

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2015-28  
July 13, 2015

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

## INCOME TAX

### **REG-138526-14, page 67.**

These proposed regulations provide a revised definition of issue price for purposes of the arbitrage restrictions under section 148 that apply to tax-exempt bonds under section 103, tax credit bonds under section 54A, and direct pay bonds under section 6431.

## EXEMPT ORGANIZATIONS

### **Announcement 2015-17, page 67.**

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

### **Notice 2015-46, page 64.**

This notice clarifies how a charitable hospital organization may comply with the requirement in § 1.501(r)-4(b)(1)(iii)(F) of the Treasury Regulations that a hospital facility include a list of providers in its financial assistance policy (FAP). This notice affects charitable hospital organizations.

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Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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## Part III. Administrative, Procedural, and Miscellaneous

### Clarifications to the Requirement in the Treasury Regulations Under § 501(r)(4) that a Hospital Facility's Financial Assistance Policy Include a List of Providers

#### Notice 2015-46

##### SECTION 1. PURPOSE

This notice provides clarification with respect to how a charitable hospital organization may comply with the requirement in § 1.501(r)-4(b)(1)(iii)(F) of the Treasury Regulations that a hospital facility include a provider list in its financial assistance policy (FAP). The list must include any providers, other than the hospital facility itself, delivering emergency or other medically necessary care in the hospital facility and specify which providers are and are not covered by the hospital facility's FAP.

##### SECTION 2. BACKGROUND

Section 9007 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), enacted § 501(r) of the Internal Revenue Code, which imposes additional requirements on charitable hospital organizations. On December 29, 2014, the Department of the Treasury ("Treasury Department") and the Internal Revenue Service ("IRS") released final regulations (TD 9708) that contain guidance on the requirements of § 501(r) and the consequences for failing to meet any of these requirements.

Section 501(r)(1) provides that a hospital organization described in § 501(r)(2) will not be treated as described in § 501(c)(3) unless the organization meets the requirements of § 501(r)(3) through (r)(6). Section 501(r)(2)(A) defines a hospital organization as including any organization that operates a facility required by a state to be licensed, registered, or similarly recognized as a hospital. Section 501(r)(2)(B) requires a hospital organization that operates more than one hospital facility to meet the requirements of

§ 501(r) separately with respect to each hospital facility.

Although a hospital organization's tax-exempt status depends on its compliance with the requirements of § 501(r), not all failures to satisfy the requirements of § 501(r) will necessarily result in revocation. A failure to meet the requirements of § 501(r) that is neither willful nor egregious is excused if the hospital facility corrects and discloses the failure in accordance with Rev. Proc. 2015-21 (2015-13 I.R.B. 817). *See* § 1.501(r)-2(c). Additionally, a hospital facility's omission or error relating to the § 501(r) requirements that is minor and either inadvertent or due to reasonable cause will not be considered a failure to meet a requirement of § 501(r) if the hospital facility corrects such omission or error as promptly after discovery as is reasonable given the nature of the omission or error. *See* § 1.501(r)-2(b).

Section 501(r)(4) requires a hospital organization to establish a written FAP. On June 26, 2012, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-130266-11, 77 FR 38148) (2012 proposed regulations) requiring each hospital facility to establish a FAP that applies to all emergency or other medically necessary care provided by the hospital facility. A number of commenters responding to the 2012 proposed regulations noted that patients, including emergency room patients, are commonly seen by private physician groups or other third-party health care providers while in the hospital facility. Many commenters asked for clarification regarding the extent to which a hospital facility's FAP must cover these other providers, such as non-employee providers in private physician groups or hospital-owned practices. Some commenters indicated that the FAP should apply only to the care provided by employees of the hospital facility itself. Other commenters noted that, even though emergency room physicians in some hospital facilities separately bill for emergency medical care provided to patients, the hospital facility's FAP should apply to the care provided by all emergency room physicians. Other commenters requested that the final regulations clearly require the hospital facili-

ty's FAP to cover all providers of emergency or other medically necessary care in a hospital facility (or all services provided in the hospital facility for the treatment of a medical emergency or the provision of other medically necessary care).

Under the final regulations, a hospital facility's FAP must apply to all emergency and medically necessary care provided in the hospital facility only to the extent the care is provided by the hospital facility itself or a substantially-related entity. *See* § 1.501(r)-4(b)(1)(i); § 1.501(r)-1(b)(28) (defining "substantially-related entity" generally as a partnership in which the hospital organization owns a capital or profits interest, or a disregarded entity of which the hospital organization is the sole member or owner, that provides emergency or other medically necessary care in the hospital facility unless the provision of such care constitutes an unrelated trade or business). However, the Treasury Department and the IRS also agreed with commenters that, because patients are typically unaware of the relationships between a hospital facility and the health-care providers working in the hospital facility, it is important for a hospital facility's FAP to clearly disclose which services provided in the hospital facility are covered by the FAP and which are not. Such information may be valuable not only for patients seeking to understand what financial assistance they may qualify for individually, but also for those seeking to understand the health needs of the community and the resources available to meet them. Therefore, in response to comments and in order to provide transparency for patients and communities, the final regulations require a hospital facility's FAP to include a list of providers, other than the hospital facility itself, delivering emergency or other medically necessary care in the hospital facility and specify which providers are covered by the hospital facility's FAP and which are not ("provider list"). *See* § 1.501(r)-4(b)(1)(iii)(F).

Recently, concerns regarding the provider list requirement have been expressed, particularly with respect to large hospital facilities where the number of providers delivering emergency or medi-

cally necessary care can be quite large. Commenters have noted that the provider list may change frequently because physicians move or change aspects of their practice and providers' relationships with a hospital facility may be complicated and subject to change. Commenters have stated that creating a provider list and keeping it up to date will be difficult. However, community advocates have indicated that although providing this information may require some additional effort by hospitals, it is valuable information that is often impossible for patients or community members to obtain otherwise and is necessary in order to evaluate what financial assistance is available.

Additionally, practical questions regarding the provider list have been raised. For example, some commenters have questioned whether the entire provider list must be included in the FAP itself, or whether it could be provided in a separate document, as is allowed for the disclosure of the percentage of gross charges that a hospital facility uses under § 1.501(r)-5(b)(3) to determine the amounts generally billed for any emergency or medically necessary care it provides to an individual who is eligible for assistance under its FAP. Further, some have questioned whether the provider list could specify the emergency or other medically necessary care covered by the FAP by department or by type of service, if all of the providers in the department or of the service are covered by the hospital facility's FAP.

In response to these comments and questions, this notice provides hospital facilities with clarification regarding how a hospital facility may comply with the provider list requirement.<sup>1</sup>

### **SECTION 3. SPECIFICATION OF PROVIDERS AND CARE COVERED BY THE FAP**

*.01 Provider list.* A hospital facility's FAP must include a list of any providers, other than the hospital facility itself, providing emergency or other medically necessary care in the hospital facility that specifies which providers are covered by its FAP and which are not. *See* § 1.501(r)-

4(b)(1)(iii)(F). For purposes of this requirement, a hospital facility may list the names of individual doctors, practice groups, or any other entities that are providing emergency or medically necessary care in the hospital facility by the name used either to contract with the hospital or to bill patients for care provided. For example, if all of the doctors in a practice group that provides emergency or other medically necessary care in the hospital facility are covered by the hospital facility's FAP, the hospital facility may include the name of the practice group, rather than the name of each individual doctor, in its provider list and indicate which services of the practice group are covered by the FAP. Alternatively, a hospital facility may specify providers by reference to a department or a type of service if the reference makes clear which services and providers are covered. For example, if all providers of all services in a department of a hospital facility are covered by the FAP, the hospital facility's FAP may include the department, rather than the specific names of doctors or practice groups, in its provider list and indicate that the services in that department are covered by the FAP. Similarly, if no providers of services in a department of the hospital facility are covered by the FAP, the provider list may include the department and indicate that none of the services provided in the department are covered by the FAP.

*.02 Partial coverage of emergency or other medically necessary care.* If a provider is covered by a hospital facility's FAP in some circumstances but not in others, the hospital facility must describe the circumstances in which the emergency or other medically necessary care delivered by the provider will and will not be covered by the FAP. For example, if the hospital facility has a contract with an outside provider to deliver certain specialty services in the hospital facility's emergency room that are covered by the FAP but other emergency or medically necessary care delivered in the hospital facility by the provider is not covered by the FAP, the hospital facility must describe the circumstances in which the out-

side provider's services will and will not be covered by the FAP.

*.03 Providers covered by policies other than the hospital facility's FAP.* A hospital facility's provider list must indicate whether the services of a particular provider are or are not covered by the hospital facility's FAP but is not required to indicate whether that provider's services are (or may be) covered by another entity's financial aid policy or program.

*.04 Maintaining the provider list in a document separate from the FAP.* A hospital facility may maintain the list of providers in a document separate from the FAP, such as in an appendix, provided that the document includes the date on which it was created or last updated. If a hospital facility maintains its provider list in a document separate from the FAP, the hospital facility's FAP must state that the list of providers is maintained in a document separate from the FAP and explain how members of the public may readily obtain it free of charge, both online and on paper.

### **SECTION 4. UPDATING THE PROVIDER LIST**

Under § 501(r)(4), a hospital organization is required to establish a FAP for each hospital facility it operates. A hospital organization has established a FAP for a hospital facility only if an authorized body of the hospital facility has adopted the policy for the hospital facility and the hospital facility has implemented the policy. *See* § 1.501(r)-4(d)(1). If the only change a hospital facility makes to its FAP is to update the provider list (whether the provider list is in the FAP or in a separate document), the FAP does not need to be adopted by an authorized body of the hospital facility again in order for the FAP to continue to be considered "established."

### **SECTION 5. OMISSIONS AND ERRORS IN THE PROVIDER LIST**

Minor omissions and errors that are either inadvertent or due to reasonable cause are not considered failures to meet a requirement of § 501(r) if they are

<sup>1</sup>The final regulations contain a collection of information that has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)) under control number 1545-0047. This notice clarifies, but makes no material change to, one of these collections of information. Accordingly, this notice has no impact on the estimated annual reporting burden provided in the final regulations.

promptly corrected, and hospital organizations are not required to disclose such omissions or errors. *See* § 1.501(r)-2(b)(1). Omissions or errors in a hospital facility's provider list, including a failure to include a provider in that list or to identify a service covered by the FAP, will be considered minor and either inadvertent or due to reasonable cause if the hospital facility takes reasonable steps to ensure that its list of providers is accurate. A hospital facility that updates its list of providers by adding new or missing infor-

mation, correcting erroneous information, and deleting obsolete information at least quarterly will be considered to have taken reasonable steps to ensure that its list is accurate and will be considered to have corrected any minor omissions or errors in the list for purposes of § 1.501(r)-2(b).

#### **SECTION 6. EFFECTIVE DATE**

This notice is applicable with respect to taxable years beginning after December 29, 2015. *See* § 1.501(r)-7(a).

#### **SECTION 7. DRAFTING INFORMATION**

The principal author of this notice is Stephanie N. Robbins of the Office of Associate Chief Counsel (TEGE). For further information regarding this notice, contact Stephanie N. Robbins at (202) 317-5800 (not a toll-free number).

## Part IV. Items of General Interest

### Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code

#### Announcement 2015–17

##### Table of Contents

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a

listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, con-

tributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on July 13, 2015 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
The Village Academy, Inc.	January 1, 2012	St. Louis, MO
Carman Ministries	January 1, 2010	Tulsa, OK
Childhood Dreams Foundation, Inc.	January 1, 2010	New Haven, CT
King Institute	January 1, 2011	Carrollton, TX
McLaren Health Plan, Inc.	August 1, 2012	Flint, MI
Wilemans Belle Isle Neighborhood	May 1, 2011	Oklahoma City, OK

### Issue Price Definition for Tax-Exempt Bonds

#### REG–138526–14

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Partial withdrawal of notice of proposed rulemaking, notice of proposed rulemaking, and notice of public hearing.

**SUMMARY:** This document partially withdraws the portion of the notice of proposed rulemaking published in the **Federal Register** on September 16, 2013 (78 FR 56842), relating to the definition of issue price for purposes of the arbitrage restrictions under section 148 of the Internal Revenue Code (Code). This document also contains a notice of proposed rulemaking that provides a revised definition of issue price for purposes of the arbitrage restrictions. In addition, this document

provides notice of a public hearing on the proposed regulations in this document. The proposed regulations in this document affect issuers of tax-exempt and other tax-advantaged bonds.

**DATES:** Written or electronic comments must be received by September 22, 2015. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for **October 28, 2015**, at 10:00 a.m., must be received by September 22, 2015.

**ADDRESSES:** Send submissions to: CC: PA:LPD:PR (REG–138526–14), Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to: CC: PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–138526–14), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal

eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG–138526–14). The public hearing will be held at the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

#### FOR FURTHER INFORMATION

**CONTACT:** Concerning the proposed regulations, Lewis Bell at (202) 317-6980; concerning submissions of comments and the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317-6901 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in § 1.148–1 has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number

1545–1347. The collection of information in this proposed regulation is in § 1.148–1(f)(2)(ii), which contains a requirement that the issuer obtain certifications and supporting documentation regarding the underwriter’s sales of the issuer’s bonds. The collection of information in § 1.148–1(f)(2)(ii) is an increase in the total annual burden under control number 1545–1347. The respondents are issuers of tax-exempt bonds that wish to use the alternative method in § 1.148–1(f)(2)(ii).

Estimated total annual recordkeeping burden: 52,276 hours.

Estimated average annual burden hours per respondent: 4 hours.

Estimated number of respondents: 12,546.

Estimated annual frequency of responses: 20,910.

Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE: CAR:MP:T:T:SP, Washington DC 20224. Comments on the collection of information should be received by August 24, 2015.

Comments are sought on whether the proposed collection of information is necessary for the proper performance of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques and other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number

assigned by the Office of Management and Budget.

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 section 6103.

## Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) on the arbitrage investment restrictions under section 148 of the Code. On June 18, 1993, the Department of the Treasury (Treasury Department) and the IRS published comprehensive final regulations in the **Federal Register** (TD 8476, 58 FR 33510) on the arbitrage investment restrictions and related provisions for tax-exempt bonds under sections 103, 148, 149, and 150. Since that time, those final regulations have been amended in certain limited respects (the regulations issued in 1993 and the amendments thereto are collectively referred to as the Existing Regulations).

A notice of proposed rulemaking was published in the **Federal Register** (78 FR 56842; REG–148659–07) on September 16, 2013 (the 2013 Proposed Regulations), which proposes amendments to the Existing Regulations to address market developments, simplify certain provisions, address certain technical issues, and make the regulations more administrable. One significant change in the 2013 Proposed Regulations addresses the definition of issue price. Comments were received, and a public hearing was held on February 5, 2014. After considering the comments and the statements made at the public hearing, the Treasury Department and the IRS have decided to withdraw § 1.148–1(f) of the 2013 Proposed Regulations relating to issue price and to propose new regulations. This document (the Proposed Regulations) contains the re-proposed definition of issue price. The Treasury Department and the IRS will address the remaining provisions contained in the 2013 Proposed Regulations at a later time.

## Explanation of Provisions

For purposes of the arbitrage investment restrictions, section 148(h) provides that yield on an issue is to be determined on the basis of the issue price (within the meaning of sections 1273 and 1274). The reason for using issue price (rather than sales proceeds less the costs of issuance) to determine yield for purposes of section 148(h) is to ensure that issuers bear the costs of issuance, rather than recover these costs through arbitrage profits. See H. Rep. No. 99–426, at 517 (1985). Congress thought that this requirement would encourage issuers to scrutinize costs of issuance more closely and would encourage better targeting of the federal subsidy associated with tax-exempt bonds. *Id.*, at 517–518. The issue price definition under the Existing Regulations generally follows the issue price definition used for computing original issue discount on debt instruments under sections 1273 and 1274, with certain modifications. The definition under the Existing Regulations provides that generally the issue price of bonds that are publicly offered is the first price at which a substantial amount of the bonds is sold to the public. However, the issue price definition in the Existing Regulations defines substantial amount as ten percent and applies a reasonable expectations standard (rather than a standard based on actual sales) for determining the issue price of bonds that are publicly offered. Specifically, the issue price of bonds for which a bona fide public offering is made is determined as of the sale date based on reasonable expectations regarding the initial offering price. The issue prices of bonds with different payment and credit terms are determined separately. Notice 2010–35, published May 10, 2010 (2010–19 IRB 660), provides that the arbitrage definition of issue price also applies to other tax-advantaged bond programs, including Build America Bonds under section 54AA and other Qualified Tax Credit Bonds under section 54A.

The definition of issue price in the 2013 Proposed Regulations differs significantly from that in the Existing Regulations. Consistent with section 148(h), the 2013 Proposed Regulations retain the rule that issue price generally will be deter-

mined under the rules of sections 1273 and 1274. The 2013 Proposed Regulations parallel the language in the existing section 1273 regulations by providing that the issue price of tax-exempt bonds issued for money is the first price at which a substantial amount of the bonds is sold to the public. The 2013 Proposed Regulations provide a safe harbor under which an issuer may treat the first price at which a minimum of 25 percent of the bonds in an issue (with the same credit and payment terms) actually is sold to the public as the issue price, provided that all orders at this price received from the public during the offering period are filled (to the extent that the public orders at such price do not exceed the amount of bonds sold). Thus, the 2013 Proposed Regulations base the determination of issue price on actual sales prices instead of reasonably expected sales at initial public offering prices. The 2013 Proposed Regulations also remove the definition of a “substantial amount” as ten percent.

The 2013 Proposed Regulations define the term “public” to mean any person other than an “underwriter.” The 2013 Proposed Regulations define the term “underwriter” to mean any person that purchases bonds from the issuer for the purpose of effecting the original distribution of the bonds or otherwise participates directly or indirectly in the original distribution. An underwriter includes a lead underwriter and any member of a syndicate that contractually agrees to participate in the underwriting of the bonds for the issuer. A securities dealer (whether or not a member of the issuer’s underwriting syndicate) that purchases bonds (whether or not from the issuer) for the purpose of effecting the original distribution of the bonds is also treated as an underwriter for this purpose. An underwriter generally includes a party related to an underwriter. A person that holds bonds for investment is not an underwriter with respect to those bonds.

A number of comments were received on the 2013 Proposed Regulations issue price definition. In general, the commenters requested the withdrawal of the portion of the 2013 Proposed Regulations relating to the definition or the re-proposal of the definition using the existing reasonable expectations test regarding the initial

public offering price, with certain clarifications. Commenters pointed out that issue price must be determined as of the sale date to provide certainty that the bonds will qualify as tax-exempt and meet state or local requirements for debt issuance. The sale date is the date when the syndicate or sole underwriter in contractual privity with the issuer signs the agreement to buy the bonds from the issuer and when the terms of the bond issue are set. Commenters expressed concern about insufficient sales of bonds preventing a timely determination of issue price on the sale date. The commenters noted that the syndicate or sole underwriter in contractual privity purchases the bonds from the issuer, so the syndicate or sole underwriter, rather than the issuer, will bear the risk of any market fluctuations after the sale date. Because the issuer neither bears this risk nor receives any further proceeds, any later change in price is not a factor that affects the costs of issuance paid by the issuer. In addition, later sales prices could reflect changes in the market, whereas the purpose of using issue price is to preclude recovery of issuance costs through arbitrage profits. See H. Rep. No. 99–426, at 517.

In general, the lower the issue price for the bonds bearing a stated interest rate, the higher the yield. Economically, the issuer should want to receive the highest price for the bonds and pay the lowest yield. This aligns with the purpose of the arbitrage provisions to minimize arbitrage investment benefits and remove incentives to issue more tax-exempt bonds, and thus to limit the federal revenue cost of the tax subsidy for tax-exempt bonds. Many of the commenters stated, however, that the use of actual sales prices likely would result in lower bond offering prices so as to ensure that each issue would meet the 25 percent threshold in the safe harbor in the 2013 Proposed Regulations as of the sale date of the bonds. The commenters pointed to unsold bonds in particular maturities of an overall tax-exempt bond issue that includes a series of bonds with separate maturities and issue prices as the particular impediment to meeting an actual sale requirement as of the sale date. These lower bond prices would reduce proceeds and increase borrowing costs for issuers, increase bond yields for arbitrage

purposes, and increase federal tax subsidies.

In addition, commenters suggested that the definition of underwriter in the 2013 Proposed Regulations was unduly broad and ambiguous. In particular, commenters expressed concern that the 2013 Proposed Regulations effectively required the issuer to obtain price information from dealers that are not in a contractual relationship with the issuer or underwriting syndicate. The commenters also expressed concern that the proposed definition of underwriter necessitated determining a dealer’s intent for buying bonds because whether a dealer was an underwriter depended upon whether the dealer purchased bonds with “the purpose of effecting the original distribution of the bonds.”

In response to the comments received, the Treasury Department and the IRS are re-proposing an amended definition of issue price for tax-exempt bonds. Consistent with section 148(h), the Proposed Regulations retain the rule that issue price generally will be determined under the rules of sections 1273 and 1274. The Proposed Regulations also parallel the language in the existing section 1273 regulations and the Existing Regulations by providing that the issue price of bonds issued for money is the first price at which a substantial amount of the bonds is sold to the public. This rule uses actual sales to determine issue price and is consistent with section 1273. The Proposed Regulations retain the rule in the Existing Regulations that ten percent is a substantial amount.

The Proposed Regulations also retain the rule for tax-exempt bonds that the issue prices of bonds with different payment and credit terms are determined separately. Tax-exempt bond issues often include bonds with different payment and credit terms that generally sell at different prices. In response to commenters’ concerns regarding the need for certainty with respect to the determination of issue price of the issue as of the sale date and that less than a substantial amount of particular bonds included within an issue may be sold by that time, the Proposed Regulations provide an alternative method of determining issue price for bonds a substantial amount of which is not sold pursuant to orders received from the public as of

the sale date. Under this alternative method, an issuer may treat the initial offering price to the public as the issue price, provided certain requirements are met.

In particular, the alternative method requires that the underwriters fill all orders at the initial offering price placed by the public and received by the underwriters on or before the sale date (to the extent the orders do not exceed the amount of bonds to be sold) and do not fill any order received by the underwriters on or before the sale date at a price higher than the initial offering price. Further, the alternative method requires the lead underwriter (or sole underwriter, if applicable) to provide certification with respect to certain matters under the alternative method, including a certification that no underwriter will fill an order received from the public after the sale date and before the issue date at a price higher than the initial offering price, except if the higher price is the result of a market change for those bonds after the sale date (for example, due to a change in interest rates), and that it will provide the issuer with supporting documentation for the matters covered by the certifications.

Documentation of the initial offering price may include a copy of the pricing wire (or equivalent communication). Documentation of bonds for which an underwriter filled an order placed by the public after the sale date and before the issue date at a price higher than the initial offering price includes both pricing information (amounts, prices, and sale dates) and information regarding the corresponding market change, such as proof of the values of a broad-based index of municipal bond interest rates on bonds similar to the type and credit rating of the bonds being sold. The issuer must not know or have reason to know, after exercising due diligence, that the certifications are false.

The Treasury Department and the IRS recognize that, under syndicate agreements among underwriters and MSRB rules, underwriters are free to sell bonds after the bond purchase agreement is signed at a fair and reasonable price different from the initial offering price. The alternative method allows the use of initial offering price as the issue price in circumstances in which bonds are sold after the

sale date and before the issue date at a higher price, provided that the higher price results from a market change for those bonds after the sale date. Based on available data, the Treasury Department and the IRS believe that the frequency of sales by underwriters at higher prices between the sale date and the issue date is limited. Thus, the burden, in effect, of requiring underwriters to maintain initial public offering prices for unsold bonds until the issue date absent justification for higher prices based on market changes should be limited. The Treasury Department and the IRS request comments on other safeguards or alternative approaches to ensure that the prices obtained by underwriters in actual sales of bonds to the public between the sale date and the issue date are consistent with use of initial offering prices to the public as of the sale date as a simplifying assumption for issue price determinations in the alternative method.

The Proposed Regulations define “public” for purposes of determining the issue price of tax-exempt bonds as any person other than an underwriter or a related party to an underwriter. The Proposed Regulations define “underwriter” to include (i) any person that contractually agrees to participate in the initial sale of the bonds to the public by entering into a contract with the issuer or into a contract with a lead underwriter to form an underwriting syndicate and (ii) any person that, on or before the sale date, directly or indirectly enters into a contract or other arrangement to sell the bonds with any of the foregoing (for example, a retail distribution contract between a member of an underwriting syndicate or selling group and another dealer that is not in the syndicate or selling group).

The Proposed Regulations remove as unnecessary a rule in the Existing Regulations expressly stating that the issue price does not change if part of the issue is later sold at a different price. The Treasury Department and the IRS intend no substantive change by the removal.

In accordance with section 6001, the issuer should maintain documentation in its books and records to support its issue price determinations. This documentation includes the specific certifications and documentation required to determine is-

sue price under the alternative method, as well as documentation to support issue price determinations under the general rule. For example, under the general rule, an issuer should include in its books and records any certification from the lead (or sole) underwriter regarding the first price at which a substantial amount of the bonds were sold to the public and reasonable supporting documentation for this price.

### **Proposed Effective/Applicability Date**

The Proposed Regulations are proposed to apply prospectively to bonds that are sold on or after the date that is 90 days after publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. In addition, issuers may rely upon the Proposed Regulations with respect to bonds that are sold on or after June 24, 2015, and before the date that is 90 days after publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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.

It is hereby certified that these Proposed Regulations, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. This certification is based generally on the fact that any effect on small entities by these rules generally flows from section 148 of the Code.

Section 148(h) of the Code requires the yield on an issue of bonds to be determined on the basis of issue price (within the meaning of sections 1273 and 1274). Under section 1273, the issue price is the first price at which a substantial amount of the bonds were sold to the public. Section 1.148-1(f)(2)(ii) of the Proposed Regulations gives effect to the statute by requiring the issuer to obtain certifications and

documentation regarding sales of the bonds from the underwriter of the bonds, which is the party that sells the bonds to the public. This information will be used to support the issue price of the bonds for audit and other purposes. Any economic impact of obtaining this information is minimal because most of the information already is provided to issuers by the underwriters under existing industry practices. Accordingly, these proposed changes do not add to the impact on small entities imposed by the statutory provision. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before these 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 IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments that are submitted by the public will be available for public inspection and copying at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing has been scheduled for October 28, 2015, at 10:00 a.m., in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For more information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by September 22, 2015. Such persons should submit a signed paper original

and eight (8) copies or an electronic copy. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

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

\* \* \* \* \*

### Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.148-1(f) of the notice of proposed rulemaking (REG-148659-07) that was published in the **Federal Register** on September 16, 2013 (78 FR 56842), is withdrawn.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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(f) and 1.148-11(m) to read as follows:

#### § 1.148-0 Scope and table of contents.

\* \* \* \* \*

(c) Table of contents. \* \* \*

#### § 1.148-1 Definitions and elections.

\* \* \* \* \*

(f) Definition of issue price.

- (1) In general.
- (2) Bonds issued for money.
- (3) Definitions.
- (4) Special rules.

\* \* \* \* \*

#### § 1.148-11 Effective/applicability dates.

\* \* \* \* \*

(m) Definition of issue price.

Par. 3. Section 1.148-1 is amended by revising the definition of *issue price* in paragraph (b) and adding paragraph (f) to read as follows:

#### § 1.148-1 Definitions and elections.

\* \* \* \* \*

(b) \* \* \*

*Issue price* means issue price as defined in paragraph (f) of this section.

\* \* \* \* \*

(f) *Definition of issue price*—(1) *In general.* Except as otherwise provided in this paragraph (f), *issue price* is defined in sections 1273 and 1274 and the regulations under those sections.

(2) *Bonds issued for money*—(i) *In general.* The issue price of bonds issued for money is the first price at which a substantial amount of the bonds is sold to the public.

(ii) *Alternative method based on initial offering price.* As an alternative to the general rule in paragraph (f)(2)(i) of this section, if the underwriters have not received orders placed by the public for a substantial amount of tax-exempt bonds on or before the sale date, the issuer may treat the initial offering price to the public as the issue price of the bonds if all of the following requirements are met:

(A) The underwriters fill all orders at the initial offering price placed by the public and received by the underwriters on or before the sale date (to the extent the orders do not exceed the amount of bonds to be sold), and no underwriter fills an order placed by the public and received by the underwriters on or before the sale date at a price higher than the initial offering price.

(B) The issuer obtains from the lead underwriter in the underwriting syndicate or selling group (or, if applicable, the sole underwriter) certification of the following:

(1) The initial offering price;

(2) That the underwriters met the requirements of paragraph (f)(2)(ii)(A) of this section;

(3) That no underwriter will fill an order placed by the public and received after the sale date and before the issue date at a

price higher than the initial offering price, except if the higher price is the result of a market change (such as a decline in interest rates) for those bonds after the sale date; and

(4) That the lead (or sole) underwriter will provide the issuer supporting documentation for the matters covered by the certifications in paragraphs (f)(2)(ii)(B)(1) and (2) of this section and, with regard to paragraph (f)(2)(ii)(B)(3) of this section, either documentation regarding any bonds for which an underwriter filled an order placed by the public and received after the sale date and before the issue date at a price higher than the initial offering price and the corresponding market change for those bonds, or a certification that no underwriter filled such orders at a price higher than the initial offering price.

(C) The issuer does not know or have reason to know, after exercising due diligence, that the certifications described in paragraph (f)(2)(ii)(B) of this section are false.

(3) *Definitions.* For purposes of this paragraph (f), the following definitions apply:

(i) *Public.* *Public* means any person (as defined in section 7701(a)(1)) other than an underwriter or a related party (as defined in § 1.150-1(b)) to an underwriter.

(ii) *Underwriter.* The term *underwriter* includes—

(A) Any person (as defined in section 7701(a)(1)) that contractually agrees to participate in the initial sale of the bonds to the public by entering into a contract with the issuer (or with the lead underwriter to form an underwriting syndicate); and

(B) Any person that, on or before the sale date, directly or indirectly enters into a contract or other arrangement with a person described in paragraph (f)(3)(ii)(A) of this section to sell the bonds.

(4) *Special rules.* For purposes of this paragraph (f), the following special rules apply:

(i) *Separate determinations.* The issue price of bonds in an issue that do not have the same credit and payment terms is determined separately.

(ii) *Substantial amount.* Ten percent is a substantial amount.

(iii) *Bonds issued for property.* If a bond is issued for property, the adjusted

applicable Federal rate, as determined under section 1288, is used in lieu of the applicable Federal rate to determine the bond's issue price under section 1274.

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

§ 1.148-11 *Effective/applicability dates.*

\* \* \* \* \*

(m) *Definition of issue price.* The definition of issue price in § 1.148-1(b) and (f) applies to bonds that are sold 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**.

John M. Dalrymple,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on June 23, 2015, 8:45 a.m., and published in the issue of the Federal Register for June 24, 2015, 80 F.R. 15411)

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

## **Numerical Finding List<sup>1</sup>**

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

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## **We Welcome Comments About the Internal Revenue Bulletin**

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.