

the point where the Kankakee River intersects State Highway Fifty-Three (53), thence northeasterly to the point where this highway intersects Interstate Highway Eighty (80), thence easterly to the point where this highway intersects the Cook County-Will County Line, thence in a general easterly and southerly direction along the northern and eastern limits of Will County, Illinois, to the point where the Will County-Cook County Line intersects the Illinois-Indiana State Line, thence northerly along the Illinois-Indiana State Line to the point near Dyer, Indiana, where U.S. Route Thirty (30) intersects this Line, thence easterly along U.S. Route Thirty (30) to the point where this highway and the Indiana State Highway Forty-Nine (49) intersect, thence in a northerly direction along Indiana State Highway Forty-Nine (49) to a place where this highway meets Lake Michigan.

Authority

This change is being made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

The Regulatory Flexibility Act and Executive Order 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. Thus, although a notice was issued requesting public comment on this subject matter, because this document relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Office of Management and Budget has determined this rule to be non-significant under Executive Order 12866.

Delegations of Authority: Signature of Customs and Border Protection Regulations

The signing authority for this document falls under § 0.2(a), CBP Regulations (19 CFR 0.2(a)) because this port extension is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, the final rule may be signed by the Secretary of Homeland Security (or his or her delegate).

Drafting Information

The principal author of this document was Christopher W. Pappas, Regulations

Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government Agencies).

Amendments to the Regulations

■ For the reasons set forth above, part 101, CBP Regulations (19 CFR 101), is amended as set forth below.

PART 101—GENERAL PROVISIONS

■ 1. The general authority citation for part 101 and specific authority provision for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

■ 2. In the list of ports in § 101.3(b)(1), under the state of Illinois, the "Limits of port" column adjacent to "Chicago" in the "ports of entry" column is amended by removing the citation "T.D. 71-121" and by adding in its place "CBP Dec. 04-24".

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Tom Ridge,

Secretary, Department of Homeland Security.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9150]

RIN 1545-BC40

Remedial Actions Applicable To Tax-Exempt Bonds Issued by State and Local Governments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the exempt facility bond rules applicable to tax-exempt bonds issued by state and local governments. The regulations affect issuers of tax-

exempt bonds and amend provisions in the current regulations permitting remedial actions for tax-exempt bonds issued by state and local governments.

DATES: *Effective Date:* These regulations are effective August 13, 2004.

Applicability Date: For dates of applicability, see § 1.141-16(c) and (d) of these regulations.

FOR FURTHER INFORMATION CONTACT:

Vicky Tsilas, (202) 622-3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 under sections 141 and 142 of the Internal Revenue Code by amending rules pertaining to remedial actions (the final regulations). On July 21, 2003, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG-132483-03) (68 FR 43059) (the proposed regulations). The proposed regulations would amend (1) the definition of nonqualified bonds in § 1.141-12, (2) the rules in §§ 1.141-12 and 1.142-2, pertaining to the allocation of nonqualified bonds, and (3) the effective date provisions under §§ 1.141-15(e) and 1.141-16(c). A public hearing was scheduled for November 4, 2003. The public hearing was cancelled because no requests to speak were received. Written comments on the proposed regulations were received. After consideration of the written comments, the proposed regulations under §§ 1.141-16 and 1.142-2 are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

A. Proposed Regulations

The proposed regulations propose two changes to the remedial action rules contained in §§ 1.141-12 and 1.142-2. First, the proposed regulations would change the definition of nonqualified bonds under § 1.141-12 to provide that the nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not satisfy the private business use test or private loan financing test, as applicable. For this purpose, the proposed regulations provide that the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the deliberate action.

Second, the proposed regulations would amend the provisions of § 1.141-12 (relating to redemption or defeasance) and § 1.142-2 relating to allocations of nonqualified bonds.

Under the proposed regulations, allocations of nonqualified bonds must be made on a pro rata basis, except that an issuer may treat any bonds of an issue as the nonqualified bonds so long as (i) the remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer, is not greater than (ii) the remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the determination date.

The proposed regulations also would amend §§ 1.141–15(e) and 1.141–16(c) to provide that for bonds issued before May 16, 1997, issuers may apply §§ 1.141–12 and 1.142–2 without regard to the 10½ year limitation on defeasances contained in those regulations.

B. Final Regulations

Public comments were received regarding the proposed regulations. These comments request that the amount of nonqualified bonds be determined in a manner consistent with the general measurement rules under § 1.141–3(g). Because of the interrelationship between the remedial action provisions of § 1.141–12 and the allocation and accounting rules of § 1.141–6 (which are currently reserved), the proposed regulations under §§ 1.141–12 and 1.141–15 are not being finalized at this time. It is anticipated that these proposed regulations will be finalized in connection with the provision of the allocation and accounting rules.

Commentators agreed with the proposed change that allows any bonds of an issue to be treated as the nonqualified bonds, provided that the redemption or defeasance does not have the effect of extending the weighted average maturity (WAM) of the issue. However, the commentators stated that under the bond indentures for certain fixed rate bonds, the redemption or defeasance of bonds with the longest maturities in an issue could result in an extension of the WAM of the issue. Under some bond indentures, optional redemptions of a portion of a term bond must be used first to reduce the earliest mandatory sinking fund payments on the bond. In this case, the redemption or defeasance of the longest bonds could result in an extension of the WAM. Commentators indicated that requiring

an issuer to use the pro rata allocation method in these circumstances is inappropriate and recommended that the regulations be revised to permit the longer bonds to be treated as the nonqualified bonds, which is permitted under the existing regulations. The IRS and Treasury Department agree that additional flexibility should be provided for outstanding bonds with bond indentures that prevent compliance with the WAM rule, but believe that extensions of the WAM should not be permitted on a prospective basis. As a result, the final regulations provide that for purposes of § 1.142–2(e)(2), in addition to the allocation methods permitted in § 1.142–2(e)(2), an issuer may treat bonds with the longest maturities (determined on a bond-by-bond basis) as the nonqualified bonds, but only with respect to failures to properly use proceeds that occur on or after May 14, 2004 with respect to bonds sold before August 13, 2004.

Other comments were received that are beyond the scope of this project. The IRS and Treasury Department continue to consider these comments.

Effective Dates

The final regulations apply to failures to properly use proceeds that occur on or after August 13, 2004 and may be applied by issuers to failures to properly use proceeds that occur on or after May 14, 2004, provided that the bonds are subject to § 1.142–2. The final regulations that amend § 1.141–16(c) apply to bonds issued before May 16, 1997, that are subject to § 1.142–2, for purposes of failures to properly use proceeds that occur on or after April 21, 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the rule does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Drafting Information

The principal authors of these regulations are Rebecca L. Harrigal and Vicky Tsilas, Office of Associate Chief Counsel (Tax-exempt and Government Entities), IRS. However, other personnel from the IRS and Treasury Department 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 1.141–0 is amended by adding an entry to the table for § 1.141–16(d) to read as follows:

§ 1.141–0 Table of contents.

* * * * *

§ 1.141–16 Effective dates for qualified private activity bond provisions.

* * * * *

(d) Certain remedial actions.

(1) General rule.

(2) Special rule for allocations of nonqualified bonds.

■ **Par. 3.** Section 1.141–16 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 1.141–16 Effective dates for qualified private activity bond provisions.

* * * * *

(c) *Permissive application.* The regulations designated in paragraph (a) of this section may be applied by issuers in whole, but not in part, to bonds outstanding on the effective date. For this purpose, issuers may apply § 1.142–2 without regard to paragraph (c)(3) thereof to failures to properly use proceeds that occur on or after April 21, 2003.

(d) *Certain remedial actions—*(1) *General rule.* The provisions of § 1.142–2(e) apply to failures to properly use proceeds that occur on or after August 13, 2004 and may be applied by issuers to failures to properly use proceeds that occur on or after May 14, 2004, provided that the bonds are subject to § 1.142–2.

(2) *Special rule for allocations of nonqualified bonds.* For purposes of § 1.142–2(e)(2), in addition to the allocation methods permitted in § 1.142–2(e)(2), an issuer may treat bonds with the longest maturities (determined on a bond-by-bond basis) as the nonqualified bonds, but only with respect to failures to properly use proceeds that occur on or after May 14, 2004, with respect to bonds sold before August 13, 2004.

■ **Par. 4.** Section 1.142–0 is amended by revising the entry to the table for § 1.142–

2 and adding paragraphs (e)(1) and (2) to read as follows:

§ 1.142-0 Table of contents.

* * * * *

§ 1.142-2 Remedial actions.

* * * * *

(e) * * *

(1) Amount of nonqualified bonds.

(2) Allocation of nonqualified bonds.

* * * * *

■ **Par. 5.** Section 1.142-2 is amended by revising paragraph (e) to read as follows:

§ 1.142-2 Remedial actions.

* * * * *

(e) *Nonqualified bonds*—(1) *Amount of nonqualified bonds.* For purposes of this section, the nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the failure to properly use the proceeds occurs, at least 95 percent of the net proceeds of the remaining bonds would be used to provide an exempt facility. If no proceeds have been spent to provide an exempt facility, all of the outstanding bonds are nonqualified bonds.

(2) *Allocation of nonqualified bonds.* Allocations of nonqualified bonds must be made on a pro rata basis, except that an issuer may treat any bonds of an issue as the nonqualified bonds so long as—

(i) The remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer to meet the requirements of paragraph (c) of this section, is not greater than

(ii) The remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the determination date.

Nancy Jardini,

Acting Deputy Commissioner of Internal Revenue.

Approved: July 18, 2004.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9151]

RIN 1545-BD26

Additional Rules for Exchanges of Personal Property Under Section 1031(a)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations replacing the use of the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS) for determining what properties are of a like class for purposes of section 1031 of the Internal Revenue Code (Code). The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register**. The final regulations consist of technical revisions to reflect the issuance of the temporary regulations.

DATES: *Effective Date:* These final and temporary regulations are effective August 12, 2004.

Applicability Date: For date of applicability, see § 1.1031(a)-2T(d).

FOR FURTHER INFORMATION CONTACT: J. Peter Baumgarten, (202) 622-4920 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 1031(a) relating to the exchange of items of personal property that are within the same product class. Section 1031(a)(1) generally provides that no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of like kind to be held either for productive use in a trade or business or for investment. Thus, for a transaction to qualify as an exchange under section 1031, the transaction must constitute an exchange, the property relinquished and the property received in the exchange must be held for use in a trade or business or for investment, and the exchanged properties must be of like kind.

Section 1.1031(a)-2(a) provides that personal properties of a like class are to

be considered of like kind for purposes of section 1031. Under § 1.1031(a)-2(b), depreciable tangible personal property is of a like class to other depreciable tangible personal property if the exchanged properties are either within the same *general asset class* or within the same *product class*. The general asset classes are derived from Rev. Proc. 87-56 (1987-2 C.B. 674) (dealing with depreciation of personal property). Section 1.1031(a)-2(b)(2) adopts certain of those general asset classes to determine what property is of like kind for purposes of exchanging depreciable tangible personal property under section 1031, and identifies the types of personal property included in each general asset class listed.

Section 1.1031(a)-2(b)(3) provides, in part, that property within a product class consists of depreciable tangible personal property that is listed in a 4-digit product class (or "code") within Division D (pertaining to the manufacturing sector of the economy) of Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manuale* (1987) (SIC Manual). Section 1.1031(a)-2(b)(4) states that the SIC Manual generally is modified every 5 years and that the product classes for section 1031 purposes will follow the modifications of product classes in the SIC Manual.

Effective January 1, 1997, the Department of Commerce discontinued the SIC system set forth in the SIC Manual and adopted NAICS as set forth in Executive Office of the President, Office of Management and Budget, *North American Industry Classification System, United States*, 1997 (NAICS Manual). The NAICS Manual was updated in 2002. Copies of the NAICS Manual may be obtained from the National Technical Information Service of the Department of Commerce and may be accessed, with a more complete listing of manufactured products and manufacturing industries, on the internet at <http://www.census.gov/naics>.

Explanation of Provisions

As a result of the replacement of the SIC system with NAICS, these temporary regulations discontinue the use of SIC codes and adopt Sectors 31 through 33 of NAICS (pertaining to manufacturing) as the system for defining the product classes for purposes of like-kind exchanges of depreciable tangible personal property. Within NAICS, product classes are designated using 6-digit codes rather than the 4-digit codes assigned to product classes under the SIC system. However, properties within the same product class under the 4-digit SIC