonds.

DATES: Comments and requests for a public hearing must be received by March 1, 2019.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-141739-08), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-141739-08), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (REG-141739-08).

FOR FURTHER INFORMATION CONTACT:
Concerning the proposed regulations, Spence Hanemann, (202) 317-6980; concerning submissions of comments and requesting a hearing, Regina Johnson, (202) 317-6991 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under sections 150 and 1001 of the Code (Proposed Regulations).

1. In General

In general, under section 103, interest received by the holders of certain bonds issued by State and local governments is
exempt from Federal income tax. To qualify for the tax exemption, a bond issued by a State or local government must satisfy various eligibility requirements under sections 141 through 150 at the time of issuance of the bond. If the issuer and holder agree after issuance to modify the terms of a tax-exempt bond significantly, the original bond may be treated as having been retired and exchanged for a newly issued, modified bond. Similarly, if the issuer or its agent acquires and resells the bond, the bond may be treated as having been retired upon acquisition and replaced upon resale with a newly issued bond.

The term “reissuance” commonly refers to the effect of a transaction in which a new debt instrument replaces an old debt instrument as a result of retirement of the old debt instrument pursuant to an exchange or extinguishment. In the case of a reissuance, the reissued bond must be retested for qualification under sections 103 and 141 through 150. The reissuance of a taxable bond may result in various negative consequences to the issuer, such as changes in yield for purposes of the arbitrage investment yield restrictions under section 148(e), acceleration of arbitrage rebate payment obligations under section 148(f), and change-in-law risk.

2. Tender Option Bonds

Tender option bonds and variable rate demand bonds (collectively, tender option bonds) have special features that present reissuance questions. Specifically, tender option bonds have original terms that provide for a tender option interest rate mode, as described in this paragraph. Issuers of tax-exempt bonds often preauthorize several different interest rate modes in the bond documents and retain an option to switch interest rate modes under parameters set forth in the bond documents. During a tender option mode, tender option bonds have short-term interest rates that are reset periodically at various short-term intervals (typically, every seven days) based on the current market rate necessary to remarket the bonds at par. In connection with each resetting of the interest rate, the holder of a tender option bond has a right or requirement to tender the bond back to the issuer or its agent for purchase at par. Tender option bonds also may have interest rate mode conversion options that permit the issuer or conduit borrower to change the interest rate mode on the bonds from a tender option mode to another short-term interest rate mode or to a fixed interest rate to maturity. At the time of a conversion to another interest rate mode, the holder of a tender option bond typically has the right or requirement to tender the bond for purchase at par.

Tender option bonds generally have third-party liquidity facilities from banks or other liquidity providers to ensure that there is sufficient cash to repurchase the bonds upon a holder’s tender, and they also commonly have credit enhancement from bond insurers or other third-party guarantors. Upon a holder’s exercise of its tender rights in connection with either a resetting of the interest rate during a tender option mode or a conversion to another interest rate mode, a remarketing agent or a liquidity provider typically will acquire the bonds subject to the tender and resell the bonds either to the same bondholders or to others willing to purchase such bonds.

3. Existing Guidance

To address reissuance questions related to tax-exempt bonds, on December 27, 1988, the IRS published Notice 88–130, 1988–2 CB 543, which provides rules for determining when a tax-exempt bond is retired for purposes of sections 103 and 141 through 150. Notice 88–130 provides in part that a tax-exempt bond is retired when there is a change to the terms of the bond that results in a disposition of the bond for purposes of section 1001. In addition, Notice 88–130 provides special rules for retirement of certain tender option bonds that are a definition of the term “qualified tender bond.”

On June 26, 1996, the Department of the Treasury (Treasury Department) and the IRS published final regulations under §1.1001–3 (1996 Final Regulations) in the Federal Register (61 FR 32926). These regulations provide rules for determining whether a modification of the terms of a debt instrument, including a tax-exempt bond, results in an exchange for purposes of section 1001. In recognition of a need to coordinate the interaction of the prior guidance in Notice 88–130 with the subsequent final regulations under §1.1001–3 for particular tax-exempt bond purposes, the Treasury Department and the IRS stated their intention to issue regulations under section 150 on this subject in the Federal Register (61 FR 32930).

On April 14, 2008, the IRS published Notice 2008–41, 2008–1 CB 742. Like Notice 88–130, Notice 2008–41 provides rules for determining when a tax-exempt bond is retired for purposes of sections 103 and 141 through 150 and includes special rules for qualified tender bonds. While the retirement standards provided in these two notices are similar, Notice 2008–41 was intended to coordinate the retirement standards for tax-exempt bond purposes with the 1996 Final Regulations on modifications of debt instruments under § 1.1001–3 and to be more administrable than Notice 88–130. In order to preserve flexibility and to limit potential unintended consequences during the 2008 financial crisis, Notice 2008–41 permitted issuers to apply either notice. Generally, under Notice 2008–41, a tax-exempt bond is retired when a significant modification to the terms of the bond occurs under § 1.1001–3, the bond is acquired by or on behalf of its issuer, or the bond is otherwise redeemed or retired. The notice clarifies that, for purposes of these retirement standards, the purchase of a tax-exempt bond by a third-party guarantor or third-party liquidity facility provider pursuant to the terms of the guarantee or liquidity facility is not treated as a purchase or other acquisition by or on behalf of a governmental issuer.

Although these general rules apply to a qualified tender bond, Notice 2008–41 also provides that certain features of qualified tender bonds will not result in a retirement. In Notice 2008–41, the Treasury Department and the IRS reiterated their intention to provide guidance on the retirement of tax-exempt bonds in regulations under section 150.

The Proposed Regulations provide rules for determining when tax-exempt bonds are treated as retired for purposes of sections 103 and 141 through 150. The Proposed Regulations also amend § 1.1001–3(a)(2) to confirm that section to the special rules in the Proposed Regulations for retirement of qualified tender bonds.

Explanation of Provisions

1. Section 1.150–3: Retirement of Tax-Exempt Bonds

A. General Rules for Retirement of a Tax-Exempt Bond

The Proposed Regulations generally provide retirement standards that apply to tax-exempt bonds for purposes of sections 103 and 141 through 150. These retirement standards follow the guidance in Notice 2008–41 with technical refinements. The Proposed Regulations provide that a tax-exempt bond is retired if a significant modification to the terms of the bond occurs under § 1.1001–3, if the issuer or an agent acting on its behalf acquires the bond in a manner that liquidates or extinguishes the bondholder’s investment in the bond, or if the bond
is otherwise redeemed (for example, redeemed at maturity).

For this purpose, the Proposed Regulations define the term "issuer" to mean the State or local governmental unit that actually issues the bonds and any related party (as defined in §1.150–1(b)) to that actual issuer. In the case of a governmental unit, the applicable related party definition under §1.150–1(b) applies a controlled group test under §1.150–1(e) to determine related party status, based generally on all of the facts and circumstances. This controlled group test includes special rules which specifically treat control over the governing board of a governmental unit and control over use of funds or assets of a governmental unit as giving rise to controlled group status.

By focusing on the actual issuer rather than on the conduit borrower, this definition of issuer maintains and respects the essential legal construct necessary for issuance of many tax-exempt bonds, such as qualified private activity bonds under section 141(e), that the actual issuer be treated as the obligor in conduit financings. Thus, under the Proposed Regulations, the acquisition of a tax-exempt bond by a conduit borrower that is not a related party to the actual issuer does not result in the retirement of that bond.

The Proposed Regulations also prescribe certain consequences for a bond that is retired pursuant to a deemed exchange under §1.1001–3 or following the acquisition of the bond by the issuer or the issuer's agent. In the former case, the bond is treated as a new bond issued at the time of the modification as determined under §1.1001–3. In the latter case, if the issuer resells the bond, the bond is treated as a new bond issued at the time of resale. If the issuer does not resell the acquired bond, the acquired bond is simply retired. In either case in which a retired bond is treated as a newly issued bond, the issuer must consider whether the new bond refunds the retired bond. For this purpose, the rules regarding the definition of a refunding issue under §1.150–1(d) apply. For example, if the issuer of the bond retired pursuant to §1.1001–3 is the same as the issuer (or a related party to the issuer) of the newly issued bond, the newly issued bond will be part of a current refunding issue that refunds the retired bond.

B. Exceptions to Retirement of a Tax-Exempt Bond

The Proposed Regulations provide three exceptions that limit retirements resulting from the operation of the general rules. Two of these exceptions are intended to prevent the special features of tender option bonds from resulting in a retirement. A third exception applies to all tax-exempt bonds.

The first two exceptions in the Proposed Regulations apply to qualified tender bonds, a defined term that is essentially a tender option bond meeting certain requirements. Specifically, a qualified tender bond is a tax-exempt bond that, pursuant to the terms of its governing contract, bears interest during each interest rate mode at a fixed rate, a qualified floating rate under §1.1275–5, or an objective rate that is permitted for a tax-exempt bond under §1.1275–5(c)(5). Furthermore, interest on a qualified tender bond must be unconditionally payable at periodic intervals of no more than a year. Finally, a qualified tender bond may not have a stated maturity date later than 40 years after its issue date and must include a qualified tender right. This definition is similar to the definition of qualified tender bond provided in Notice 2008–41.

The Proposed Regulations define a qualified tender right required for a qualified tender bond in terms of the mechanics by which the tender right operates. The Proposed Regulations define a qualified tender right to include either a tender right that arises periodically during a tender option mode or a tender right that arises upon the exercise of the issuer's option under the original terms of the bond to change the interest rate mode. A qualified tender bond has two features that otherwise could result in retirement of the bond under the general rules for retirement in the Proposed Regulations. First, when accompanied by a qualified tender right, an exercise of the issuer's option to change the interest rate mode might, in some circumstances, qualify as a modification under the rule in §1.1001–3(c)(2)(iii) for alterations that result from the exercise of an option. Thus, absent the exception in the Proposed Regulations, a qualified tender right might result in a modification that, if significant, would cause the qualified tender bond to be retired. To address this circumstance, the Proposed Regulations provide an exception that avoids retirement by disregarding a qualified tender right for purposes of determining whether a significant modification of a qualified tender bond under §1.1001–3 results in retirement of the bond. Consequently, the issuer's option to change the interest rate mode typically would qualify as a unilateral option and the change of interest rate mode resulting from exercise of that option would not be a modification of the qualified tender bond.

The second feature of a qualified tender bond that could result in retirement of the bond under the general rules for retirement in the Proposed Regulations is the financial structure feature that may require the issuer or its agent to acquire the bond upon exercise of the qualified tender right. To address this circumstance, the Proposed Regulations provide another exception under which an acquisition of a qualified tender bond pursuant to the exercise of a qualified tender right will not result in retirement, provided that neither the issuer nor its agent holds the bond for longer than 90 days. This 90-day period is intended to provide the issuer or its remarketing agent with sufficient time to resell a tendered bond to a new holder.

The Proposed Regulations also provide an exception to the general rules of retirement for all tax-exempt bonds. This exception, carried forward from Notice 2008–41, provides that acquisition of a tax-exempt bond by a guarantor or liquidity facility provider acting as the issuer's agent does not result in retirement of the bond if the acquisition is pursuant to the terms of the guaranty or liquidity facility and the guarantor or liquidity facility provider is not a related party (as defined in §1.150–1(b)) to the issuer.

2. Applicability Dates

The rules in §1.150–3 of the Proposed Regulations are proposed to apply to events and actions taken with respect to bonds that occur on or after the date that is 90 days after the date of publication of the Treasury decision adopting these rules as final regulations in the Federal Register. Issuers may apply these regulations to events and actions taken with respect to bonds that occur before that date. The Treasury Department and the IRS expect that the final regulations will obsolete Notice 88–130 and Notice 2008–41.

Special Analyses

This regulation is not subject to review under section 6(b)(2) of Executive Order 12886 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for
Advocacy of the Small Business Administration for comment on its impact on small entities.

Comments and Requests for Public Hearing

Before the Proposed Regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ADDRESSES heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal authors of these regulations are Spence Hamann of the Office of Associate Chief Counsel (Financial Institutions and Products) and Vicky Tsilas, formerly of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

Availability of IRS Documents

The IRS notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at www.irs.gov.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

§1.11001–3 Modifications of debt instruments.

(a) General purpose and scope. This section provides rules to determine when a tax-exempt bond is retired for purposes of sections 103 and 141 through 150.

(b) General rules for retirement of a tax-exempt bond. Except as otherwise provided in paragraph (c) of this section, a tax-exempt bond is retired when:

(1) A significant modification of the bond occurs under §1.1001–3;

(2) The issuer or its agent acquires the bond in a manner that liquidates or extinguishes the bondholder's investment in the bond; or

(3) The bond is otherwise redeemed (for example, redeemed at maturity).

(c) Exceptions to retirement of a tax-exempt bond—(1) Qualified tender right does not result in a modification. In applying §1.11001–3 to a qualified tender bond for purposes of paragraph (b)(1) of this section, both the existence and exercise of a qualified tender right are disregarded. Thus, a change in the interest rate mode made in connection with the exercise of a qualified tender right generally is not a modification because the change occurs by operation of the terms of the bond and the holder's resulting right to put the bond to the issuer or its agent does not prevent the issuer's option from being a unilateral option.

(2) Acquisition pursuant to a qualified tender right. Acquisition of a qualified tender bond by the issuer or its agent does not result in retirement of the bond under paragraph (b)(2) of this section if the acquisition is pursuant to the operation of a qualified tender right and neither the issuer nor its agent continues to hold the bond after the close of the 90-day period beginning on the date of the tender.

(3) Acquisition of a tax-exempt bond by a guarantor or liquidity facility provider. Acquisition of a tax-exempt bond by a guarantor or liquidity facility provider acting on the issuer's behalf does not result in retirement of the bond under paragraph (b)(2) of this section if the acquisition is pursuant to the terms of the guarantee or liquidity facility and the guarantor or liquidity facility provider is not a related party (as defined in §1.1150–1(b)) to the issuer.

(d) Effect of retirement. If a bond is retired pursuant to paragraph (b)(1) of this section (that is, in a transaction treated as an exchange of the bond for a bond with modified terms), the bond is treated as a new bond issued at the time of the modification as determined under §1.11001–3. If the issuer or its agent resells a bond retired pursuant to paragraph (b)(2) of this section, the bond is treated as a new bond issued on the date of resale. In both cases, the rules of §1.1150–1(d) apply to determine if the new bond is part of a refunding issue.

(e) Definitions. For purposes of this section, the following definitions apply:

(1) Issuer means the State or local governmental unit (as defined in §1.1150–1(b)) to the actual issuer (as distinguished, for example, from a conduit borrower that is not a related party to the actual issuer).

(2) Qualified tender bond means a tax-exempt bond that, pursuant to the terms of its governing contract, has all of the features described in this paragraph (e)(2). During each authorized interest rate mode, the bond bears interest at a fixed interest rate, a qualified floating rate under §1.1275–5(b), or an objective rate for a tax-exempt bond under §1.1275–5(c)(5). Interest on the bond is unconditionally payable at periodic intervals of no more than one year. The bond has a stated maturity date that is not later than 40 years after the issue date of the bond. The bond includes a qualified tender right.

(3) Qualified tender right means a right or obligation of a holder of the bond to tender the bond for purchase as described in this paragraph (e)(3). The purchaser under the tender may be the issuer, its agent, or another party. The tender right is available on at least one date before the stated maturity date. For each such tender, the purchase price of the bond is equal to par (plus any accrued interest). Following each such tender, the issuer or its remarketing agent either redeems the bond or uses reasonable best efforts to resell the bond within the 90-day period beginning on the date of the tender. Upon any such resale, the purchase price of the bond is equal to par (plus any accrued interest).

(f) Applicability date. This section applies to events and actions taken with respect to bonds that occur on or after the date that is 90 days after the date of publication of the Treasury decision adopting these rules as final regulations in the Federal Register.

■ Para. 3. Section 1.11001–3 is amended by:

1. Revising paragraph (a)(2).

2. Revising the paragraph (b) subject heading.

3. Revising the first sentence of paragraph (b)(1).

4. Revising the paragraph (b)(2) subject heading.

5. Adding paragraph (b)(3).

The revisions and addition read as follows:

§1.11001–3 Modifications of debt instruments.

(a) * * *

(2) Qualified tender bonds. For special rules governing whether tax-
exempt bonds that are qualified tender bonds are re-issued for purposes of sections 103 and 141 through 150, see § 1.150–3.

(h) Applicability date.

(1) Except as otherwise provided in paragraphs (b)(2) and (3) of this section, the section applies to alterations of the terms of a debt instrument on or after September 24, 1996.

(2) Alteration or modification results in an instrument or property right that is not debt.

(3) Qualified tender bonds. Paragraph (a)(2) of this section applies to events and actions taken with respect to qualified tender bonds that occur on or after the date that is 90 days after the date of publication of the Treasury decision adopting these rules as final regulations in the Federal Register.

Kirsten Winolob,
Deputy Commissioner for Services and Enforcement.

[FR Doc. 2018-28370 Filed 12-28-18; 8:45 am]
BILLINE CODE 4835-01-P

DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration
49 CFR Part 385
[Docket No. FMCSA–2018–0165]
RIN 2122–AC01
Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: FMCSA proposes to amend its Hazardous Materials Safety Permits regulations to incorporate by reference the updated Commercial Vehicle Safety Alliance (CVSA) handbook. The Out-of-Service Criteria provide uniform enforcement tolerances for roadside inspections to enforcement personnel nationwide, including FMCSA’s State partners. Currently, the regulations reference the April 1, 2016, edition of the handbook. Through this notice, FMCSA proposes to incorporate by reference the April 1, 2018, edition.

DATES: Comments on this document must be received on or before January 30, 2019.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2018–0165 using any of the following methods:

• Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments.
• Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
• Hand Delivery or Courier: West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
• Fax: 202–493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Huntley, Chief, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 by telephone at (202) 366–9209 or by email at michael.huntley@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9626.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking (NPRM) is organized as follows:

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Advance Notice of Proposed Rulemaking Not Required
II. Executive Summary
III. Legal Basis for the Rulemaking
IV. Background
V. Discussion of Proposed Rulemaking
VI. International Impacts
VII. Section-by-Section Analysis
VIII. Regulatory Analyses
A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
B. E.O. 13771 (Reducing Regulation and Controlling Costs)
C. Regulatory Flexibility Act (Small Entities)
D. Assistance for Small Entities
E. Unfunded Mandates Reform Act of 1995
F. Paperwork Reduction Act
G. E.O. 13132 (Federalism)
H. E.O. 12988 (Civil Justice Reform)
I. E.O. 13045 (Protection of Children)
J. E.O. 12630 (Taking of Private Property)
K. Privacy
L. E.O. 13272 (Intergovernmental Review)

M. E.O. 13211 (Energy Supply, Distribution, or Use)
N. E.O. 13175 (Indian Tribal Governments)
O. National Technology Transfer and Advancement Act (Technical Standards)
P. Environment (National Environmental Policy Act)

I. Public Participation and Request for Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA–2018–0165), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to http://www.regulations.gov, put the docket number, FMCSA–2018–0165, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act, CBI is eligible for protection from public disclosure. If you have CBI that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as
Agency Documents

Department of the Treasury
Internal Revenue Service
Revenue Procedure

IRS Rev. Proc. 2019-17
26 CFR 601.601: Rules and regulations
(Also Part I, §§ 42 and 142)
Rev. Proc. 2019-17
SECTION 1. PURPOSE

This revenue procedure provides guidance regarding the general public use requirements for qualified residential rental projects financed with tax-exempt bonds under §142(d) of the Internal Revenue Code (Code). Specifically, this revenue procedure coordinates these requirements with the provisions in §42(g)(9). Under §42(g)(9), a project does not violate the general public use requirement under §42 as a result of specified occupancy restrictions or preferences (for example, certain housing preferences for military veterans).

SECTION 2. BACKGROUND

.01 State and local governments may issue tax-exempt bonds under §103 to finance exempt facilities (exempt facility bonds). A qualified residential rental project, as defined in §142(d), is one type of exempt facility that may be financed with exempt facility bonds.

.02 To satisfy the requirements of §142(d), a specified portion of the residential units in a residential rental project must serve individuals with qualifying incomes. For example, under §142(d)(1)(A), a residential rental project satisfies these requirements if 20 percent or more of the residential units in the project are occupied by individuals whose income is 50 percent or less of area median gross income.

.03 Under §1.103-8(b)(2) of the Income Tax Regulations, to qualify as an exempt facility, a facility must serve or be available on a regular basis for general public use, or be part of a facility so used, as contrasted with similar types of facilities that are constructed for the exclusive use of a limited number of private business users. For example, an apartment building for which employees of an adjacent factory are given preference over other potential tenants is not available for use by the general public. See §1.103-8(b)(9), Example 2.

.04 Section 42 provides a low-income housing credit in an amount equal to a portion of the qualified basis (as defined in §42(c)(1)) of each qualified low-income building (as defined in §42(c)(2)) that is part of a qualified low-income housing project (as defined in §42(g)).

.05 Section 1.42-9(a) provides that a residential rental unit in a building that is not for use by the general public is not eligible for a low-income housing credit under §42. Section 1.42-9(b) further provides that a residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development. Section 1.42-9(b), however, provides that if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for a low-income housing credit under §42.

.06 Section 42(g)(9) provides that a project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (A) with special needs, (B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or (C) who are involved in artistic or literary activities. For example, there are certain Federal or State programs that support housing for military veterans. Section 42(g)(9) was added to the Code by §3004(g) of the Housing and Economic Recovery Act of 2008, Pub. L. 110-289, 122 Stat. 2654, 2864.

.07 Section 142(d) does not contain a provision similar to §42(g)(9). Low-income housing credits under §42 and exempt facility bonds issued under §142(d) are often used together to finance residential rental projects. Questions have arisen as to whether a project that is treated as not failing the general public use requirement solely based on the restrictions or preferences provided under §42(g)(9) for purposes of the low-income housing credit under §42 may be treated as not failing the general public use requirement applicable to tax-exempt financing of qualified residential rental projects under §142(d).

SECTION 3. SCOPE

This revenue procedure only applies to exempt facility bonds that finance qualified residential rental projects under § 142(d) and does not affect the rules applicable to exempt facility bonds that finance other exempt facilities. For rules applicable to exempt facility bonds that finance other exempt facilities, see, generally, § 1.103-8.

SECTION 4. APPLICATION

A qualified residential rental project (as defined in § 142(d) ) does not fail to meet the general public use requirement applicable to exempt facilities solely because of occupancy restrictions or preferences that favor tenants described in § 42(g)(9) (for example, certain housing preferences for military veterans).

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to bonds sold before, on, or after April 3, 2019.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Johanna Som de Cerff of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Johanna Som de Cerff on (202) 317-6980 (not a toll free call).
instrument approach and departure procedures at these airports. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reports, as promulgated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the ADDRESSES section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 1,200 feet above the surface at Wiley Post/Will Rogers Memorial Airport, Barrow, AK; Chevak Airport, Clarks Point Airport, Elm Airports, and Golovin Airport, AK. This action adds language to the legal descriptions of these airports that reads “excluding that airspace that extends beyond 12 miles from the shoreline”. An editorial change is also made to the Chevak airport designation removing the city from the airport name to comply with a change to FAA Order 7400.2L. Procedures for Handling Airspace Matters.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71
Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

§ 71.62 [Amended]

1. The authority citation for part 71 continues to read as follows:


§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Barrow, AK [Amended]
Wiley Post/Will Rogers Memorial Airport, AK
(Lat. 71°17'00" N, long. 165°46'07" W)
That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Wiley Post/Will Rogers Memorial Airport; and that airspace extending upward from 1,200 feet above the surface within a 7.3-mile radius of the Wiley Post/Will Rogers Memorial Airport, excluding that airspace extending beyond 12 miles of the shoreline.

AAL AK E5 Chevak, AK [Amended]
Chevak Airport, AK
(Lat. 63°32'27" N, long. 165°36'03" W)
That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of Chevak Airport; and that airspace extending upward from 1,200 feet above the surface within a 7.9-mile radius of Chevak Airport, excluding that airspace extending beyond 12 miles of the shoreline.

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 5
[TD 9845]
RIN 1545-BS91
Public Approval of Tax-Exempt Private Activity Bonds
AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Final regulation.
SUMMARY: This document contains final regulations on the public approval requirement applicable to tax-exempt private activity bonds issued by State and local governments. The final
Proposed Regulations and explains the revisions made in the Final Regulations in response to those comments.

1. Section 1.147(f)-1(d): Public Hearing and Reasonable Public Notice

Under the 2017 Proposed Regulations, an issue of private activity bonds is approved by a governmental unit if a qualifying elected representative of that governmental unit approves the issue following a public hearing for which there was reasonable public notice. For this purpose, a public hearing is generally defined as a forum that provides a reasonable opportunity for interested individuals to express their views, orally or in writing, on the supported issue of bonds and the location and nature of the proposed project to be financed. Reasonable public notice generally means a published notice that is reasonably designed to inform residents of the approving governmental unit, including residents of the issuing unit and the host governmental unit where a project is to be located, of the proposed issue.

A. Public Hearing

The 2017 Proposed Regulations provided that a governmental unit may impose reasonable requirements on persons who wish to participate in a public hearing, such as a requirement that persons desiring to speak at the hearing make a written request to speak at least 24 hours before the hearing. One commenter suggested that the Final Regulations allow a governmental unit to cancel a scheduled public hearing if the governmental unit received no timely requests to participate in the hearing and published a supplemental public notice. However, section 147(f)(5)(B)(ii) specifically requires a public hearing before an elected official may approve the issue. Furthermore, members of the public may not always provide timely notice of their intent to participate in a public hearing and, in such cases, canceling the hearing could frustrate the purpose of the public hearing requirement. Therefore, the Treasury Department and the IRS have concluded that the Final Regulations should not disregard the express requirement of holding a public hearing in section 147(f)(5)(B)(i) by permitting a governmental unit to cancel a public hearing. Accordingly, the Final Regulations do not adopt this comment.
Other commenters suggested alternative means to satisfy the public hearing requirement. One commenter suggested allowing a public hearing by teleconference or webinar. The Treasury Department and the IRS have determined that, although these technologies may be effective for other purposes, they cannot replace a conventional public hearing conducted in-person because they are not sufficiently reliable, publicly available, susceptible to public response, or uniform in their features and operation. Another commenter suggested allowing a public hearing performed for any other federal, state, or local purpose to satisfy the public hearing requirement under section 147(f), regardless of the procedures by which the organizer publishes notice or conducts the hearing. The Final Regulations defer to a certain degree to state and local procedures if citing a public hearing and publishing notice of that hearing. See §1.147(f)-1(d)(3) and (d)(4)(iv) of the Final Regulations. Furthermore, to the extent that a hearing conducted for another governmental purpose satisfies all of the requirements of section 147(f) and the Final Regulations, such a hearing may serve for both purposes. The Treasury Department and the IRS have determined, however, that state and local procedures may not supersede a specific requirement of the Final Regulations. Accordingly, the Final Regulations do not adopt either of these comments.

B. Reasonable Public Notice

The Existing Regulations provide that public notice is presumed reasonable if published no fewer than 14 days before the hearing. The 2008 Proposed Regulations proposed to shorten this minimum notice period from 14 days to seven days. The 2017 Proposed Regulations proposed to retain the 14-day period between notice and hearing, citing a statement in the legislative history of TEFRA referring to such a time period. Several commenters recommended shortening this minimum notice period to seven days before the public hearing, as proposed in 2008. These commenters noted that, although a portion of the legislative history includes a reference to a 14-day notice period, the statute does not require it. Commenters also reasoned that the substantial increases in the speed at which information spreads to individual members of the public and advances in technology since the original enactment of this public approval requirement in 1982 should warrant a shorter public notice period. Accordingly, the Final Regulations adopt this comment. The Final Regulations treat notice as presumed to be reasonably designed to inform residents of an approving governmental unit if, among other things, the notice is given no fewer than seven days before the public hearing.

The 2017 Proposed Regulations proposed to treat notice as presumed to be reasonably designed to inform residents of an approving governmental unit if, among other things, the notice was posted to the approving governmental unit’s public website. Many commenters supported this proposed rule. Some commenters suggested modifications to this rule. Several commenters noted that issuers that issue bonds on behalf of a governmental unit may be unable to use this rule as proposed. The proposed rule would permit publication on the website of the approving governmental unit, but an issuer (such as a constitutional authority that acts on behalf of a city or county) may not have the authority to post content to the approving governmental unit’s website. Commenters suggested permitting publication of a public notice on the website of the on-behalf-of issuer as an alternative to the website of the approving governmental unit. The Final Regulations adopt this comment. The Final Regulations provide that, for an issuer approval by an issuer that acts on behalf of a governmental unit, public notice may be posted on the public website of either the on-behalf-of issuer or the approving governmental unit.

The 2017 Proposed Regulations required that, for public notices by website, a governmental unit also offer a reasonable alternative notice method for residents without access to the internet. Commenters presented evidence that more people regularly use the internet than use a particular newspaper, radio station, or television station. These commenters recommended removing the requirement for an alternative notice method in the case of publication by website. The Final Regulations adopt this comment and eliminate the requirement for an alternative method of obtaining the information in a website notice.

Further, to address concerns that a public notice posted on a large, complex website may be difficult for the intended recipients of that public notice to locate, the Final Regulations clarify that a public notice must be posted on the governmental unit’s primary public website in an area of that website that is used to inform its residents about events affecting the residents. In addition, issuers remain responsible for maintaining records showing that a public notice containing the requisite information was timely posted to an appropriate website. See § 1.6001–1.

The 2017 Proposed Regulations included a provision in §1.147(f)-1(d)(4)(iv) that presumed notice to be reasonable if, among other things, the notice was given in a way permitted under a general state law for providing public notice of a public hearing held by the approving governmental unit. The 2017 Proposed Regulations also included a provision in §1.147(f)-1(d)(5) that treated a public hearing performed in compliance with state procedural requirements as meeting the public hearing requirements of section 147(f) except to the extent in conflict with a specific requirement of the proposed regulations. One commenter expressed a concern that these two provisions were inconsistent. The Treasury Department and the IRS have determined that these two provisions of the 2017 Proposed Regulations are not inconsistent. In this regard, §1.147(f)-1(d)(3) addresses public hearings and §1.147(f)-1(d)(4) addresses public notices. Upon consideration of this comment and in response to concerns raised about the accessibility of notices given under state laws, the Final Regulations clarify that notice given in a way a state permits under a general law must still be reasonably accessible to the residents of the approving governmental unit.

2. Section 1.147(f)-1(e): Applicable Elected Representative

The 2017 Proposed Regulations provided that an applicable elected representative of the approving governmental unit may execute a public approval. The 2017 Proposed Regulations provided that the applicable elected representative of a governmental unit consists of any one of the following: (1) The governmental unit’s elected legislative body; (2) the governmental unit’s chief elected executive officer; (3) in the case of a state, the chief elected legal officer of the state’s executive branch of government; or (4) any official elected by the voters of the governmental unit and designated by the governmental unit’s chief elected executive officer or by state or local law to approve issuances for the governmental unit. One commenter suggested expanding the definition of an applicable elected representative to include the chairman of the governing board of a conduit issuer, if that person is appointed by an elected official to execute public approvals and empowered to approve a bond resolution to authorize an issuance
of private activity bonds. The 2017 Proposed Regulations reflected the statutory definition of an applicable elected representative in section 147(f). This statutory definition generally requires that an applicable elected representative be either an elected official or a body of elected officials. Under section 147(f)(5)(G)(i), "the" statute allows for an appointee of an elected official to serve as an applicable elected representative only in the event that the office of an applicable elected representative is vacated and only for the remaining term of the elected official who vacated that office. The Treasury Department and the IRS have determined that expanding the statutory definition of applicable elected representative to permit the appointee of an elected official to qualify as an applicable elected representative on a permanent basis would be inconsistent with the purpose and content of the statute. Accordingly, the Final Regulations adopt this provision as proposed.

3. Section 1.147(f)-1(f): Contents of Notice and Approval

The 2017 Proposed Regulations provided that a project was within the scope of a public approval if the requisite public notice and the approval contained a general functional description of the project, the maximum stated principal amount of bonds to be issued to finance the project, the name of the initial owner or principal user of the project, and a general description of the project's location. The 2017 Proposed Regulations further provided that a substantial deviation between the information required to be provided in the notice and approval and the actual use of proceeds of the issue generally would cause that issue to fail to meet the public approval requirement.

A. Contents of Notice and Approval: Maximum Stated Principal Amount of Bonds

The 2017 Proposed Regulations provided that the public notice and public approval must include the maximum stated principal amount of the issue of private activity bonds to be issued to finance the project. The 2017 Proposed Regulations clarified that, if an issue financed multiple projects, the notice and approval must specify separately the maximum stated principal amount of bonds to be issued to finance each separate project. The 2017 Proposed Regulations further provided that a deviation between the maximum stated principal amount of bonds to be used to finance a project that is specified in the notice and approval and the stated principal amount of bonds actually used to finance that project is an insubstantial deviation if that actual stated principal amount is no more than ten percent (10%) greater than the amount in the notice and approval or any amount less than the amount in the notice and approval.

One commenter suggested the notice and approval should require only the aggregate maximum stated principal amount of the bonds of the issue to be used to finance all of the projects financed by the issue. Another commenter similarly suggested that a deviation between the maximum stated principal amount of the bonds to be used to finance a project as provided in the notice and approval and the actual stated principal amount of the bonds so used be calculated with respect to the issue as a whole rather than individually for each project. The Treasury Department and the IRS have determined that the relative principal amounts within an issue to be spent on each separate project are relevant information for this public approval process. The approximate amount of money used to fund a particular project is evidence of the scope of that project and the project's potential impact on the local community. By contrast, the aggregate maximum stated principal amount of bonds financing all projects financed by an issue is essentially the stated principal amount of the issue and conveys little additional information about the relative scopes of the particular projects in multiple-project financings. Accordingly, the Final Regulations do not adopt these comments.

One commenter suggested clarifying that the maximum stated principal amount of bonds used to finance a project may be determined on any reasonable basis and may take into account contingencies, such as cost overruns or failures to receive construction approvals, without regard to whether the occurrence of any such contingency is reasonably expected at the time of the notice or approval. Such a rule would give issuers the flexibility to account for uncertainties that may arise after the bonds are issued, and the prohibition against a substantial deviation would assure the accuracy of the public approval information to an acceptable degree. The Final Regulations adopt this comment.

One commenter suggested changing the term "maximum stated principal amount" of bonds to "maximum stated par amount" of bonds. The Treasury Department and the IRS have determined that, for this purpose, these two terms have the same meaning. The Final Regulations do not adopt this comment and retain the term "maximum stated principal amount" as proposed.

B. Contents of Notice and Approval: Initial Owner or Principal User

The 2017 Proposed Regulations provided that a project was within the scope of a public approval if the public notice and approval included the name of the expected initial legal owner or principal user of the project or, alternatively, the name of the true beneficial party of interest for such legal owner or user. One commenter suggested clarifying that a general partner of a partnership that owns a project may be treated as a true beneficial party of interest for this purpose. Recognizing that limited partnership ownership structures are common among exempt facilities under section 142, the Treasury Department and the IRS have determined that this clarification is warranted. Accordingly, the Final Regulations adopt this comment and include an example clarifying that a public notice and approval may name a general partner of an owner of a project as a true beneficial party of interest.

C. Contents of Notice and Approval: Project Location

The Existing Regulations provide that a facility is within the scope of a public approval if the public notice and approval contain the prospective location of the facility by its street address or, if none, by a general description designed to inform readers of its specific location. The 2017 Proposed Regulations required that the public notice and approval include a general description of the prospective location of the project by street address, reference to boundary streets or other geographic boundaries, or other description of the specific geographic location that is reasonably designed to inform readers of the location. One commenter raised a concern that the phrase "specific geographic location" in the 2017 Proposed Regulations would be more restrictive than the language in the Existing Regulations and would be burdensome for projects located at well-known landmarks, which may be widely recognized by their public name but may not have a street address or identifiable geographic boundaries. The Treasury Department and the IRS do not agree with the comment because, as noted above, the 2017 Proposed Regulations and the Existing Regulations both call for a general description of the specific location. The
Final Regulations adopt this provision as proposed.

D. Special Rule for Pooled Financings With Qualified 501(c)(3) Bonds

For qualified 501(c)(3) bonds issued to finance pooled loan programs that are described in section 147(b)(4)(B), the 2017 Proposed Regulations provided a special, two-stage public approval process. At the time that such bonds are issued, the issuer may have only limited information about the projects to be financed. Thus, for the first stage of public approvals occurring before the qualified 501(c)(3) bonds are issued, the 2017 Proposed Regulations allowed the public notice and approval to include limited general information about projects to be financed, such as the maximum stated principal amount of bonds expected to finance loans to section 501(c)(3) organizations or governmental units and a general description of the types of projects to be financed with those loans (for example, hospital facilities or college facilities). For the second stage of public approvals for those financings, before the issuer originates a loan to a section 501(c)(3) organization or governmental unit, the 2017 Proposed Regulations required a supplemental public approval satisfying the ordinary requirements of section 147(f) for the bonds financing that loan. One commenter recommended that no host approval be required at the time of the limited pre-issuance public approval before the qualified 501(c)(3) bonds are issued because the specific project information may be unknown at that time. The Final Regulations adopt this comment. Under the Final Regulations, for this type of financing, an issuer may either meet the general rules on the public approval requirement or, alternatively, at the issuer’s option, may meet the special rules for a two-stage public approval process that reflects adoption of this comment. In particular, under this optional two-stage public approval process, a pre-issuance issuer approval is required and a supplemental post-issuance public approval, including issuer approval and host approval, is required.

E. Timing of Hearing and Approval

The 2017 Proposed Regulations provided a safe harbor for the minimum period of time between a notice of public hearing and the public hearing. The 2017 Proposed Regulations also provided that the approved bonds must be issued within a certain period of time after the public approval. Neither the Existing Regulations nor the 2017 Proposed Regulations restrict the period of time between a public hearing and a public approval. One commenter suggested that the Final Regulations impose a one-year maximum time period between a public hearing and a valid public approval. The Treasury Department and the IRS have determined that, although a period of one year between a public hearing and a public approval is reasonable, a longer period may be reasonable in some circumstances. Further, no such maximum period was proposed. Accordingly, the Final Regulations do not adopt this comment.

4. Section 1.147(f)-1(g): Definitions

The Existing Regulations define a facility to mean a tract or adjoining tracts of land, the improvements thereon, and any personal property used in connection with such real property. The IRS has further provided that non-adjacent tracts of land may be treated as one facility only if they are used in an “integrated operation.” The 2017 Proposed Regulations use the term “project” rather than “facility” and generally define a project as one or more capital projects or facilities, including land, buildings, equipment, and other property, to be financed with an issue, that are located on the same site, or adjacent or proximate sites used for similar purposes. This proposed definition of project was intended to afford flexibility for a single project to extend beyond a single tract or adjoining tracts of land, such as the case of a college campus on adjacent or proximate sites. Because of the potential difficulty of determining whether facilities are used in an integrated operation, the 2017 Proposed Regulations proposed to remove the provision of the Existing Regulations that allowed financed assets on non-adjacent tracts of land to be treated as one facility if those assets were used in an integrated operation.

One commenter noted that, under the 2017 Proposed Regulations, two financed properties that are located on non-proximate sites could not be part of a single project, whereas two such financed properties could be part of a single facility under the Existing Regulations if the properties were part of an integrated operation. The commenter suggested that this aspect of the definition of project in the 2017 Proposed Regulations was more burdensome than the definition of facility in the Existing Regulations. In general, the 2017 Proposed Regulations would provide greater flexibility to permit a greater physical distance between the sites included in a project than would the Existing Regulations, as the 2017 Proposed Regulations would permit a single project to include financed property at sites that are proximate but not adjoining. The Final Regulations generally adopt this more flexible definition of project from the 2017 Proposed Regulations. In addition, to address this commenter’s concern, the Final Regulations also retain the longstanding “integrated operations” standard from the Existing Regulations to allow capital projects or facilities that are located on non-proximate sites to be treated as a one project if those capital projects or facilities are used in an integrated operation.

The same commenter also suggested adopting the very broad definition of project from a different context involving mixed-use projects under §1.141-6(e)(3), which generally includes any facilities or capital projects financed in whole or in part with proceeds of the issue. The commenter reasoned that the requirement in the 2017 Proposed Regulations that the public notice and approval include the maximum stated principal amount of the issue to be used to finance each project would lock an issuer into a specific allocation of bond proceeds to the project as defined in section 147(f), whereas §1.141-6 would permit floating allocations of bond proceeds to financed property in certain cases. These two definitions of project serve rules with different purposes, and the different definitions reflect those purposes. The Treasury Department and the IRS have determined that, if the public notice and approval presented this information as an aggregate of all property financed by the issue, members of the public and approving officials would be unable to extract and evaluate the portions of the aggregate relevant to their respective roles in the public approval process. The Final Regulations do not adopt this comment.

5. Section 1.147(f)-1(h): Applicability of the Final Regulations

The Final Regulations apply to bonds issued pursuant to a public approval occurring on or after April 1, 2019. In addition, in response to public comments, an issuer may apply the provisions of §1.147(f)-1(f)(6) of the Final Regulations (regarding deviations in public approval information) in whole, but not in part, to bonds issued pursuant to a public approval occurring before April 1, 2019.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11,
26 CFR Part 5

Income taxes. Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 5f are amended as follows:

PART 1—INCOME TAXES

§ 1.147(f)-1 Public approval of private activity bonds.

(a) In general. Interest on a private activity bond is excludable from gross income under section 103(a) only if the bond meets the requirements for a qualified bond as defined in section 141(e) and other applicable requirements provided in section 103. In order to be a qualified bond as defined in section 141(e), among other requirements, a private activity bond must meet the requirements of section 147(f). A private activity bond meets the requirements of section 147(f) only if the bond is publicly approved pursuant to paragraph (b) of this section or the bond qualifies for the exception for refunding bonds in section 147(f)(2)(D).

(b) Public approval requirement—(1) In general. Except as otherwise provided in this section, a bond meets the requirements of section 147(f) if, before the issue date, the issue of which the bond is part receives issuer approval and host approval (each a public approval) as defined in paragraphs (b)(2) and (3) of this section in accordance with the method and process set forth in paragraphs (c) through (f) of this section.

(2) Issuer approval. Except as otherwise provided in this section, issuer approval means an approval that meets the requirements of this paragraph (b)(2). Either the governmental unit that issues the issue of the governmental unit on behalf of which the issue is issued must approve the issue. For this purpose, § 1.1103-1 applies to the determination of whether an issuer issues bonds on behalf of another governmental unit. If an issuer issues bonds on behalf of more than one governmental unit (for example, in the case of an authority that acts for two counties), any one of those governmental units may provide the issuer approval.

(3) Host approval. Except as otherwise provided in this section, host approval means an approval that meets the requirements of this paragraph (b)(3). Each governmental unit the geographic jurisdiction of which contains the site of a project to be financed by the issue must approve the issue. If, however, the entire site of a project to be financed by the issue is within the geographic jurisdiction of more than one governmental unit within a State (counting the State as a governmental unit within such State), then any one of those governmental units may provide host approval for the issue for that project. For purposes of the host approval, if a project to be financed by the issue is located within the geographic jurisdiction of two or more governmental units but not entirely within any one of those governmental units, each portion of the project that is located entirely within the geographic jurisdiction of the relevant governmental units may be treated as a separate project. The issuer approval provided pursuant to paragraph (b)(2) of this section may be treated as a host approval if the governmental unit providing the issuer approval is also a governmental unit eligible to provide the host approval pursuant to this section.

(4) Special rule for host approval of airports or high-speed intercity rail facilities. Pursuant to a special rule in section 147(f)(3), if the proceeds of an issue are to be used to finance a project that consists of either facilities located at an airport (within the meaning of section 142(g)(1)) or high-speed intercity rail facilities (within the meaning of section 142(g)(11)) and the issuer of that issue is the owner or operator of the airport or high-speed intercity rail facilities, the issuer is the only governmental unit that is required to provide the host approval for that project.

(5) Special rule for issuer approval of scholarship funding bond issues and volunteer fire department bond issues.

In the case of a qualified scholarship funding bond as defined in section 150(d)(2), the governmental unit that made a request described in section 150(d)(2)(B) with respect to the issuer of the bond is the governmental unit on behalf of which the bond was issued for purposes of the issuer approval. If more than one governmental unit within a State made a request described in section 150(d)(2)(B), the State or any such requesting governmental unit may be treated as the governmental unit on behalf of which the bond was issued for purposes of the issuer approval. In the case of a bond of a volunteer fire department treated as a bond of a political subdivision of a State under
section 150(e), the political subdivision described in section 150(e)(2)(B) with respect to that volunteer fire department is the governmental unit on behalf of which the bond is issued for purposes of the issuer approval.

(6) Special rules for host approval of mortgage revenue bonds, student loan bonds, and certain qualified 501(c)(3) bonds. In the case of a mortgage revenue bond (as defined in paragraph (g)(3) of this section), a qualified student loan bond as defined in section 144(b), and the portion of an issue of qualified 501(c)(3) bonds as defined in section 145 that finances working capital expenditures, the issue or portion of the issue must receive an issuer approval but no host approval is necessary. See also paragraph (f)(3) of this section, providing certain optional alternative special rules for qualified 501(c)(3) bonds for pooled loan financings described in section 147(b)(1)(B).

(c) Method of public approval. The method of public approval of an issue must satisfy either paragraph (c)(1) or (2) of this section. An approval may satisfy the requirements of this paragraph (c) without regard to the authority under State or local law for the acts constituting that approval.

(1) Applicable elected representative. An applicable elected representative of the approving governmental unit approves the issue following a public hearing for which there was reasonable public notice.

(2) Voter referendum. A voter referendum of the approving governmental unit approves the issue.

(d) Public hearing and reasonable public notice—(1) Public hearing. Public hearing means a forum providing a reasonable opportunity for interested individuals to express their views orally or in writing, on the proposed issue of bonds and the location and nature of the proposed project to be financed.

(2) Location of the public hearing. The public hearing must be held in a location that, based on the facts and circumstances, is convenient for residents of the approving governmental unit. The location of the public hearing is presumed convenient for residents of the unit if the public hearing is located in the approving governmental unit's capital or seat of government. If more than one governmental unit is required to hold a public hearing, the hearings may be combined as long as the combined hearing affords the residents of all of the participating governmental units a reasonable opportunity to be heard. The location of any combined hearing is presumed convenient for residents of each participating governmental unit if it is no farther than 100 miles from the seat of government of each participating governmental unit beyond whose geographic jurisdiction the hearing is conducted.

(3) Procedures for conducting the public hearing. In general, a governmental unit may select its own procedure for a public hearing, provided that interested individuals have a reasonable opportunity to express their views. Thus, a governmental unit may impose reasonable requirements on persons who wish to participate in the hearing, such as a requirement that persons desiring to speak at the hearing make a written request to speak at least 24 hours before the hearing or that they limit their oral remarks to a prescribed time. For this purpose, it is unnecessary, for example, that the applicable elected representative of the approving governmental unit be present at the hearing, that a report on the hearing be submitted to that applicable elected representative, or that State administrative procedural requirements for public hearings be observed. Except to the extent State procedural requirements for public hearings are in conflict with a specific requirement of this section, a public hearing performed in compliance with State procedural requirements satisfies the requirements for a public hearing in this paragraph (d).

(4) Reasonable public notice. Reasonable public notice means notice that is reasonably designed to inform residents of an approving governmental unit, including the issuing governmental unit and the governmental unit in whose geographic jurisdiction a project is to be located, of the proposed issue. The notice must state the time and place for the public hearing and contain the information required by paragraph (f)(2) of this section. Notice is presumed to be reasonably designed to inform residents of an approving governmental unit if it satisfies the requirements of this paragraph (d)(4) and is given no fewer than seven (7) calendar days before the public hearing in one or more of the ways set forth in paragraphs (d)(4)(i) through (iv) of this section.

(i) Newspaper publication. Public notice may be given by publication in one or more newspapers of general circulation available to the residents of the governmental unit.

(ii) Radio or television broadcast. Public notice may be given by radio or television broadcast to the residents of the governmental unit.

(iii) Governmental unit website posting. Public notice may be given by electronic posting on the approving governmental unit's primary public website in an area of that website used to inform its residents about events affecting the residents (for example, notice of public meetings of the governmental unit). In the case of an issuer approval of an issue issued by an on-behalf-of issuer that acts on behalf of a governmental unit, such notice may be posted on the public website of the on-behalf-of issuer as an alternative to the governmental unit's approving governmental unit.

(iv) Alternative State law public notice procedures. Public notice may be given in any way that is permitted under a general State law for public notices for public hearings for the approving governmental unit, provided that the public notice is reasonably accessible.

(e) Applicable elected representative—(1) In general—(i) Definition of applicable elected representative. The applicable elected representative of a governmental unit means—

(A) The governmental unit's elected legislative body;

(B) The governmental unit's chief elected executive officer;

(C) In the case of a State, the chief elected legal officer of the State's executive branch of government; or

(D) Any official elected by the voters of the governmental unit and designated for purposes of this section by the governmental unit's chief elected executive officer or by State or local law to approve issues for the governmental unit.

(ii) Elected officials. For purposes of paragraphs (e)(1)(I)(B), (C), and (D) of this section, an official is considered elected only if that official is popularly elected at-large by the voters of the governmental unit. An official popularly elected at-large by the voters of a governmental unit is appointed or selected pursuant to State or local law to be the chief executive officer of the unit, that official is deemed to be an elected chief executive officer for purposes of this section but for no longer than the official's tenure as an official popularly elected at-large.

(iii) Legislative bodies. In the case of a bicameral legislature that is popularly elected, both chambers together constitute an applicable elected representative. Absent designation
under paragraph (e)(1)(ii)(D) of this section, however, neither such chamber independently constitutes an applicable elected representative. If multiple elected legislative bodies of a governmental unit have independent legislative authority, the body with the more specific authority relating to the issue is the only legislative body that is *treated* as an elected legislative body under paragraph (e)(1)(ii)(A) of this section.

(2) **Governmental unit with no applicable elected representative**—(i) **In general.** The applicable elected representatives of a governmental unit with no applicable elected representative (but for this paragraph (e)(2) and section 147(f)(2)(E)(III)) are the applicable elected representatives of the next higher governmental unit (with an applicable elected representative) from which the governmental unit derives its authority. Except as otherwise provided in this section, any governmental unit from which the governmental unit with no applicable elected representative derives its authority may be treated as the next higher governmental unit without regard to the relative status of such higher governmental unit under State law. A governmental unit derives its authority from another governmental unit that—

(A) Enacts a specific law (for example, a provision in a State constitution, charter, or statute) by or under which the governmental unit is created;

(B) Otherwise empowers or approves the creation of the governmental unit; or

(C) Appoints members to the governing body of the governmental unit.

(ii) **Host approval.** For purposes of a host approval, a governmental unit may be treated as the next higher governmental unit only if the project is located within its geographic jurisdiction and eligible residents of the unit are entitled to vote for its applicable elected representatives.

(3) **On behalf of issuers.** In the case of an issuer that issues bonds on behalf of a governmental unit, the applicable elected representative is any applicable elected representative of the governmental unit on behalf of which the bonds are issued.

(4) **Public approval process**—(1) **In general.** The public approval process for an issue, including scope, content, and timing of the public approval, must meet the requirements of this paragraph (f). A governmental unit must timely approve either each project to be financed with proceeds of the issue or a plan of financing for each project to be financed with proceeds of the issue.

(2) **General rule on information required for a reasonable public notice and public approval.** Except as otherwise provided in this section, a project to be financed with proceeds of an issue is within the scope of a public approval under section 147(f) if the reasonable public notice of the public hearing, if applicable, and the public approval (together the notice and approval) include the information set forth in paragraphs (f)(2)(ii) through (iv) of this section.

(i) **The project.** The notice and approval must include a general functional description of the type and use of the project to be financed with the issue. For this purpose, a project description is sufficient if it identifies the project by reference to a particular category of exempt facility bond to be issued (for example, an exempt facility bond for an airport pursuant to section 142(a)(2) or by reference to another general category of private activity bond together with information on the type and use of the project to be financed with the issue (for example, a qualified small issue bond as defined in section 144(a) for a manufacturing facility or a qualified 501(c)(3) bond as defined in section 145 for a hospital facility and working capital expenditures).

(ii) **The maximum stated principal amount of the issue.** The notice and approval must include the maximum stated principal amount of the issue of private activity bonds to be issued to finance the project or projects. If an issue finances multiple projects (for example, facilities at different locations on non-proximate sites that are not treated as part of the same project), the notice and approval must specify separately the maximum stated principal amount of bonds to be issued to finance each separate project to be financed as part of the issue. The maximum stated principal amount of bonds to be issued to finance a project may be determined on any reasonable basis and may take into account contingencies, without regard to whether the occurrence of any such contingency is reasonably expected at the time of the notice.

(iii) **The name of the initial legal owner or principal user of the project.** The notice and approval must include the name of either the expected initial legal owner or principal user (within the meaning of section 144(a)) of the project or, alternatively, the name of a significant true beneficial party of interest for such legal owner or user (for example, the name of a section 501(c)(3) organization that is the sole member of a limited liability company that is the legal owner or the name of a general partner of a partnership that owns the project).

(iv) **The location of the project.** The notice and approval must include a general description of the prospective location of the project by street address, reference to boundary streets or other geographic boundaries, or other description of the specific geographic location that is reasonably designed to inform readers of the location. For a project involving multiple capital projects or facilities located on the same site or on adjacent or reasonably proximate sites with similar uses, a consolidated description of the location of those capital projects or facilities provides a sufficient description of the location of the project. For example, a project for a section 501(c)(3) educational entity involving multiple buildings on the entity's main university campus may describe the location of the project by reference to the outside street boundaries of that campus with a reference to any noncontiguous features of that campus.

(3) **Special rule for mortgage revenue bonds.** Mortgage loans financed by mortgage revenue bonds are within the scope of a public approval if the notice and approval state that the bonds are to be issued to finance residential mortgages, provide the maximum stated principal amount of mortgage revenue bonds expected to be issued, and provide a general description of the geographic jurisdiction in which the residences to be financed with the proceeds of the mortgage revenue bonds are expected to be located (for example, residences located throughout a State for an issuer with a statewide jurisdiction or residences within a particular local geographic jurisdiction, such as within a city or county, for a local issuer). For this purpose, in the case of mortgage revenue bonds, no information is required on specific names of mortgage loan borrowers or specific locations of individual residences to be financed.

(4) **Special rule for qualified student loan bonds.** Qualified student loans financed by qualified student loan bonds as defined in section 144(b) are within the scope of a public approval if the notice and approval state that the bonds will be issued to finance student loans and state the maximum stated principal amount of qualified student loan bonds expected to be issued for qualified student loans. For this purpose, in the case of qualified student loan bonds, no information is required with respect to names of specific student loan borrowers.

(5) **Special rule for certain qualified 501(c)(3) bonds.** Qualified 501(c)(3)
bonds issued pursuant to section 145 for pooled loan financings that are
described in section 147(b)(4)(B)
(without regard to any election under
section 147(b)(4)(A)) are within the
scope of a public approval if the public
approval either meets the general
requirements of paragraph (b) of this
section or, alternatively, at the issuer's
option, meets the special requirements
of paragraphs (f)(5)(i) and (ii) of this
section.

(i) Pre-issuance issuer approval.
Within the time period required by
paragraph (f)(7) of this section, an issuer
approval is obtained after reasonable
public notice of a public hearing is
provided and a public hearing is held.
For this purpose, a project is treated as
described in the notice and approval if
the notice and approval provide that the
bonds will be qualified 501(c)(3) bonds
to be used to finance loans described in
section 147(b)(4)(B), state the maximum
stated principal amount of bonds
expected to be issued to finance loans
to 501(c)(3) organizations or
governmental units as described in
section 147(b)(4)(B), provide a general
description of the type of project to be
financed with such loans (for example,
loans for hospital facilities or college
facilities), and state that an additional
public approval that includes specific
project information will be obtained
before any such loans are originated.

(ii) Post-issuance public approval for
specified loans. Before a loan described in
section 147(b)(4)(B) is originated, a
supplemental public approval, including
issuer approval and host approval, for the
bonds to be used to finance that loan is
obtained that meets all the requirements of
section 147(f) and the requirements for a
public approval in paragraph (b) of this
section. This post-issuance supplemental
public approval requirement applies by
treating the bonds to be used to finance
such loan as if they were reissuance for
purposes of section 147(f) (without
regard to paragraph (f)(5) of this
section). For this purpose, proceeds to
be used to finance such loan do not
include the portion of the issue used to
finance a common reserve fund or
common costs of issuance.

5. Deviations in public approval
information—(i) In general. Except as
otherwise provided in this section, a
substantial deviation between the stated
use or amount of proceeds of an issue
included in the information required to
be provided in the notice and approval
(public approval information) and the
actual use or amount of proceeds of the
issue issues that is due to fail to meet the
public approval requirement.

Conversely, insubstantial deviations
between the stated use or amount of
proceeds of an issue included in the
public approval information and the
actual use or amount of proceeds of the
issue do not cause such a failure. In
general, the determination of whether a
deviations is substantial is based on all
the facts and circumstances. In all
events, however, a change in the
fundamental nature or type of a project
is a substantial deviation.

(ii) Certain insubstantial deviations in
public approval information. The
following deviations from the public
approval information in the notice and
approval are treated as insubstantial
deviations:

(A) Size of bond issue and use of
proceeds. A deviation between the
maximum stated principal amount of a
proposed issuance of bonds to finance a
project that is specified in the public
approval information and the actual
stated principal amount of bonds issued
and used to finance that project is an
insubstantial deviation if that actual
stated principal amount is not more than
ten percent (10%) greater than that
maximum stated principal amount or is
any amount less than that maximum
stated principal amount. In addition, the
use of proceeds to pay working capital
expenditures directly associated with
any project specified in the public
approval information is an insubstantial
development.

(B) Initial legal owner or principal
customer. A deviation between the initial
legal owner or principal user of the
project named in the notice and
approval and the actual initial legal
owner or principal user of the project is
an insubstantial deviation if such
parties are related parties on the issue
date of the issue.

(iii) Supplemental public approval to
cure certain substantial deviations in
public approval information. A
substantial deviation between the stated
use or amount of proceeds of an issue
included in the public approval
information and the actual use or
amount of the proceeds of the issue does
not cause that issue to fail to meet the
public approval requirement if all of the
following requirements are met:

(A) Original public approval and
reasonable expectations. The issuer met
the requirements for a public approval
in paragraph (b) of this section. In
addition, on the issue date of the issue,
the issuer reasonably expected there
would be no substantial deviations
between the stated use or amount of
proceeds of an issue included in the
public approval information and the
actual use or amount of proceeds of the
issue.

(B) Unexpected events or unforeseen
changes in circumstances. As a result of
unexpected events or unforeseen
changes in circumstances that occur
after the issue date of the issue, the
issuer determines to use proceeds of the
issue in a manner or amount not
provided in a public approval.

(C) Supplemental public approval.
Before using proceeds of the bonds in a
manner or amount not provided in a
public approval, the issuer obtains a
supplemental public approval for those
bonds that meets the public approval
requirement in paragraph (b) of this
section. This supplemental public
approval requirement applies by
treating those bonds as if they were
reissued for purposes of section 147(f).

(7) Certain timing requirements.
Public approval of an issue is timely
only if the issuer obtains the public
approval within one year before the
issue date of the issue. Public approval of a
plan of financing is timely only if the
issuer obtains public approval for the
plan of financing within one year
before the issue date of the first issue
issued under the plan of financing and
the issuer issues all issues under the
plan of financing within three years
after the issue date of such first issue.

(g) Definitions. The definitions in this
paragraph (g) apply for purposes of this
section. In addition, the general
definitions in §1.150–1 apply for
purposes of this section.

(1) Geographic jurisdiction means the
area encompassed by the boundaries
prescribed by State or local law for a
governmental unit or, if there are no
such boundaries, the area in which a
unit may exercise such sovereign
powers that make that unit a
governmental unit for purposes of
§1.103–1 and this section.

(2) Governmental unit has the
meaning of "State or local governmental
unit" as defined in §1.103–1. Thus, a
governmental unit is a State, territory,
possession of the United States, the
District of Columbia, or any political
subdivision thereof.

(3) Host approval is defined in
paragraph (b)(2) of this section.

(4) Issuer approval is defined in
paragraph (b)(2) of this section.

(5) Mortgage revenue bonds mean
qualified mortgage bonds as defined in
section 143(a), qualified veterans'
mortgage bonds as defined in section
143(b), or refunding bonds issued to
finance mortgages of owner-occupied
residences pursuant to applicable law in
effect prior to enactment of section
143(a) or section 143(b).

(6) Proceeds means "proceeds" as
defined in §1.141–1(b), except that it
does not include disposition proceeds.
§ 51.103-2 [Removed]
Par. 4. Section 51.103-2 is removed.

Kirsten Wielobob,
Deputy Commissioner for Services and Enforcement

Approved: November 1, 2018.
David J. Kautter,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2018–28371 Filed 12–28–18; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard
33 CFR Part 165
[Docket Number USCG–2018–1078]
RIN 1625–AA00

Safety Zone: Marina Del Rey Fireworks Event; Marina Del Rey, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary safety zone in Marina Del Rey Harbor around the fireworks launch site located at the south jetty. This temporary safety zone is necessary to provide for the safety of the waterway users by keeping them clear of potentially harmful debris within the fall out zone during the fireworks displays scheduled to take place within Marina Del Rey harbor on December 31, 2018 and January 1, 2019. Entry of persons or vessels into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP), Los Angeles—Long Beach, or her designated representative.

DATES: This rule is effective from 12:01 a.m. on December 31, 2018, until 1:01 a.m. on January 1, 2019. This rule will be enforced during the duration of the fireworks displays occurring within the effective period, which will be broadcasted via local Broadcast Notice to Mariners.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to http:// www.regulations.gov, type USCG–2018–1078 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Waterways Management, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 521–3860, email D11-SMB-SECTORLAB-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CTR Code of Federal Regulations
DHS Department of Homeland Security
E.D. Executive order
FR Federal Register
LINR Light List Number
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Publishing an NPRM would be impracticable in this case due to having received initial notice of the event on December 3, 2018. We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register, the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable due to the date of the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority of 33 U.S.C. 1223. The COTP, Los Angeles—Long Beach, has determined that potential hazards associated with navigation safety that arise because the fireworks display creates potential for hazards for any person or vessel within a 500-foot radius of the fireworks launch site. Potential hazards include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This temporary safety zone is necessary to ensure the safety of, and reduce the risk to, the public, and mariners, in Marina Del Rey harbor.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from December 31, 2018 to January 1, 2019, encompassing all navigable waters from the surface to the sea floor within a 500-foot radius.
DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8038-CP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds.

DATES: Written comments should be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION DOCUMENT IN THE FEDERAL REGISTER] to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317-6009, at Internal Revenue Service, room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at Lanita.VanDyke@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Return for Credit Payments to Issuers of Qualified
Bonds.

OMB Number: 1545-2142.

Form Number: Form 8038-CP.

Abstract: Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds, was developed to carry out the provisions of the American Recovery and Reinvestment Act of 2009. It provides State and local governments with the option of issuing a tax credit bond instead of a tax-exempt governmental obligation bond. The bill gives state and local governments the option to receive a direct payment from the Federal government equal to a subsidy that would have been received through the Federal tax credit for bonds.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 12 hours 20 minutes.

Estimated Total Annual Burden Hours: 246,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be
retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2019

Laurie Brimmer,
Senior Tax Analyst.
[FR Doc. 2019-00731 Filed: 1/31/2019 8:45 am; Publication Date: 2/1/2019]
DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9854]

RIN 1545-BO77

Arbitrage Investment Restrictions on Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the arbitrage investment restrictions under section 148 of the Internal Revenue Code (Code) applicable to tax-exempt bonds and other tax-advantaged bonds issued by State and local governments. The final regulations clarify existing regulations regarding the definition of "investment-type property" by expressly providing an exception for investment in capital projects that are used in furtherance of the public purposes of the bonds. The final regulations affect State and local governmental issuers of these bonds and potential investors in capital projects financed with these bonds.

DATES: Effective Date: These final regulations are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Applicability Date: For the date of applicability, see §1.148-11(n).

FOR FURTHER INFORMATION CONTACT: Lewis Bell at (202) 317-6980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:
Background

This document contains amendments to 26 CFR part 1 under section 148 of the Code. For interest on State or local bonds to be excluded from the gross income of the bondholder under section 103, the bonds must satisfy various eligibility requirements, including a requirement that the bonds not be arbitrage bonds as defined in section 148. Section 148(a) generally defines an “arbitrage bond” as any bond issued as part of an issue any portion of the proceeds of which are reasonably expected to be used or are intentionally used to acquire “higher yielding investments” or to replace funds so used. Section 148(b)(1) defines the term “higher yielding investments” as any “investment property” that produces a yield over the term of the issue that is materially higher than the yield on the issue. Section 148(b)(2) defines the term “investment property” to include any security (within the meaning of section 165(g)(2)(A) or (B)), any obligation, any annuity contract, certain residential rental property, and any “investment-type property.” Section 1.148-1(e)(1) of the Income Tax Regulations defines “investment-type property” to include any property (other than securities, obligations, annuity contracts, and covered residential rental property for family units under section 148(b)(2)(A), (B), (C), and (E)) “that is held principally as a passive vehicle for the production of income.” Section 1.148-1(e)(1) provides that, for this purpose, the production of income includes any benefit based on the time value of money.

Institutional investors have suggested clarification of the scope of the regulatory definition of investment-type property under §1.148-1(e)(1) to ensure that the definition does not impede greater investment in public infrastructure.
The legislative history to the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085, indicates that Congress intended to limit the scope of the arbitrage restriction on investment-type property so that it did not extend to investments in capital projects in furtherance of the public purposes of the bonds. In this regard, the House Report to the Tax Reform Act of 1986 included the following statement about the intended scope of the definition of investment-type property: "The restriction would not apply, however, to real or tangible personal property acquired with bond proceeds for reasons other than investment (e.g., courthouse facilities financed with bond proceeds)." H.R. Rep. No. 99-426, at 552 (1985), 1986-3 (vol. 2) C.B. 457; see also S. Rep. No. 99-313, at 844 (1986), 1986-3 (vol. 3) C.B. 682 (containing a statement substantially identical to that in the House report); H.R. Rep. No. 99-841, at II-747 (1986) (Conf. Rep.), 1986-3 (vol. 4) C.B. 608 (stating that the conference agreement follows the House bill and the Senate amendment on this restriction).

To clarify the scope of the investment-type property definition consistent with Congressional intent reflected in the legislative history, in a notice of proposed rulemaking published in the Federal Register (83 FR 27302; REG-106977-18) on June 12, 2018 (the Proposed Regulations), the Department of the Treasury (Treasury Department) and the IRS proposed an exception to the definition of investment-type property for certain capital projects that further the public purposes for which the tax-exempt bonds were issued.

The Treasury Department and the IRS solicited requests for a public hearing and written comments on the Proposed Regulations. No public hearing was held because no request for a hearing was received. The Treasury Department and the IRS received
four public comments favoring finalization of the Proposed Regulations to allow greater
capital investment in public infrastructure and did not receive any unfavorable public
comments. Accordingly, the Treasury Department and the IRS adopt the Proposed
Regulations, without substantive change, as final regulations by this Treasury Decision.

Explanation of Provisions

1. Section 1.148-1(e)(4): Exception to Investment-Type Property Definition for Certain
   Capital Projects

   Section 1.148-1(e)(4) of the Final Regulations provides that investment-type
   property does not include real property or tangible personal property (for example, land,
   buildings, and equipment) that is used in furtherance of the public purposes for which
   the tax-exempt bonds are issued. For example, investment-type property does not
   include a courthouse financed with governmental bonds or an eligible exempt facility
   under section 142, such as a public road, financed with private activity bonds.

2. Applicability Dates and Reliance

   The amendments to the definition of investment-type property in the final
   regulations apply to bonds sold on or after [INSERT DATE 90 DAYS AFTER DATE OF
   PUBLICATION IN THE FEDERAL REGISTER]. Issuers may apply the provisions of
   the final regulations to bonds that are sold before [INSERT DATE 90 DAYS AFTER
   DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order
12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the
Treasury Department and the Office of Management and Budget regarding review of tax
regulations. Because this regulation does not impose a collection of information on
small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal authors of these regulations are Lewis Bell and Spence Hanemann of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.148-0(c) is amended by adding entries for §§1.148-1(e)(4) and 1.148-11(n) to read as follows:

§1.148-0 Scope and table of contents.

* * * * *

(c) * * *

§1.148-1 Definitions and elections.

* * * * *
(e) Exception for certain capital projects.

§1.148-11 Effective/applicability dates.

(n) Investment-type property.

Par. 3. Section 1.148-1 is amended by:

1. Revising the first sentence of paragraph (e)(1).

2. Adding paragraph (e)(4).

The revision and addition read as follows:

§1.148-1 Definitions and elections.

(e) Investment-type property—(1) In general. Except as otherwise provided in this paragraph (e), investment-type property includes any property, other than property described in section 148(b)(2)(A), (B), (C), or (E), that is held principally as a passive vehicle for the production of income. * * *

(4) Exception for certain capital projects. Investment-type property does not include real property or tangible personal property (for example, land, buildings, and equipment) that is used in furtherance of the public purposes for which the tax-exempt bonds are issued. For example, investment-type property does not include a courthouse financed with governmental bonds or an eligible exempt facility under section 142, such as a public road, financed with private activity bonds.

* * *
Par. 4. Section 1.148-11 is amended by adding paragraph (n) to read as follows:

§1.148-11 Effective/applicability dates.

* * * * *

(n) Investment-type property. Section 1.148-1(e)(1) and (4) apply to bonds sold on or after [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. An issuer may apply the provisions of §1.148-1(e)(1) and (4) to bonds sold before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: November 16, 2018.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

Editorial Note: This document was received for publication by the Office of the Federal Register on April 3, 2019.

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Internal Revenue Service

Number: 201910020
Release Date: 3/8/2019
Index Number: 142.04-00, 9100.00-00;

Department of the Treasury
Washington, DC 20224
Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
ID No.
Telephone Number:

Refer Reply To:
CC: FIP:B05
PLR-131418-18
Date:
November 21, 2018

LEGEND:

Issuer  =

County  =

Bonds  =

Borrower  =

Date 1  =

Date 2  =

Dear :

This is in response to your request for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to elect the use of the 20-50 test as described in § 142(d)(1)(A) of the Internal Revenue Code (the Code).

Facts and Representations

Issuer is authorized to issue debt to improve the welfare of the people living in County. Issuer issued the Bonds on Date 1 to finance a qualified residential rental project (the "Project") within the meaning of § 142(d)(1). Borrower, the conduit borrower of the Bond proceeds, expects to place Project into service on or about Date 2.
Borrower covenanted in the Bond documents to operate Project as a qualified residential rental project under § 142(d)(1). To be qualified under that section the Project must at all times during the qualified project period meet the requirements of either § 142(d)(1)(A) (the 20-50 test) or § 142(d)(1)(B) (the 40-60 test).

Throughout the process of planning for, designing, and obtaining financing for the Project, Issuer and Borrower intended that Project would proceed under the 20-50 test as defined in § 142(d)(1)(A). Thus, documents prepared by or at the direction of Borrower such as a feasibility study, a current and proposed rents worksheet, and a agreement between Borrower and the dissemination agent, reference the 20-50 test. Certain documents prepared by or at the direction of the Bond underwriter, including the Bond purchase agreement and the Bonds preliminary limited offering memorandum, also reference the 20-50 test. Finally, certain documents prepared by or on behalf of Issuer including the Project lease agreement also reference the 20-50 test.

However, during the course of document preparation by Bond counsel certain Bond documents inadvertently reference the 40-60 test under § 142(d)(1)(B) rather than the 20-50 test under § 142(d)(1)(A). These documents include the final limited offering memorandum, the regulatory agreement, the tax certificate, and Form 8038 filed with the IRS.

The inclusion of the 20-50 test in certain Bond documents and the 40-60 test in other Bond documents was the result of parties focusing on different aspects of the transaction and an unintentional failure by certain parties to communicate fully with one another.

Prior to lease-up of Project, Borrower discovered that the regulatory agreement referenced the wrong test and promptly communicated the discrepancy to Bond counsel. Bond counsel immediately identified the discrepancy in the other Bond documents as noted above, and prepared amendments to the regulatory agreement, the tax certificate, and Form 8038 reflecting the 20-50 election. Subsequently, this ruling request was submitted to the IRS before the Project was placed in service.

**Law and Analysis**

Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond unless it is a qualified bond. Section 141(e) provides that an exempt facility bond is a qualified bond. Section 142(e)(7) provides that the term exempt facility bond includes any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a qualified residential rental project.
Section 142(d)(1) defines a qualified residential rental project as a project for residential rental property that, at all times during the qualified project period meets the requirements of either subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project. The project meets the requirements of § 142(d)(1)(A) if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

The project meets the requirements of § 142(d)(1)(B) if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income.

Section 301.9100-7T(g) of the Temporary Procedure and Administration Regulations provides, in part, that the election under § 142(d)(1) must be made in the bond indenture or a related document on or before the date of issue. Under § 301.9100-7T(a)(4)(i), the election is irrevocable.

Section 301.9100-1 of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements for automatic extensions in § 301.9100-2, such as this request, must be made under the rules of § 301.9100-3. Pursuant to § 301.9100-3(a), requests for relief will be granted if the taxpayer provides evidence establishing to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requested relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the IRS. Section 301.9100-3(b)(3)(iii) provides, however, that the taxpayer has not acted in good faith if it used hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability than the taxpayer would have had if the election had been timely (taking into account the time value of money).
Based on the facts as recited above, election of the 40-60 test as reflected in certain bond documents prepared by Bond counsel, including Form 8038 filed with the IRS was inadvertent. Although other bond documents prepared by Issuer and Borrower prior to those prepared by Bond Counsel accurately reflect the Issuer and Borrower's intent to elect the 20-50 test, we conclude that the ambiguity created by Bond counsel's inadvertent reference to the 40-60 test in certain documents caused an election not to have been properly made.

We note that (1) the inadvertent reference was discovered before the property was placed in service (and before discovery by IRS) and (2) if we grant the relief requested by Issuer, neither the Bond holders nor the Issuer will have a lower tax liability than if the election had been properly and timely made.

Based on all of the facts and circumstances, we conclude the Issuer acted promptly and in good faith upon discovery of the mistake and that the request for relief is not based on Issuer's hindsight. We also conclude that the interests of the government will not be prejudiced if we grant the relief requested by Issuer. Thus, we permit the Issuer, within a reasonable time after the date of this letter ruling, to make a proper election under § 301.9100-7T to have the 20-50 test as described in § 142(d)(1)(B) apply to the Project.

Conclusion

Issuer is granted an extension of time of 45 days from the date of this letter ruling to make a proper election in accordance with § 301.9100-7T(g), of the 20-50 test described in § 142(d)(1)(A).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.
The ruling contained in this letter is based upon information and representations submitted by Issuer and accompanied by penalty of perjury statements executed by the appropriate parties. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Assistant Chief Counsel
(Financial Institutions and Products)

/s/

By:__________________________

Timothy L. Jones
Senior Counsel, Branch 5
Public Comment Invited on Recommendations for 2019-2020 Priority Guidance Plan

Notice 2019-30

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (Service) invite public comment on recommendations for items that should be included on the 2019-2020 Priority Guidance Plan.

The Treasury Department’s Office of Tax Policy and the Service use the Priority Guidance Plan each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The 2019-2020 Priority Guidance Plan will identify guidance projects that the Treasury Department and the Service intend to actively work on as priorities during the period from July 1, 2019, through June 30, 2020.

The Treasury Department and the Service recognize the importance of public input in formulating a Priority Guidance Plan that focuses resources on guidance items that are most important to taxpayers and tax administration. Published guidance plays an important role in increasing voluntary compliance by helping to clarify ambiguous areas of the tax law. The published guidance process is most successful if the Treasury Department and the Service have the benefit of the experience and knowledge of taxpayers and practitioners who must apply the rules implementing the tax laws.

On December 22, 2017, P.L. 115-97, “An Act to provide for the reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year
2018, commonly referred to as the Tax Cuts and Jobs Act (TCJA), was enacted. Since that time, the Treasury Department and the Service have focused their efforts on guidance projects necessary to implement the TCJA and published 111 items, including 30 regularly scheduled items, during the first two quarters of the 2018-2019 plan year.

The Treasury Department and the Service expect to continue to prioritize guidance implementing the TCJA during the 2019-2020 plan year and that the plan will reflect this priority. The Treasury Department and the Service expect that, even though many important projects not related to the TCJA were published during the 2018-2019 plan year, a number of other non-TCJA guidance projects on the 2018-2019 Priority Guidance Plan will not be completed by June 30, 2019. These projects may be carried over to the 2019-2020 Priority Guidance Plan. Due to resource limitations, the Treasury Department and the Service also expect that not all of the uncompleted projects will be carried over to the 2019-2020 Priority Guidance Plan, and only a limited number of new non-TCJA guidance projects will be added to the plan.

In reviewing recommendations and selecting additional projects for inclusion on the 2019-2020 Priority Guidance Plan, the Treasury Department and the Service will consider the following:

1. Whether the recommended guidance resolves significant issues relevant to many taxpayers;
2. Whether the recommended guidance reduces controversy and lessens the burden on taxpayers or the Service;
3. Whether the recommendation involves existing regulations or other guidance that is outdated, unnecessary, ineffective, insufficient, or unnecessarily
burdensome and that should be modified, streamlined, expanded, replaced, or withdrawn;

4. Whether the recommended guidance would be in accordance with Executive Order 13771 (82 FR 9339), Executive Order 13777 (82 FR 12285), Executive Order 13789 (82 FR 19317), or other executive orders.

5. Whether the recommended guidance promotes sound tax administration;

6. Whether the Service can administer the recommended guidance on a uniform basis; and

7. Whether the recommended guidance can be drafted in a manner that will enable taxpayers to easily understand and apply the guidance.

Please submit recommendations by Friday, June 7, 2019, for possible inclusion on the original 2019-2020 Priority Guidance Plan. Taxpayers may, however, submit recommendations for guidance at any time during the year. The Treasury Department and the Service will update the 2019-2020 Priority Guidance Plan periodically to reflect additional guidance that the Treasury Department and the Service intend to publish during the plan year. The periodic updates allow the Treasury Department and the Service to respond in a timely manner to the need for additional guidance that may arise during the plan year.

Taxpayers are not required to submit recommendations for guidance in any particular format. Taxpayers should, however, briefly describe the recommended guidance and explain the need for the guidance. In addition, taxpayers may include an analysis of how the issue should be resolved. For recommendations to modify, streamline, or withdraw existing regulations or other guidance, taxpayers should explain
how the changes would reduce taxpayer cost and/or burden or benefit tax administration. It would be helpful if taxpayers suggesting more than one guidance project prioritize the projects by order of importance. If a large number of projects are being suggested, it would be helpful if the projects were grouped by subject matter and then in terms of high, medium, or low priority. Requests for guidance in the form of petitions for rulemaking will be considered with other recommendations for guidance in accordance with the considerations described in this notice.

Taxpayers may submit comments electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2019-0019 in the search field on the regulations.gov homepage to find this notice and submit comments).

Alternatively, taxpayers may mail comments to:

Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

All recommendations for guidance submitted by the public in response to this notice will be available for public inspection and copying in their entirety. For further information regarding this notice, contact Emily M. Lesniak of the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317-3400 (not a toll-free call).