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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8967]

RIN 1545-AY88

Definition of Private Business Use

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends the final regulations on the definition of private business use applicable to tax-exempt bonds issued by State and local governments. The amendments provide that certain arrangements do not result in private business use if the term of the use does not exceed 50, 100 or 200 days, as applicable.

DATES: Effective Date: These regulations are effective November 20, 2001.

Applicability Date: For dates of applicability, see §1.141-15.

FOR FURTHER INFORMATION CONTACT: Michael P. Brewer at (202) 622-3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Background**

Section 103(a) of the Internal Revenue Code (Code) provides that, generally, interest on any State or local bond is not included in gross income. However, this exclusion does not apply to any private activity bond that is not a qualified bond.

Under section 141, a bond is a private activity bond if it is issued as part of an issue that meets either the private business use test and the private security or payment test, or the private loan financing test.

The private business use test is met if more than 10 percent of the proceeds of an issue are to be used for any private business use. Section 141(b)(6)(A) defines the term 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, use as a member of the general public is not taken into account.

Section 1.141-3 provides guidance regarding the private business use test. Generally, 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. The existing regulations provide the following three special rules for use by nongovernmental persons under short-term arrangements:

1. Section 1.141-3(c)(3) states that an arrangement is not treated as general public use if the term of the use under the arrangement, including all renewal options, is greater than 180 days.

2. Section 1.141-3(d)(3)(i) provides that certain arrangements are not private business use if the term of the use under the arrangement, including all renewal options, is not longer than 90 days.

3. Section 1.141-3(d)(3)(ii) provides that certain arrangements are not private business use if the term of the use under the arrangement, including all renewal options, is not longer than 30 days.

Section 1.141-3(f) contains examples that illustrate these special rules.

#### **Explanation of Provisions**

Comments have been received requesting that the regulations provide for additional flexibility in structuring short-term arrangements with nongovernmental persons. For example, commentators have requested that the 180-day, 90-day, and 30-day rules of §1.141-3 be changed to accommodate six-month, three-month, and one-month arrangements, respectively (i.e., arrangements with terms of use based on months that exceed 30 days). This Treasury decision adopts this suggested modification by amending §1.141-3(c)(3), (d)(3) and (f) to change all references to 180 days, 90 days, and 30 days to 200 days, 100 days, and 50 days, respectively.

#### **Effective Dates**

The changes made by this Treasury decision apply to any bond sold on or after **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**. The changes made by this Treasury decision may be applied by issuers to any bond outstanding on **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]** to which §1.141-3 applies.

#### **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) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal authors of these final regulations are Bruce M. Serchuk and Michael P. Brewer, Office of Chief Counsel (TE/GE), 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 \* \* \*

**§1.141-3 [Amended]**

Par. 2. In the list below, for each paragraph indicated in the left column, remove the words indicated in the middle column from wherever they appear in the paragraph, and add the words indicated in the right column:

| Paragraph  | Remove   | Add      |
|--|----------|----------|
| 1.141-3(c)(3), first sentence of introductory text       | 180 days | 200 days |
| 1.141-3(d)(3)(i)(A)                                      | 90 days  | 100 days |
| 1.141-3(d)(3)(ii)(A)                                     | 30 days  | 50 days  |
| 1.141-3(f)<br><u>Example 10</u> , penultimate sentence   | 180 days | 200 days |
| 1.141-3(f)<br><u>Example 12</u> , third sentence (twice) | 180 days | 200 days |
| 1.141-3(f)<br><u>Example 13</u> , fifth sentence         | 180 days | 200 days |
| 1.141-3(f)<br><u>Example 15</u> , fourth sentence        | 90 days  | 100 days |
| 1.141-3(f)<br><u>Example 16(i)</u> , last sentence       | 30 days  | 50 days  |

Par. 3. Section 1.141-15 is amended as follows:

1. Paragraph (b) is redesignated (b)(1).
2. A paragraph heading for newly designated paragraph (b)(1) is added.

3. Paragraph (b)(2) is added.

The additions read as follows:

§1.141-15 Effective dates.

\* \* \* \* \*

(b) Effective Dates-- (1) In general. \* \* \*

(2) Certain short-term arrangements. The provisions of §1.141-3 that refer to arrangements for 200 days, 100 days, or 50 days apply to any bond sold on or after November 20, 2001 and may be applied to any bond outstanding on November 20, 2001 to which §1.141-3 applies.

\* \* \* \* \*

David A. Mader

Assistant Deputy Commissioner of Internal Revenue.

Approved: November 14, 2001

Mark Weinberger

Assistant Secretary of the Treasury.