

of duty into the United States multiplied by the sum of:

- (i) The number of units shipped up to 300,000 units times a factor of 90%; plus
 - (ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus
 - (iii) Incremental units shipped up to 600,000 units times a factor of 80%; plus
 - (iv) Incremental shipments up to 750,000 units times a factor of 75%.
- (2) The Departments may make adjustments for these data in the manner set forth in § 303.17(c).

§ 303.21 Appeals.

(a) Any official decision or action relating to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party. Such appeals must be received within 30 days of the date on which the decision was made or the action taken in accordance with the procedures set forth in paragraph (b) of this section. Interested parties may petition for the issuance of a rule, or amendment or repeal of a rule issued by the Secretaries. Interested parties may also petition for relief from the application of any rule on the basis of hardship or extraordinary circumstances resulting in the inability of the petitioner to comply with the rule.

(b) Petitions shall bear the name and post office address of the petitioner and the name and address of the principal attorney or authorized representative (if any) for the party concerned. They shall be addressed to the Secretaries and filed in one original and two copies with the U.S. Department of Commerce, Import Administration, International Trade Administration, Washington, DC 20230, Attention: Statutory Import Programs Staff. Petitions shall contain the following:

- (1) A reference to the decision, action or rule which is the subject of the petition;
 - (2) A short statement of the interest of the petitioner;
 - (3) A statement of the facts as seen by the petitioner;
 - (4) The petitioner's argument as to the points of law, policy or fact. In cases where policy error is contended, the alleged error together with the policy the submitting party advocates as the correct one should be described in full;
 - (5) A conclusion specifying the action that the petitioner believes the Secretaries should take.
- (c) The Secretaries may at their discretion schedule a hearing and invite the participation of other interested parties.
- (d) The Secretaries shall communicate their decision, which shall be final, to

the petitioner by registered, certified or express mail.

Robert LaRussa,

Assistant Secretary for Import Administration, Department of Commerce.

Ferdinand Aranza,

Acting Director, Office of Insular Affairs, Department of the Interior.

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BILLING CODE 3510-DS-P and 4310-93-P

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-105565-99]

RIN 1545-AX22

Arbitrage Restrictions Applicable to Tax-exempt Bonds Issued by State and Local Governments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the arbitrage restrictions applicable to tax-exempt bonds issued by State and local governments. The proposed amendments affect issuers of tax-exempt bonds and provide a safe harbor for qualified administrative costs for brokers' commissions and similar fees incurred in connection with the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow.

DATES: Written comments must be received by November 26, 1999.

Outlines of topics to be discussed at the public hearing scheduled for December 14, 1999, at 10 a.m. must be received by Tuesday, November 23, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG-105565-99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-105565-99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS site at http://www.irs.ustreas.gov/tax_regs/regslst.html. The public hearing is in the Auditorium, Internal Revenue

Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Rose M. Weber, (202) 622-3980; concerning submissions of comments, the hearing, and/or requests to be placed on the building access list to attend the hearing, Michael Slaughter, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 148 of the Internal Revenue Code provides rules addressing the use of proceeds of tax-exempt State and local bonds to acquire higher-yielding investments. On May 9, 1997, final regulations (TD 8718) relating to the arbitrage restrictions and related rules under sections 103, 148, 149, and 150 were published in the **Federal Register** (62 FR 25502). The final regulations (TD 8718) were amended on December 30, 1998 (63 FR 71748). This document proposes to modify § 1.148-5(e)(2) to provide a safe harbor for determining whether brokers' commissions and similar fees incurred in connection with the acquisition of guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow are treated as qualified administrative costs.

Explanation of Provisions

Section 1.148-5(e)(2)(iii) and (iv) of the regulations provides rules for determining whether a broker's commission or similar fee is treated as a qualified administrative cost. Section 1.148-5(e)(2)(iii) provides that, for a guaranteed investment contract, a broker's commission or similar fee paid on behalf of either an issuer or the provider is treated as an administrative cost and, generally, is a qualified administrative cost to the extent that the present value of the commission, as of the date the contract is allocated to the issue, does not exceed the lesser of a reasonable amount or the present value of annual payments equal to .05 percent of the weighted average amount reasonably expected to be invested each year of the term of the contract. Present value is computed using the taxable discount rate used by the parties to compute the commission, or if not readily ascertainable, the yield to the issuer on the investment contract or other reasonable taxable discount rate.

Section 1.148-5(e)(2)(iv) provides that, for investments purchased for a yield restricted defeasance escrow, a fee paid to a bidding agent is a qualified administrative cost only if the fee is comparable to a fee that would be

charged for a reasonably comparable investment if acquired with a source of funds other than gross proceeds of tax-exempt bonds, and it is reasonable. The fee is deemed to meet both the comparability and reasonableness requirements if it does not exceed the lesser of \$10,000 and .1 percent of the initial principal amount of investments deposited in the yield restricted defeasance escrow.

Unlike § 1.148-5(e)(2)(iv), § 1.148-5(e)(2)(iii) does not provide parameters under which the reasonableness test will be deemed to have been met. Practitioners have noted that they are uncertain about how to determine reasonableness and whether the .05% test may be used as a safe harbor without regard to whether the resulting amount is a reasonable fee.

Practitioners have also noted that the computation required by § 1.148-5(e)(2)(iii) is too complex and results in different fees being paid for the same services provided.

Finally, having different rules for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow provides an unnecessary tax incentive to structure investments in a certain manner.

To eliminate these complexities and to provide a rule that is easily administered by issuers, the proposed regulations create a single rule for qualified administrative costs that applies to a broker's commission or similar fee incurred in connection with a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow. The proposed regulations also set forth a safe harbor, which allows a broker's commission or similar fee incurred in connection with the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow to be treated as a qualified administrative cost. To fairly compensate most brokers, the proposed safe harbor provides a higher safe harbor limit than is currently provided for in § 1.148-5(e)(2)(iv).

The proposed safe harbor sets forth two requirements. Under the first requirement, the amount of the broker's commission or similar fee incurred in connection with the acquisition of a guaranteed investment contract or other investments purchased for a yield restricted defeasance escrow and treated by the issuer as a qualified administrative cost cannot exceed the lesser of \$25,000 and .2 percent of the computational base. For guaranteed investment contracts, the computational base is the aggregate amount reasonably

expected to be deposited over the term of the contract. For investments, other than guaranteed investment contracts, deposited in a yield restricted defeasance escrow, the computational base is the initial amount invested in those investments. For example, for a guaranteed investment contract purchased for a debt service fund, the aggregate amount reasonably expected to be deposited includes all periodic deposits reasonably expected to be made pursuant to the terms of the contract. Under the second requirement, for any issue of bonds, the issuer cannot treat as qualified administrative costs more than \$75,000 in brokers' commissions and similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

The proposed regulations eliminate the special rule in § 1.148-5(e)(2)(iii) for issues that meet section 148(f)(4)(D)(i). These bond issues will be permitted to use the safe harbor.

These regulations are proposed to apply to bonds sold on or after the date 90 days after the issuance of the final regulations.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. 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 to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies, if written) that are submitted timely to the IRS. In particular, the IRS and Department of Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, December 14, 1999, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. 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 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 comments by November 26, 1999, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 23, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of 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 proposed regulations are Rose M. Weber and Rebecca L. Harrigal, Office of the Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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. In § 1.148-5, paragraph (e) is amended as follows:

1. Paragraph (e)(2)(iii) is revised.
2. Paragraph (e)(2)(iv) is removed.

The revision reads as follows:

§ 1.148-5 Yield and valuation of investments.

* * * * *

(e) * * *

(2) * * *

(iii) *Special rule for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow—(A) In general.* An amount paid for a broker's commission or similar fee with respect to a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is a qualified administrative cost if the fee is reasonable within the meaning of paragraph (e)(2)(i) of this section.

(B) *Safe harbor.* (1) A broker's commission or similar fee with respect to the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable within the meaning of paragraph (e)(2)(i) of this section if—

(i) The amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of \$25,000 and .2% of the computational base; and

(ii) For any issue, the issuer does not treat as qualified administrative costs more than \$75,000 in brokers' commissions or similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

(2) For purposes of paragraph (e)(2)(iii)(B)(1) of this section, computational base shall mean—

(i) For a guaranteed investment contract, the amount the issuer reasonably expects as of the issue date to be deposited in the guaranteed investment contract over the term of the contract; and

(ii) For investments (other than guaranteed investment contracts) to be deposited in a yield restricted defeasance escrow, the amount of gross proceeds initially invested in those investments.

(C) *Example.* The following example illustrates an application of the safe harbor in paragraph (e)(2)(iii)(B) of this section:

Example. The issuer of a multipurpose issue uses brokers to purchase the following investments with gross proceeds of the issue: a guaranteed investment contract for amounts to be deposited in a debt service fund (debt service GIC), a guaranteed investment contract for amounts to be deposited in a construction fund (construction GIC), Treasury securities to be deposited in a yield restricted defeasance escrow (Treasury investments) and a guaranteed investment contract that will be used to earn a return on

what would otherwise be idle cash balances from maturing investments in the yield restricted defeasance escrow (the float GIC). The issuer uses \$8,040,000 of the proceeds to purchase the Treasury investments and deposits \$14,000,000 into the construction GIC. Over the term of the construction GIC, the issuer reasonably expects that no further deposits will be made. Over the term of the float GIC, the issuer reasonably expects that aggregate deposits of \$600,000 will be made to the float GIC. Over the term of the debt service GIC, the issuer reasonably expects that it will make aggregate deposits of \$22,000,000, plus interest on the bond issue. The brokers' fees do not exceed \$16,080 for the Treasury investments, \$25,000 for the construction GIC, \$1,200 for the float GIC, and \$25,000 for the debt service GIC. Assuming the issuer claims no further brokerage or similar fees, the issuer can claim all \$67,280 in brokerage fees for these investments as qualified administrative costs because the fees do not exceed the limitations described in paragraph (e)(2)(iii)(B) of this section.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99-21877 Filed 8-26-99; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-105327-99]

RIN 1545-AX03

Qualified Zone Academy Bonds; Obligations of State and Political Subdivisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document contains a correction to REG-105327-99, which was published in the **Federal Register** on Thursday, July 1, 1999 (64 FR 35579). These regulations provide guidance to holders and issuers of qualified zone academy bonds.

FOR FURTHER INFORMATION CONTACT: Timothy L. Jones, (202) 622-3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under sections 1397E and 1397F of the Internal Revenue Code.

Need for Correction

As published, REG-105327-99 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-105327-99), which is the subject of FR Doc. 99-16622, is corrected as follows:

On page 35579, column 3, in the preamble, under the paragraph heading "Comments and Public Hearing", second paragraph, second line of the paragraph, the language "for November 19, 1999, beginning at 10" is corrected to read "for November 9, 1999, beginning at 10".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99-22223 Filed 8-26-99; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT-001-0011; FRL-6429-8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a notice published on July 28, 1999 (64 FR 40791). In the July 28 document, EPA proposed to partially approve, conditionally approve and partially disapprove the Billings/Laurel sulfur dioxide (SO₂) State Implementation Plan (SIP) revisions submitted by the State of Montana in response to a SIP Call. EPA also proposed a regulatory scheme for sanctions. At the request of several of the stationary sources controlled by the SIP, EPA is extending the comment period through September 27, 1999.

DATES: Comments must be received on or before September 27, 1999.

ADDRESSES: Mail written comments (in duplicate if possible) to Richard R. Long, Director, Air Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202.