

§ 1.148–1(e)(2) for determining whether a prepayment gives rise to investment-type property, except that the private loan regulations focus on whether the prepayment provides a benefit of tax-exempt financing to the seller. The final regulations amend the private loan provisions of § 1.141–5(c)(2) to conform to the amendments to the definition of investment-type property in the final regulations.

III. Tables of Contents

The final regulations amend the tables of contents in §§ 1.141–0 and 1.148–0 to reflect the final regulations and certain previously issued regulations under sections 141 and 148.

Effective Dates

The final regulations apply to bonds sold on or after October 3, 2003. In addition, issuers may apply the final regulations to bonds sold before October 3, 2003 that are subject to §§ 1.141–5 and 1.148–1.

Special Analyses

It has been determined that this Treasury decision 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 rule does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal authors of these regulations are Rebecca L. Harrigal and Johanna Som de Cerff, Office of Chief Counsel (TE/GE), IRS, and Stephen J. Watson, Office of Tax Policy, Treasury Department. 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.

Adoption of 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 continues to read in part as follows:

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

■ **Par. 2.** Section 1.141–0 is amended by revising the entry for § 1.141–15(b) to read as follows:

§ 1.141–0 Table of contents.

* * * * *

§ 1.141–15 Effective dates.

- (b) Effective dates.
- (1) In general.
- (2) Certain short-term arrangements.
- (3) Certain prepayments.

* * * * *

■ **Par. 3.** In § 1.141–5, paragraph (c)(2)(ii) is revised and paragraphs (c)(2)(iii) and (c)(2)(iv) are added to read as follows:

§ 1.141–5 Private loan financing test.

* * * * *

(c) * * *

(2) * * *

(ii) *Certain prepayments treated as loans.* Except as otherwise provided, a prepayment for property or services, including a prepayment for property or services that is made after the date that the contract to buy the property or services is entered into, is treated as a loan for purposes of the private loan financing test if a principal purpose for prepaying is to provide a benefit of tax-exempt financing to the seller. A prepayment is not treated as a loan for purposes of the private loan financing test if—

(A) Prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing;

(B) The prepayment is made within 90 days of the reasonably expected date of delivery to the issuer of all of the property or services for which the prepayment is made; or

(C) The prepayment meets the requirements of § 1.148–1(e)(2)(iii)(A) or (B) (relating to certain prepayments to acquire a supply of natural gas or electricity).

(iii) *Customary prepayments.* The determination of whether a prepayment satisfies paragraph (c)(2)(ii)(A) of this section is generally made based on all the facts and circumstances. In addition, a prepayment is deemed to satisfy paragraph (c)(2)(ii)(A) of this section if—

(A) The prepayment is made for—

(1) Maintenance, repair, or an extended warranty with respect to personal property (for example, automobiles or electronic equipment); or

(2) Updates or maintenance or support services with respect to computer software; and

(B) The same maintenance, repair, extended warranty, updates or

maintenance or support services, as applicable, are regularly provided to nongovernmental persons on the same terms.

(iv) *Additional prepayments as permitted by the Commissioner.* The Commissioner may, by published guidance, set forth additional circumstances in which a prepayment is not treated as a loan for purposes of the private loan financing test.

* * * * *

■ **Par. 4.** Section 1.141–15 is amended by adding paragraph (b)(3) to read as follows:

§ 1.141–15 Effective dates.

* * * * *

(b) * * *

(3) *Certain prepayments.* Except as provided in paragraph (c) of this section, paragraphs (c)(2)(ii), (c)(2)(iii) and (c)(2)(iv) of § 1.141–5 apply to bonds sold on or after October 3, 2003. Issuers may apply paragraphs (c)(2)(ii), (c)(2)(iii) and (c)(2)(iv) of § 1.141–5, in whole but not in part, to bonds sold before October 3, 2003 that are subject to § 1.141–5.

■ **Par. 5.** Section 1.148–0 is amended by:

■ 1. Adding entries in paragraph (c) for § 1.148–1, paragraphs (e)(1) through (e)(3).

■ 2. Adding entries in paragraph (c) for § 1.148–11, paragraphs (b)(4), (h), (i) and (j).

The additions read as follows:

§ 1.148–0 Scope and table of contents.

* * * * *

(c) Table of contents.

* * * * *

§ 1.148–1 Definitions and elections.

* * * * *

(e) * * *

(1) In general.

(2) Prepayments.

(3) Certain hedges.

* * * * *

§ 1.148–11 Effective dates.

(b) * * *

(4) No elective retroactive application for safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.

* * * * *

(h) Safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.

(i) Special rule for investments purchased for a yield restricted defeasance escrow.

(j) Certain prepayments.

■ **Par. 6.** In § 1.148–1, paragraphs (e)(1) and (2) are revised to read as follows:

§ 1.148–1 Definitions and elections.

* * * * *