

private loan financing test to be satisfied. In general, a deliberate action is any action taken by the issuer that is within its control.

The proposed regulations provide that an action that would otherwise cause a refunding issue to satisfy the private business tests or the private loan financing test is not taken into account under the reasonable expectations test of § 1.141-2(d) if (1) the action is not a deliberate action within the meaning of § 1.141-2(d)(3), and (2) the weighted average maturity of the refunding bonds is not greater than the remaining weighted average maturity of the prior bonds.

#### *B. Treatment of Issuance Costs Financed by Prior Issue of Qualified 501(c)(3) Bonds*

Under the Final Regulations, the use of proceeds of an issue of qualified 501(c)(3) bonds to pay issuance costs of the issue is treated as a private business use. The proposed regulations provide that, solely for purposes of applying the private business use test to a refunding issue, the use of proceeds of the prior issue (or any earlier issue in a series of refundings) to pay issuance costs of the prior issue (or the earlier issue) is treated as a government use.

#### *C. Limitation on Advance Refundings of Private Activity Bonds*

Under section 149(d)(2), interest on a bond is not excluded from gross income if any portion of the issue of which the bond is a part is issued to advance refund a private activity bond (other than a qualified 501(c)(3) bond). The proposed regulations provide that, for purposes of section 149(d)(2), the term private activity bond includes a qualified bond described in section 141(e) (other than a qualified 501(c)(3) bond), regardless of whether the refunding issue consists of private activity bonds under the proposed regulations. The proposed regulations also provide that, for purposes of section 149(d)(2), the term private activity bond does not include a taxable bond.

#### **Proposed Effective Date**

The proposed regulations will apply to bonds that are (1) sold on or after the date of publication of final regulations under § 1.141-13 in the **Federal Register** and (2) subject to the Final 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. 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 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 Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 9, 2003, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the lobby more than 30 minutes before the hearing starts.

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 August 19, 2003 and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by August 19, 2003.

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.

Comments are requested on all aspects of the proposed regulations. In addition, comments are specifically requested on the application of the private loan financing test to refunding issues.

#### **Drafting Information**

The principal authors of these regulations are Bruce M. Serchuk and Gary W. Bornholdt, Office of Chief Counsel (Tax-exempt and Government Entities), Internal Revenue Service and Stephen J. Watson, Office of Tax Legislative Counsel, Department of the Treasury. 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**

1. The authority citation for part 1 continues to read in part as follows:

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

2. Section 1.141-0 is amended by adding entries to the table in numerical order for §§ 1.141-13 and 1.141-15(j) to read as follows:

#### **§ 1.141-0 Table of contents**

\* \* \* \* \*

#### **§ 1.141-13 Refunding Issues.**

- (a) In general.
- (b) Application of private business use test and private loan financing test.
  - (1) Allocation of proceeds.
  - (2) Determination of amount of private business use.
- (c) Application of private security or payment test.
  - (1) Separate issue treatment.
  - (2) Combined issue treatment.
  - (3) Special rule for arrangements not entered into in contemplation of the refunding issue.
- (d) Multipurpose issue allocations.
  - (1) In general.
  - (2) Exceptions.
- (e) Application of reasonable expectations test to certain refunding bonds.
- (f) Examples.

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#### **§ 1.141-15 Effective dates.**

\* \* \* \* \*

- (j) Effective dates for certain regulations relating to refundings.

\* \* \* \* \*

3. In § 1.141-1, paragraph (b) is amended by revising the definition of governmental bond to read as follows:

#### **§ 1.141-1 Definitions and rules of general application.**

\* \* \* \* \*

*Governmental bond* has the same meaning as in § 1.150-1(b), except that, for purposes of § 1.141-13, governmental bond is defined in § 1.141-13(b)(2)(iv).

\* \* \* \* \*

4. Section 1.141-13 is added to read as follows:

#### **§ 1.141-13 Refunding Issues**

- (a) *In general.* Except as provided in this section, a refunding issue and a