

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

**Bulletin No. 2017-37
September 11, 2017**

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

Rev. Proc. 2017-50, page 234.

This revenue procedure modifies Rev. Proc. 2008-37, 2008-2 (Vol.1) C.B. 137, to provide guidance regarding the time for filing claims for recovery of “overpayments” (as defined in § 1.148-3(i)(1) of the Income Tax Regulations) of amounts paid to the United States with respect to the arbitrage rebate requirement under § 148(f) of the Internal Revenue Code for excess investment earnings, similar payments of penalty in lieu of arbitrage rebate under § 148(f)(4)(C)(vii) and (viii), and yield reduction payments under § 1.148-5(c).

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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

26 CFR 601.601: General arbitrage rebate rules.(Also § 1.148-3)

Rev. Proc. 2017-50

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2008-37, 2008-2 (Vol.1) C.B. 137, to provide guidance to issuers of tax-exempt bonds and other tax-advantaged bonds regarding the time for filing claims for recovery of “overpayments” (as defined in § 1.148-3(i)(1) of the Income Tax Regulations) of amounts paid to the United States with respect to the arbitrage rebate requirement under § 148(f) of the Internal Revenue Code for excess investment earnings, similar payments of penalty in lieu of arbitrage rebate under § 148(f)(4)(C)(vii) and (viii), and yield reduction payments under § 1.148-5(c). In particular, section 3 of this revenue procedure extends the deadline for filing claims for recovery of such overpayments to two years after: (1) the date that is 60 days after the final computation date of the issue to which the payment relates; or (2) with respect to the portion of the overpayment paid more than 60 days after the final computation date, the date that the payment was made to the United States.

SECTION 2. BACKGROUND

.01 Under § 103(b)(2), the exclusion from gross income of interest on any State or local bond under § 103(a) does not apply to interest on an arbitrage bond within the meaning of § 148.

.02 Section 148(f)(1) generally provides that a bond that is part of an issue shall be treated as an arbitrage bond unless the issuer pays to the United States any arbitrage rebate amounts described in § 148(f)(2) (arbitrage rebate) for the issue according to the schedule provided in § 148(f)(3).

.03 Section 148(f)(3) provides, in part, that, except to the extent provided by the Secretary, the arbitrage rebate must be paid in installments that are made at least once every five years. The last installment must be made no later than 60 days after

the day on which the last bond of the issue is redeemed.

.04 Section 148(f)(4)(C)(vii) and (viii) permits issuers of certain construction issues (as defined in § 148(f)(4)(C)(iv)) to elect to pay a penalty in lieu of arbitrage rebate (penalty in lieu of arbitrage rebate) in the manner and amount described in § 148(f)(4)(C)(vii) and (viii).

.05 Section 1.148-5(c)(1) permits issuers to pay yield reduction payments that may be taken into account in determining the yield on an issue for arbitrage purposes under § 148 (yield reduction payments) in the circumstances and manner described in § 1.148-5(c).

.06 Section 1.148-3(i)(1) provides that, in general, an issuer may recover an overpayment of arbitrage rebate by establishing to the satisfaction of the Commissioner that the overpayment occurred. An “overpayment” is the excess of the amount paid over the sum of the “rebate amount” (as defined in § 1.148-3(b)) as of the most recent “computation date” (as defined in § 1.148-3(e)) and all amounts that are otherwise required to be paid under § 148 as of the date the recovery is requested. Under § 1.148-3(e)(2), the final computation date generally is the date that an issue is discharged (for example, retired at maturity or redeemed earlier).

.07 In general, overpayments of the penalty in lieu of arbitrage rebate and yield reduction payments are treated in the same manner as overpayments of arbitrage rebate. *See, generally,* §§ 1.148-3(i)(1), 1.148-5(c)(1) and (2), and 1.148-7(k)(3) and (m).

.08 Rev. Proc. 2008-37 provides procedures for filing claims for recovery of an overpayment of arbitrage rebate, penalty in lieu of arbitrage rebate, or yield reduction payments with respect to an issue. Under section 3.02 of that revenue procedure, a refund claim for an overpayment amount must be filed by an issuer no later than the date that is two years after the final computation date for the applicable issue of bonds under § 1.148-3(e)(2).

.09 Like section 3.02 of Rev. Proc. 2008-37, § 1.148-3(i)(3)(i) provides that an issuer must request a refund of an overpayment (claim) no later than the date that is two years after the final arbitrage

computation date for the issue to which the overpayment relates. Section 1.148-3(g) provides that each arbitrage rebate payment must be paid no later than 60 days after the computation date to which the payment relates.

.10 Section 1.148-10(g) provides authority to the Commissioner to waive regulatory limitations under certain circumstances. Specifically, § 1.148-10(g) provides that, notwithstanding any specific provision in §§ 1.148-1 through 1.148-11, the Commissioner may prescribe extensions of temporary periods, larger reasonably required reserve or replacement funds, or consequences of failures or remedial action under § 148 in lieu of or in addition to other consequences of those failures, or take other action, if the Commissioner finds that good faith or other similar circumstances so warrant, consistent with the purposes of § 148.

.11 In certain circumstances involving payments to the United States made under § 148 after the final computation date, the application of the existing deadline to request a refund of overpayments under § 1.148-3(i)(3)(i) may not provide an adequate opportunity for issuers of tax-advantaged bonds to recover such overpayments.

.12 In the interest of sound tax administration and in reliance on authority under § 1.148-10(g), this revenue procedure extends the time for filing claims to recover overpayments under § 148 to ensure that issuers have a reasonable opportunity to recover overpayments made both before and after the final computation date. This revenue procedure adds 60 days to the existing 2-year deadline under § 1.148-3(i)(3)(i) and provides a new 2-year deadline for payments made after the date that is 60 days after the final computation date.

SECTION 3. EXTENDED DEADLINE FOR CLAIMS FOR RECOVERY OF OVERPAYMENTS

.01 An issuer may file a claim in accordance with this section 3 for a refund of an overpayment, with respect to an issue of bonds, no later than two years after:

(1) the date that is 60 days after the final computation date of the issue to which the payment relates; or

(2) with respect to the portion of the overpayment paid more than 60 days after the final computation date, the date that the payment is made to the United States.

.02 Except as provided in section 3.01 of this revenue procedure, a claim for a refund under this section 3 must be made in accordance with the procedures for requesting a refund under § 1.148-3(i) and section 3.01 of Rev. Proc. 2008-37 (or corresponding provisions of any successor revenue procedure).

SECTION 4. DATES OF APPLICABILITY

.01 This revenue procedure applies to claims that are pending or filed with the Internal Revenue Service on or after August 25, 2017, for recovery of overpayments of arbitrage rebate, penalty in lieu of arbitrage rebate, or yield reduction payments for an issue of bonds.

.02 For purposes of this revenue procedure, an issuer that has made a payment after the final computation date for the issue to which the overpayment relates, but prior to August 25, 2017, will be deemed to have made the payment on August 25, 2017.

SECTION 5. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies Rev. Proc. 2008-37.

SECTION 6. DRAFTING INFORMATION

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

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.

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–01 through 2017–26 is in Internal Revenue Bulletin 2017–26, dated June 27, 2017.

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–01 through 2017–26 is in Internal Revenue Bulletin 2017–26, dated June 27, 2017.

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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/*.

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.