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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9701]

RIN 1545-BK80

Arbitrage Rebate Overpayments on Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance on the recovery of overpayments of arbitrage rebate on tax-exempt bonds and other tax-advantaged bonds.

These final regulations provide the deadline for filing a claim for an arbitrage rebate overpayment and certain other rules. These final regulations affect issuers of tax-exempt and tax-advantaged bonds.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For dates of applicability, see §1.148-11(l)(4).

FOR FURTHER INFORMATION CONTACT: Timothy Jones at (202) 317-6980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 16, 2013, the IRS published a Notice of Proposed Rulemaking (REG-148812-11) in the **Federal Register** (78 FR 56841) (the “Proposed Regulations”). A public hearing was scheduled for February 5, 2014, but later was cancelled because no one requested to speak. However, two comments responding to the Proposed Regulations were received. After consideration of these comments, the Proposed Regulations are adopted as revised by this Treasury decision.

Explanation of Provisions and Summary of Comments

The final regulations amend 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). Section 1.148-3(i) of the existing 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 Commissioner that the overpayment occurred.

Rev. Proc. 2008-37 (2008-2 CB 137) provides procedures for filing claims for the 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 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 on or before June 24, 2008. Like the Proposed Regulations, the final regulations include this two-year limitation on filing claims as well as the transition rule.

The final regulations also adopt the rule in the Proposed Regulations 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 in the Commissioner's request or, if the Commissioner grants the issuer an extension to provide the information, by the extension date. Under both the Proposed Regulations and final regulations, if the Commissioner denies a claim because the Commissioner asserts that it was filed after the two-year deadline or that the information requested by the Commissioner was 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 the Office of Appeals concludes that 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.

The final regulations amend the Proposed Regulations to take into account a comment received suggesting that the Proposed Regulations be revised to provide a minimum time period for issuers to respond to any request by the Commissioner for additional information. In response to this request, the final regulations revise the Proposed Regulations to provide that issuers will be given at least 21 calendar days to respond to a request for additional information. The 21 day period is consistent with the time period provided by the IRS in other instances for submitting additional information. See, for example, section 8.05 of Rev. Proc. 2014-1, 2014-1 IRB 1, 31 (providing taxpayers with 21 days to submit additional information requested by the IRS in connection with the evaluation of a letter ruling request).

Another commenter questioned the Commissioner's authority to impose the two-year limitation on filing of claims for recovery of an overpayment of arbitrage rebate. The commenter also expressed a concern that an issuer's right to proceed to court could expire while the issuer's claim awaits review by the Commissioner.

Treasury and the IRS believe that the Commissioner's authority to impose the two-year limitation arises from the broad grant of authority to prescribe regulations under section 148(i). In addition, an issuer's right to proceed to court cannot expire in the manner suggested by the commenter because sections 6532 and 7422 apply to the recovery of arbitrage rebate overpayments. Under section 7422, a claim for the recovery of an alleged arbitrage overpayment cannot be filed in any court until a claim for such amount has been filed with the Secretary. Under section 6532, a proceeding to recover an alleged overpayment of arbitrage generally may not begin before the expiration of six months from the date the claim required by section 7422 has been filed with the Secretary, nor after the expiration of two years from the date the taxpayer is notified of the claim denial. Thus, the final regulations adopt the two-year limitation without change.

Certain changes made by the final regulations to the procedures for processing arbitrage rebate overpayment claims are not reflected in Rev. Proc. 2008-37. As a result, the Treasury Department and the IRS intend to publish guidance updating Rev. Proc. 2008-37 to take into account changes made by the final regulations. Comments are requested on whether other changes should be made to the procedures as part of that guidance.

Effective/Applicability Date

In accordance with section 7805(b)(1)(C) and Rev. Proc. 2008-37, §1.148-3(i)(3)(i) of the final 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. For purposes of applying §1.148-3(i)(3)(i), 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 final 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 September 16, 2013.

Special Analyses

It has been determined that this Treasury decision 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these 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 final regulations reaffirm or clarify filing deadlines previously published in other administrative guidance. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

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.

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

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

Section 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) Table of contents 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 (claim) no later than the date that is two years after the final computation date for the issue to which the overpayment relates (the filing deadline). The claim must be made using the form provided by the Commissioner for this purpose.

(ii) The Commissioner may request additional information to support a claim. 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. An issuer will be given at least 21 calendar days to respond to a request for additional information.

(iii) A claim described in either paragraph (i)(3)(iii)(A) or (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, the Office of Appeals must return the 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 Commissioner asserts that the claim was filed after the filing deadline.

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

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Par. 4. Section 1.148-11 is amended by revising the section heading and adding reserved paragraph (k) and paragraph (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 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 for purposes of applying §1.148-3(i)(3)(i).

(ii) Section 1.148-3(i)(3)(ii) and (iii) apply to 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.

John Dalrymple,
Deputy Commissioner for Services and
Enforcement.

Approved: October 17, 2014.

Mark J. Mazur,
Assistant Secretary of the Treasury.
(Tax Policy).

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