

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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Refer Reply To:

**CC:TEGE:EOEG:TEB/PLR-146221-02**

Date:

December 19, 2002

**LEGEND:**

Authority =

Counties =

State =

Bonds =

a =

b =

This is in response to your request for a ruling that a portion of a pooled bond issue, the proceeds of which are reasonably expected to be lent to one or more local government borrowers to refinance prior debt of that local government borrower(s) more than 90 days after the issue date of the pooled bond issue, can be treated as a separate issue for § 149(d)(3)(A)(i), (ii) and (iii) of the Internal Revenue Code.

**Facts and Representations**

Authority makes the following factual representations. Authority is a body corporate and politic organized under the laws of State and by the Counties, each of

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which is located in State. Authority was created to make loans to certain governmental entities (the "Participants"). Authority uses a revolving loan structure such that when loans are repaid, the repayments are used to originate new loans.

Authority proposes to issue the Bonds to make loans to between a and b Participants. Some of the proceeds of the Bonds will be lent to one or more Participants that will use the proceeds to refund prior debt of the Participant(s). Authority reasonably expects that a certain amount of Bond proceeds will refund prior debt of a Participant more than 90 days after the issue date of the Bonds.

Authority will consider any Bond, from which proceeds are used to refund a debt more than 90 days after the issue date of the Bonds, an advance refunding bond (the "Advance Refunding Bond"), within the meaning of § 149(d)(5). Any prior debt of a Participant that will be advance refunded with an Advance Refunding Bond will be a debt that can be advance refunded under § 149(d).

Proceeds of any Advance Refunding Bond, including any loan repayments and any transferred proceeds, will never be invested at a yield that is materially higher than the Bond yield within the meaning of § 1.148-2(d)(ii). In addition, loan repayments on any Advance Refunding Bond will be deposited in a segregated fund that will be used to make new loans and will not be used to refund a prior debt.

Authority will apply the allocation rules of §1.148-9(h) to reasonably and consistently allocate Bonds, proceeds, and investments among the separate purposes of the issue (i.e., the advance refunding purpose and remaining purposes). Authority will elect to make these allocations on the date of issue of the Bonds based upon Authority's reasonable expectations about the use of Bond proceeds. But proceeds of the Bonds that will actually be used for advance refunding purposes will not be invested at a yield that is materially higher than the yield on the Bonds (as defined in § 1.148-2(d)(ii)).

### **Law and Analysis**

Section 149(d)(1) provides that "[n]othing in § 103(a) or any other provision of the law shall be construed to provide an exemption from Federal income tax for interest on any bond issued as part of an issue described in paragraph (2), (3), or (4)." Section 149(d)(3) provides, in part, that an issue is described in that paragraph if any bond is issued to advance refund a bond unless the refunding bond is only the first advance refunding of the original bond issued after 1985. Section 149(d)(5) provides that a bond shall be treated as issued to advance refund another bond if it is issued more than 90 days before the redemption of the refunded bond.

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Section 1.149(d)-1(d)(1) provides, in part, that for purposes of § 149(d)(3)(A)(i), (ii) and (iii), the provisions of the multipurpose issue rules in § 1.148-9(h) apply, except that the limitation in § 1.148-9(h)(5) is disregarded. The definitions in § 1.148-1 apply for purposes of § 149(d). § 1.149(d)-1(d)(4).

Section 1.148-9(h)(1) provides that the portion of the bonds of a multipurpose issue reasonably allocated to any separate purpose under paragraph (h) is treated as a separate issue for all purposes of § 148, except for certain arbitrage purposes listed therein. A multipurpose issue is an issue the proceeds of which are used for two or more separate purposes determined in accordance with § 1.148-9(h). § 1.148-1(b). Separate purposes of a multipurpose issue include refunding a separate prior issue, financing a separate purpose investment, and any clearly discrete governmental purpose reasonably expected to be financed by the issue. § 1.148-9(h)(3).

Separate purposes may be treated as single purpose if the proceeds used to finance those purposes are eligible for the same initial temporary period under § 148(c). For example, the use of proceeds of a multipurpose issue to finance separate qualified mortgage loans may be treated as a separate purpose. § 1.148-9(h)(3)(i). The temporary period for an advance refunding bond is 30 days. § 1.148-9(d)(2)(i).

Section 1.148-9(h)(2)(i) provides, in part, that proceeds, investments, and bonds of a multipurpose issue may be allocated among the various separate purposes of the issue using any reasonable consistently applied allocation method. Allocations under this paragraph may be made at any time, but once made may not be changed. An allocation is not reasonable if it achieves more favorable results under §§ 148 or 149(d) than could be achieved with actual separate issues.

Authority wishes to treat the Advance Refunding Bonds as a separate issue. The Bonds will be a multipurpose issue. The Advance Refunding Bonds will fund a separate purpose, as that term is defined in § 1.148-9(h)(3), and will qualify for the same temporary period. Based upon Authority's representations, Authority's allocations to the separate purposes will be reasonable. Moreover, allocations to separate purposes can be made at any time.

### **Conclusion**

We conclude that the Advance Refunding Bonds can be treated as a separate issue under § 1.148-9(h) for purposes of § 149(d)(3)(A)(i), (ii), (iii).

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

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Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Assistant Chief Counsel  
(Exempt Organizations/Employment Tax/  
Government Entities)

By: \_\_\_\_\_  
Rebecca L. Harrigal  
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