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IRS Publishes Proposed Regs on Arbitrage Rebate Overpayments on Tax-Exempt Bonds.

The IRS has published proposed regulations (REG-148812-11) that provide guidance on the recovery of overpayments of arbitrage rebate on tax-exempt bonds and other tax-advantaged bonds, including the deadline for filing a claim for an arbitrage rebate overpayment.

Comments and discussion topic outlines for the February 5 hearing are due by December 16.

Section 148(f)(1) generally provides that a bond that is part of an issue will be treated as an arbitrage bond unless the issuer pays to the United States the arbitrage rebate amounts described in section 148(f)(2). Reg. section 1.148-3(i) provides that an issuer may recover an overpayment of arbitrage rebate and similar payments on an issue of tax-exempt bonds if the issuer establishes to the satisfaction of the IRS that the overpayment occurred.

Rev. Proc. 2008-37 prescribed procedures for filing claims for a refund of arbitrage rebate and similar payments and imposed a filing deadline. In particular, a claim for a refund must be filed no later than two years after the final arbitrage computation date for the issue from which the claim arose. A transition rule applies to issues with a final computation date before June 24, 2008. The proposed regs include this two-year limitation on filing claims as well as the transition rule.

Under the proposed regs, the IRS may request additional information to support a claim, specify a date for a return of that information, and deny the claim if the information is not returned by the date specified or as extended by the IRS. If the IRS denies a claim because it was filed after the two-year deadline or if the Service doesn't receive requested information by the date specified in the request for additional information, the issuer may appeal the denial to the Office of Appeals. If Appeals determines that the claim was timely filed or that the requested information was timely submitted, the case will be returned for further consideration of the claim's merits.

Prop. reg. section 1.148-3(i)(3)(i) applies to refund claims arising from an issue of bonds to which reg. section 1.148-3(i) applies and for which the final computation date is after June 24, 2008. Issues for which the actual final computation date is on or before June 24, 2008, are deemed to have a final computation date of July 1, 2008. Prop. reg. section 1.148-3(i)(3)(ii) applies to refund claims arising from an issue of bonds to which reg. section 1.148-3(i) applies and for which the final computation date is after the date the proposed regs are published.

Arbitrage Rebate Overpayments on Tax-Exempt Bonds

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-148812-11]

RIN 1545-BK80

AGENCY: Internal Revenue Service (IRS), Treasury.ACTION: Notice of Proposed Rulemaking and Notice of Public Hearing.

SUMMARY: This document contains proposed regulations that provide guidance on the recovery of overpayments of arbitrage rebate on tax-exempt bonds and other tax-advantaged bonds. These proposed regulations provide the deadline for filing a claim for an arbitrage rebate overpayment and certain other rules. These proposed regulations affect issuers of tax-exempt and tax-advantaged bonds. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 16, 2013. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for February 5, 2014, at 2 p.m., must be received by December 16, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-148812-11), Internal Revenue Service, PO 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-148812-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-148812-11). 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, Timothy Jones at (202) 622-3980; concerning submissions of comments and the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) on the arbitrage investment restrictions on tax-exempt bonds and other tax-advantaged bonds under section 148 of the Internal Revenue Code (Code) (Proposed Regulations). Section 1.148-3(i) of the Income Tax Regulations provides that an issuer may recover an overpayment of arbitrage rebate and similar payments on an issue of tax-exempt bonds if the issuer establishes to the satisfaction of the IRS Commissioner that the overpayment occurred. Revenue Procedure 2008-37, 2008-2 CB 137, provides procedures for filing claims for a refund of arbitrage rebate and similar payments and imposes a deadline for filing such claims. In particular, a claim for a refund must be filed no later than 2 years after the final arbitrage computation date for the issue from which the claim arose. A transition rule applies to issues with a final computation date before June 24, 2008. The Proposed Regulations include this 2-year limitation on filing claims as well as the transition rule.

The Proposed Regulations also provide that the Commissioner may request additional information to support a claim, specify a date for a return of that information, and deny the claim if the information is not returned by the date specified or as extended by the Commissioner. Under the Proposed Regulations, if the Commissioner denies a claim because it was filed after the year deadline or requested information is not received by the date specified in the request for such additional information, the issuer may appeal the denial to the Office of Appeals. If Appeals concludes the claim was timely filed or the requested information was timely submitted, as applicable, the case will be

returned to the Commissioner for further consideration of the merits of the claim. See 26 CFR 601.601(d)(2).

In accordance with section 7805(b)(1), § 1.148-3(i)(3)(i) of the Proposed Regulations applies to refund claims arising from an issue of bonds to which § 1.148-3(i) applies and for which the final computation date is after June 24, 2008. Issues for which the actual final computation date is on or before June 24, 2008, are deemed to have a final computation date of July 1, 2008. Section 1.148-3(i)(3)(ii) and (iii) of the Proposed Regulations apply to refund claims arising from an issue of bonds to which § 1.148-3(i) applies and for which the final computation date is after the date of publication of the Proposed Regulations.

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 is hereby certified that these Proposed Regulations will 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. The proposed changes reaffirm or clarify filing deadlines previously published in other administrative guidance. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation 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 will be available at www.regulations.gov or upon request.

A public hearing has been scheduled for February 5, 2014, at 2 p.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 December 16, 2013. 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 author of these regulations is Timothy Jones, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements

Proposed 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 is amended by removing the entry for § 1.148-6 and revising the entry for §§ 1.148-0 through 1.148-11 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.148-0 through 1.148-11 also issued under 26 U.S.C. 148(i). * * *

Par. 2. Section 1.148-0 is amended by adding entries to paragraph (c) for §§ 1.148-3(i)(3) and 1.148-11(k) and (l) and revising § 1.148-11 section heading to read as follows:

§ 1.148-0 Scope and table of contents.

(c) * * *

§ 1.148-3 General arbitrage rebate rules.

(i) * * *

(3) Time and manner for requesting refund.

§ 1.148-11 Effective/applicability dates.

(k) [Reserved]

(l) Additional arbitrage guidance updates.

(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) Application.

Par. 3. Section 1.148-3 is amended by adding paragraph (i)(3) to read as follows:

§ 1.148-3 General arbitrage rebate rules.

(i) * * *

(3) Time and manner for requesting refund — (i) An issuer must request a refund of an overpayment no later than the date that is 2 years after the final computation date for the issue to which the overpayment relates (the filing deadline). The request must be made using the form provided by the Commissioner for this purpose.

(ii) The Commissioner may request additional information to support a refund request. The issuer must file the additional information by the date specified in the Commissioner's request which date may be extended by the Commissioner if unusual circumstances warrant.

(iii) A claim described in either paragraph (i)(3)(iii)(A) or (i)(3)(iii)(B) of this section that has been denied by the Commissioner may be appealed to the Office of Appeals under this paragraph (i)(3)(iii). Upon a determination in favor of the issuer, Appeals must return an undeveloped case to the Commissioner for further consideration of the substance of the claim.

(A) A claim is described in this paragraph (i)(3)(iii)(A) if the claim is filed after the filing deadline.

(B) A claim is described in this paragraph (i)(3)(iii)(B) if it is a claim for which additional information satisfactory to the Commissioner is not submitted within the time specified in the request for information or any extension of such specified time period.

Par. 4. Section 1.148-11 is amended by revising the section heading and adding paragraphs (k) and (l) to read as follows:

§ 1.148-11 Effective/applicability dates.

(k) [Reserved]

(l) Additional arbitrage guidance updates. (1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) Application. (i) Section 1.148-3(i)(3)(i) applies to refund claims arising from an issue of bonds to which § 1.148-3(i) applies and for which the final computation date is after June 24, 2008. For purposes of this paragraph (l)(4), issues for which the actual final computation date is on or before June 24, 2008, are deemed to have a final computation date of July 1, 2008.

(ii) Section 1.148-3(i)(3)(ii) and (iii) apply to refund claims arising from an issue of bonds to which § 1.148-3(i) applies and for which the final computation date is after September 16, 2013.

Beth Tucker

Deputy Commissioner for Operations

Support

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