Internal Revenue
bulletin

Bulletin No. 2006-44
October 30, 2006

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

SPECIAL ANNOUNCEMENT

Announcement 2006–87, page 822.

This announcement for the 2007 IRS Individual e-file Partnership Program solicits applications from potential partners for participation in the program. The partnership opportunities are a result of RRA '98 which requires the IRS to receive 80 percent of all returns electronically by 2007. RRA '98 authorized the IRS Commissioner to promote the benefits of and encourage the use of e-file products and services through partnerships with various entities that offer low cost tax preparation and electronic filing of individual income tax returns for qualified taxpayers. Those applicants that are accepted as partners will have a link(s) and description(s) of their products and services posted to *www.irs.gov* (Partners Page).

INCOME TAX

Rev. Rul. 2006–53, page 796.

LIFO; price indexes; department stores. The August 2006 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, August 31, 2006.

REG–140379–02; REG–142599–02, page 808.

Generally, interest on a state or local bond is excluded from gross income. However, the exclusion does not apply to a private activity bond unless the bond is a qualified bond. Proposed regulations under sections 141 and 145 of the Code provide general rules on the allocation of and accounting for bond proceeds for purposes of the private activity bond restrictions which apply to tax-exempt governmental bonds. Special rules are also provided for certain projects that are used by both a private business and government (mixed-use project). Finally, the regulations provide that a partnership in which all the partners are governmental persons are disregarded and any use of the financed property by the partnership is treated as governmental use. A public hearing is scheduled for January 11, 2007.

Notice 2006–93, page 798.

This notice provides guidance on the new information reporting requirements in section 6049 of the Code for payments of interest on state or local bonds that are excludable from gross income under section 103 (tax-exempt interest).

Rev. Proc. 2006–44, page 800.

This procedure formally establishes the Appeals arbitration program, which is designed to improve tax administration, provide customer service, and reduce taxpayer burden. Arbitration is available for cases within Appeals jurisdiction that meet the operation requirements of the program. Generally, this program is available for cases in which a limited number of factual issues remain unresolved following settlement discussions in Appeals.

EXEMPT ORGANIZATIONS

Announcement 2006–81, page 821.

The IRS has revoked its determination that University Lithotripsy Affiliates, Inc., of Newark, NJ, qualifies as an organization described in sections 501(c)(3) and 170(c)(2) of the Code.

(Continued on the next page)

Finding Lists begin on page ii.
Index for July through October begins on page v.

Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

T.D. 9288, page 794.
Final regulations under 31 USC 9701 implement new user fees for the special enrollment examination for enrolled agents (SEE), the application for enrollment of enrolled agents, and the renewal of such enrollment. The user fee that the IRS currently charges applicants in order to take the SEE is being modified to reflect the change in IRS costs of administering the exam program as a result of the contracting out of the exam. Furthermore, the user fees that the IRS currently charges applicants for the enrollment and renewal of enrollment process are less than the actual cost of overseeing the enrollment process. The regulations establish an $11 per part per applicant user fee for the SEE and separate $125 user fees for the enrollment and renewal of enrollment process.

Notice 2006–93, page 798.
This notice provides guidance on the new information reporting requirements in section 6049 of the Code for payments of interest on state or local bonds that are excludable from gross income under section 103 (tax-exempt interest).

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Announcement 2006–82, page 821.
This document contains corrections to final and temporary regulations (T.D. 9281, 2006–39 I.R.B. 517) relating to the determination of the interest expense deduction of foreign corporations and applies to foreign corporations engaged in a trade or business within the United States.

Announcement 2006–83, page 822.
This document contains corrections to final regulations (T.D. 9276, 2006–37 I.R.B. 423) concerning the definition of supplemental wages for income tax withholding purposes and income tax requirements for employers making payments of supplemental wages to employees.

Announcement 2006–89, page 826.
This document contains corrections to final regulations (T.D. 9274, 2006–33 I.R.B. 244) relating to the disclosure of return information pursuant to section 6103(k)(6) of the Code.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 330 (31 USC).—Best Practices for Tax Advisors

T.D. 9288

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 300

User Fees Relating to Enrollment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the regulations relating to user fees for the special enrollment examination to become an enrolled agent, the application for enrollment of enrolled agents, and the renewal of this enrollment. The charging of user fees is authorized by the Independent Offices Appropriations Act (IOAA) of 1952.

DATES: *Effective Date:* November 6, 2006.

Applicability Date: For date of applicability, see §300.0(c).

FOR FURTHER INFORMATION CONTACT: Concerning cost methodology, Eva Williams, (202) 622–6400; concerning the regulations, Matthew Cooper, (202) 622–4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document amends the regulations relating to user fees for the special enrollment examination to become an enrolled agent, the application for enrollment of enrolled agents, and the renewal of this enrollment. The charging of user fees is authorized by the IOAA of 1952, which is codified at 31 U.S.C. 9701.

The IOAA of 1952 authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA of 1952 provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in OMB Circular A–25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for Government-provided services must calculate its full cost of providing those services. In general, a user fee should be set at an amount in order for the agency to recover the cost of providing the special service, unless the Office of Management and Budget grants an exception.

On August 29, 2006, a notice of proposed rulemaking (REG–145154–05, 2006–39 I.R.B. 567) was published in the **Federal Register**. Approximately 40 written comments responding to the proposed regulations were received. A public hearing was held on September 29, 2006, but there were no requests to speak at the hearing. After consideration of the comments, the proposed regulations are adopted by this Treasury decision.

Enrolled Agent Program

Section 330 of Title 31 of the United States Code authorizes the Secretary of the Treasury to regulate practice before the Treasury Department. Pursuant to section 330 of Title 31, the Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted them as Treasury Department Circular No. 230 (Circular 230). These regulations are administered by the IRS Office of Professional Responsibility (OPR).

Section 10.3 of Circular 230 generally authorizes attorneys, certified public accountants, enrolled agents and enrolled actuaries to practice before the IRS. An enrolled agent is defined as an individual enrolled as an agent pursuant to the provisions of Circular 230. The provisions of Circular 230 provide that an individual desiring to become an enrolled agent is eligible for enrollment through either the successful passing of a written examination or through demonstration of sufficient expertise in tax administration based on former employment with the IRS. Specifically, §10.4(a) authorizes the Director of OPR to grant enrollment to an applicant who demonstrates special competence in tax matters by passing a written examination administered by, or administered under the oversight of, the Director of OPR and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of Circular 230. Accordingly, every year OPR develops and administers a Special Enrollment Examination (SEE) that is given to all applicants desiring to become enrolled agents so that they can practice before the IRS. The IRS charged applicants a user fee of $55 ($45 if taking the examination in parts) in order to take the 2005 SEE.

Section 10.4(b) authorizes the Director of OPR to grant enrollment for former IRS employees if the former employee meets certain requirements, including length of employment with the IRS and substantive tax expertise. Application for enrollment based on former employment with the IRS must be made within three years from the date of separation from such employment.

Once eligible for enrollment, by either passing the examination or because of former employment with the IRS, an applicant must file an application for enrollment on Form 23, "*Application for Enrollment to Practice Before the Internal Revenue Service*," with the Director of OPR. As part of the application for enrollment process, the applicant must enclose a check or money order payable to the IRS in the amount set forth on Form 23, which constitutes a fee charged to each applicant for enrollment. The fee is nonrefundable regardless of whether the applicant is granted enrollment. The current user fee for enrollment on the Form 23 (Rev. February 2005) is $80. The Director of OPR will act upon an application for enrollment and issue an

enrollment card to each individual whose application for enrollment to practice before the IRS is approved.

Pursuant to §10.6(d), each individual, once enrolled, is required to renew the enrollment every three years to maintain an active enrollment to practice before the IRS. In order to qualify for renewal, an applicant must certify the completion of the continuing professional education requirements set forth in §10.6(e) of Circular 230. A nonrefundable user fee of $80 is currently charged for each application for renewal of enrollment filed with the Director of OPR on Form 8554, "*Application for Renewal of Enrollment to Practice Before the Internal Revenue Service.*"

Contracting Out of Special Enrollment Examination

OPR has recently contracted out certain functions pertaining to the SEE to a private contractor. The contractor will furnish the resources, facilities, and services necessary to administer the entire SEE program, which includes examination development, administration of SEE, notification to IRS of candidates who took the examination, and the results of the examination. The contractor will receive payment for its services by charging a fee to examination applicants. OPR will, nonetheless, still maintain an oversight role with respect to the SEE. The contractor will collect a user fee on behalf of the IRS based on the full costs incurred by the IRS. These final regulations only establish a user fee with respect to the government costs for overseeing the SEE and do not include any fee that the contractor may charge for its services. Accordingly, while the user fee imposed pursuant to these regulations is less than the user fee that applicants were charged in 2005, the total fee that applicants will be charged is greater. The IRS estimates that the efficiencies resulting from using a contractor will reduce the total fees that would otherwise be charged by the IRS in order to recover the full cost of the IRS administering all aspects of the SEE. Further information about the contracting out of the SEE can be found at *http://www.irs.gov/taxpros/agents/index.html*.

Summary of Comments

The final regulations establish an $11 per part user fee for the SEE. The final regulations establish separate $125 user fees for the enrollment and renewal of enrollment process. Most of the comments on the proposed regulations did not favor the higher fees. These comments focused on the increased economic burden on enrolled agents resulting from the higher fees. Several comments also stated that the Request for Proposal (RFP) for the examination implied that the IRS would collect its fee from the amount that the contractor is charging for its services. One comment requested that the IRS publicly release the costing methodology and the schedule for reevaluating the user fees, as well as provide a clarification of the "Special Analyses" section of the preamble. For the following reasons, these final regulations follow the proposed regulations without change.

The OMB Circular requires the IRS to calculate and recover its full cost of providing services under the enrolled agent program. In accordance with the OMB Circular, these final regulations increase the fees to bring them in line with actual costs based upon a recent review of the enrolled agent program. The IRS is in compliance with the OMB Circular in its methodology for computation of the actual cost and will follow the OMB Circular's direction providing for a biennial reevaluation of the fees.

The IRS has determined that the full cost to the IRS of overseeing the SEE is $11 per part per applicant. This revised user fee reflects the change in IRS costs of administering the examination program as a result of contracting out of the examination to a private contractor. For the first examination cycle (October 5, 2006 to December 1, 2006), the contractor is not collecting any user fee on behalf of the IRS. In future years, consistent with the RFP, the contractor will collect the user fee based on the full costs incurred by the IRS in overseeing the examination, which is separate and distinct from the fee that the contractor is charging for its services.

The IRS has determined that the full cost of administering the enrollment and renenrollment process is $125 per enrolled agent. Before this final regulation, the most recent increase in user fees for the enrollment and renewal of enrollment process was in September 1995.

The Chief Counsel for Advocacy of the Small Business Administration (SBA) commented that the certification in the proposed regulations regarding the economic impact on small entities in the "Special Analyses" section of the preamble could be clearer. Specifically, the SBA requested that the certification identify the number of enrolled agents and the appropriate North American Industry Classification System (NAICS) codes for enrolled agents, estimate the percent of enrolled agents that are operating as or employed by small entities based upon the small business size standards established by the SBA, and further explain why the increased fees are not economically significant. The "Special Analyses" section of the final regulations adopts these recommended changes.

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. This final rule affects enrolled agents, of which there are currently 45,261 active. The economic impact of these regulations on any small entity would result from a small entity, including a sole proprietor, being required to pay a fee prescribed by these regulations in order to obtain a particular service. The appropriate NAICS codes for enrolled agents relate to tax preparation services (NAICS code 541213) and other accounting services (NAICS code 541219). Entities identified under these codes are considered small under the SBA size standards (13 CFR 121.201) if their annual revenue is less than $6.5 million or $7.5 million respectively. The IRS estimates that 99 percent of enrolled agents are operating as or employed by small entities. Therefore, the IRS has determined that this final rule will affect a substantial number of small entities. The dollar amounts of the increases in fees are not,

however, substantial enough to have a significant economic impact on any entity subject to the fees. The amounts of the fees are commensurate with, if not less than, the amount of fees charged for other professional examination and enrollment fees. Persons who elect to take the examination and apply for enrollment or renewal of enrollment also receive benefits from obtaining the enrolled agent designation. The Chief Counsel for Advocacy of the Small Business Administration submitted comments on the regulation, which are discussed elsewhere in this preamble.

Drafting Information

The principal author of these regulations is Matthew S. Cooper of the Office of the Associate Chief Counsel (Procedure & Administration), Administrative Provisions & Judicial Practice Division.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 300 is amended as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read in part as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.0 is amended as follows:

1. Paragraphs (b)(4), (b)(5), and (b)(6) are added.

2. Paragraph (c) is revised.

The additions and revision read as follows:

§300.0 User fees; in general.

* * * * *

(b) * * *

(4) Taking the special enrollment examination to become an enrolled agent.

(5) Enrolling an enrolled agent.

(6) Renewing the enrollment of an enrolled agent.

(c) *Effective date*. This part 300 is applicable March 16, 1995, except that the user fee for processing offers in compromise is applicable November 1, 2003, and the user fee for the special enrollment examination, enrollment, and renewal of enrollment for enrolled agents is applicable November 6, 2006.

Par. 3. Section 300.4 is added to read as follows:

§300.4 Special enrollment examination fee.

(a) *Applicability*. This section applies to the special enrollment examination to become an enrolled agent pursuant to 31 CFR 10.4(a).

(b) *Fee*. The fee for taking the special enrollment examination is $11 per part, which is the government cost for overseeing the examination and does not include any fees charged by the examination administrator.

(c) *Person liable for the fee*. The person liable for the special enrollment examination fee is the applicant taking the examination.

Par. 4. Section 300.5 is added to read as follows:

§300.5 Enrollment of enrolled agent fee.

(a) *Applicability*. This section applies to the initial enrollment of enrolled agents with the IRS Office of Professional Responsibility pursuant to 31 CFR 10.5(b).

(b) *Fee*. The fee for initially enrolling as an enrolled agent with the IRS Office of Professional Responsibility is $125.

(c) *Person liable for the fee*. The person liable for the enrollment fee is the applicant filing for enrollment as an enrolled agent with the IRS Office of Professional Responsibility.

Par. 5. Section 300.6 is added to read as follows:

§300.6 Renewal of enrollment of enrolled agent fee.

(a) *Applicability*. This section applies to the renewal of enrollment of enrolled agents with the IRS Office of Professional Responsibility pursuant to 31 CFR 10.6(d)(6).

(b) *Fee*. The fee for renewal of enrollment as an enrolled agent with the IRS Office of Professional Responsibility is $125.

(c) *Person liable for the fee*. The person liable for the renewal of enrollment fee is the person renewing their enrollment as an enrolled agent with the IRS Office of Professional Responsibility.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved October 2, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary for Tax Policy.

(Filed by the Office of the Federal Register on October 3, 2006, 10:00 a.m., and published in the issue of the Federal Register for October 5, 2006, 71 F.R. 58740)

Section 472.—Last-in, First-out Inventories

26 CFR 1.472–1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The August 2006 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, August 31, 2006.

Rev. Rul. 2006–53

The following Department Store Inventory Price Indexes for August 2006 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46, 1986–2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, August 31, 2006.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups — soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

	Groups	Aug 2005	Aug 2006	Percent Change from Aug 2005 to Aug 2006[1]
1.	Piece Goods	486.8	457.5	-6.0
2.	Domestics and Draperies	512.2	486.2	-5.1
3.	Women's and Children's Shoes	661.5	671.9	1.6
4.	Men's Shoes	875.1	877.5	0.3
5.	Infants' Wear	554.0	563.9	1.8
6.	Women's Underwear	542.8	534.2	-1.6
7.	Women's Hosiery	339.1	340.6	0.4
8.	Women's and Girls' Accessories	585.4	531.7	-9.2
9.	Women's Outerwear and Girls' Wear	331.2	341.4	3.1
10.	Men's Clothing	527.1	517.3	-1.9
11.	Men's Furnishings	557.0	551.5	-1.0
12.	Boys' Clothing and Furnishings	384.1	384.3	0.1
13.	Jewelry	888.5	916.9	3.2
14.	Notions	810.5	823.5	1.6
15.	Toilet Articles and Drugs	998.0	995.5	-0.3
16.	Furniture and Bedding	598.5	603.3	0.8
17.	Floor Coverings	614.0	622.4	1.4
18.	Housewares	708.6	697.7	-1.5
19.	Major Appliances	203.9	203.5	-0.2
20.	Radio and Television	38.7	35.5	-8.3
21.	Recreation and Education[2]	77.3	76.3	-1.3
22.	Home Improvements[2]	136.0	140.3	3.2
23.	Automotive Accessories[2]	115.9	121.2	4.6
	Groups 1–15: Soft Goods	544.8	544.9	0.0
	Groups 16–20: Durable Goods	378.6	373.1	-1.5
	Groups 21–23: Misc. Goods[2]	92.6	93.6	1.1
	Store Total[3]	485.7	484.9	-0.2

[1]Absence of a minus sign before the percentage change in this column signifies a price increase.

[2]Indexes on a January 1986 = 100 base.

[3]The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622–7924 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Information Reporting Requirements for Payments of Interest on Tax-Exempt Bonds

Notice 2006–93

Section 1: Purpose

This notice provides guidance on the new information reporting requirements in section 6049 of the Internal Revenue Code for payments of interest on State or local bonds that are excludable from gross income under section 103 of the Code (tax-exempt interest). References to "tax-exempt interest" herein also include exempt-interest dividends under section 852(b)(5) (exempt-interest dividends). This notice provides transitional guidance for persons (payors) required under section 6049, as amended, to file with the Internal Revenue Service and to furnish to payment recipients (payees) information with respect to payments of tax-exempt interest commencing in 2006.

Pursuant to this notice, in order to satisfy the requirements of section 6049 for payments of tax-exempt interest made in 2006, affected payors may file with the Service and furnish to payees a Form 1099–INT, *Interest Income*, to report information regarding the aggregate amount of tax-exempt interest paid in 2006 and, to the extent possible after reasonable effort, the separately-identified portion of the tax-exempt interest that constitutes interest on specified private activity bonds that is an item of tax preference under section 57(a)(5) for purposes of the alternative minimum tax (tax-exempt AMT interest). Alternatively, to satisfy the requirements of section 6049 for payments of tax-exempt interest made in 2006, in lieu of filing and furnishing Form 1099–INT, payors may file with the Service and furnish to payees a substitute statement containing the information specified in Section 3 of this notice (substitute statement).

This notice also provides that the Service will not impose penalties for violations of section 6049 with respect to payments of tax-exempt interest in 2006 if a payor satisfies the requirements of Section 3 of this notice. This notice further provides that the Service is providing transitional relief from backup withholding under section 3406 with respect to any payment of tax-exempt interest made in 2006 and in the first quarter of 2007. Section 5 of this notice defers reporting obligations with respect to certain tax-exempt bearer bonds and original issue discount on tax-exempt bonds.

Section 2: Background

On May 17, 2006, the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109–222, 120 Stat. 345 (TIPRA), was enacted into law. Section 502 of TIPRA amended section 6049 to remove "interest on any obligation if such interest is tax-exempt under section 103(a)" from the list of payments excluded from the definition of "interest" for purposes of information reporting. Section 6049 now requires the reporting of tax-exempt interest paid after December 31, 2005, in a manner similar to reporting interest paid on taxable obligations. Section 6049 provides, in relevant part, as follows:

Sec. 6049. Returns regarding payments of interest

(a) Requirement of reporting.—Every person—

(1) who makes payments of interest (as defined in subsection (b)) aggregating $10 or more to any other person during any calendar year, or

(2) who receives payments of interest (as so defined) as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the interest so received,

> shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(b) Interest defined.—

(1) General rule.—For purposes of subsection (a), the term "interest" means—

(A) interest on any obligation—

(i) issued in registered form, or

(ii) of a type offered to the public,

other than any obligation with a maturity (at issue) of not more than 1 year which is held by a corporation...

Section 6049 requires payors of interest to file information returns with the Service and to furnish corresponding information statements to payees named on the information returns showing the information that is reported to the Service. The return and information statement are required to include information concerning the aggregate amount of tax-exempt interest and the separately-stated amount of tax-exempt AMT interest that was paid by the payor during the calendar year to assist taxpayers and the Service in determining a taxpayer's correct tax liability for the calendar year.

Payors have advised the Treasury Department and the Service that the amendment to section 6049 enacted by TIPRA and which established January 1, 2006, as the effective date by which payors must begin to capture information on payments of tax-exempt interest, provides insufficient lead time for many payors to make the necessary programming changes to comply with the reporting and backup withholding requirements. In order to provide time for payors to implement these programming changes, the Service will not impose penalties or backup withholding obligations on payors that comply with the requirements in the transition rules set forth in Sections 3 and 4 of this notice. The penalty and backup withholding relief under this notice will allow additional time for payors to make the necessary programming changes to enable them to capture information on, and report payments of, tax-exempt interest made in 2006 and future calendar years consistent with the reporting requirements of section 6049, as amended.

Section 3: Transitional Information Reporting Requirements for Tax-exempt Interest Paid in 2006 and Related Penalty Relief

Section 3.1. *Background.* Section 6721 provides for a penalty in the case of any failure by any person to file a correct information return reporting payments of interest paid pursuant to section 6049. Additionally, section 6722 provides for a penalty in the case of any failure by any person to furnish a correct corresponding payee statement to each person whose name is required to be reported as the recipient of interest paid. Section 6011(e)

provides rules regarding electronic filing of tax returns. Under section 6049, as amended by TIPRA, payments of tax-exempt interest potentially are subject to backup withholding under section 3406.

Section 3.2. *Penalty Relief.* The Service will not impose penalties under section 6721 or section 6722 for failure to report payments attributable to tax-exempt interest paid in calendar year 2006, and waives any requirement under 6011(e) to file such information returns reporting only such payments in magnetic media if payors comply with the requirements of Sections 3.3 and 3.4 of this notice.

Section 3.3. *Report Tax-exempt Interest on Form 1099–INT or on Prescribed Substitute Statement.* For tax-exempt interest paid in 2006, payors may report information regarding tax-exempt interest (including exempt-interest dividends) and, to the extent possible after reasonable effort, tax-exempt AMT interest to the Service and to payees on Form 1099–INT. Alternatively, in lieu of reporting tax-exempt interest on Form 1099–INT, payors may report information regarding tax-exempt interest to the Service and to payees on a substitute statement that meets the requirements described below.

The payor may report to the Service and furnish to the payee a substitute statement that provides information regarding the amount of tax-exempt interest and, to the extent possible after reasonable effort, tax-exempt AMT interest paid in 2006. The substitute statement must include, at a minimum, the following information:

(a) Payor's name, address and telephone number;

(b) Payor's federal employer identification number;

(c) Payee's name and address;

(d) Payee's taxpayer identification number (TIN), if available;

(e) Payee's account number;

(f) The amount of tax-exempt interest (including tax-exempt interest that is paid as exempt-interest dividends);

(g) The amount of tax-exempt AMT interest (including tax-exempt AMT interest that is paid as exempt-interest dividends), to the extent possible after reasonable effort; and

(h) Federal income tax withheld, if any.

The substitute statement must also indicate that the amount of tax-exempt interest paid in 2006 must be reported on the applicable Form 1040, *U.S. Individual Income Tax Return*, for 2006 and that the amount of tax-exempt AMT interest paid in 2006 must be taken into account in computing the alternative minimum tax reported on Form 1040 for 2006. Payors are required to retain records sufficient to show the amounts reported to payees on the substitute statements.

Section 3.4. *Timing for Forms 1099–INT and Substitute Statements.* For tax-exempt interest paid in 2006, payors must furnish Forms 1099–INT or substitute statements to payees by January 31, 2007, and to the Service by February 28, 2007, if filed on paper or by magnetic media, or by March 31, 2007, if filed electronically.

Section 4: Transitional Provisions Regarding Backup Withholding

Section 4.1. *Backup Withholding Relief in General.* The Service understands that the programming changes necessary to institute backup withholding for the first time on accounts that pay tax-exempt interest may require considerable lead time to implement in many circumstances. In recognition of this needed lead time, the Service is providing transitional relief from backup withholding under section 3406 with respect to any payment of tax-exempt interest made in 2006 and in the first quarter of 2007 (*i.e.*, between January 1, 2006, and March 31, 2007).

Section 4.2. *Existing Accounts: Special Payee Certification Rules and Backup Withholding after March 31, 2007.* For accounts established or instruments acquired on or before October 30, 2006, that involve the payment of tax-exempt interest after March 31, 2007, the general rules on backup withholding under section 3406 will apply to reportable payments of tax-exempt interest made after March 31, 2007. For this purpose, a payee will be treated as satisfying the payee certification requirements under section 3406(d) if the payor of tax-exempt interest obtains from the payee, a valid TIN by any reasonable manner, including by an uncertified writing, by oral communication, or by a completed, certified Form W–9, *Request for Taxpayer Identification Number and Certification*. Solely for purposes of relief from the backup withholding requirements that would otherwise apply to payments of tax-exempt interest by reason of payee certification failure, this Section shall continue to apply until the Treasury Department and the Service provide further guidance regarding payee certification under section 3406(d) for these accounts and instruments.

Section 4.3. *New Accounts: General Payee Certification Rules and Backup Withholding after March 31, 2007.* For new accounts established or instruments acquired after October 30, 2006, that involve the payment of tax-exempt interest after March 31, 2007, the general rules on backup withholding under section 3406 will apply to reportable payments of tax-exempt interest made after March 31, 2007. For this purpose, the general rules on payee certification under section 3406(d) require that a payor obtain from a payee a completed, certified Form W–9, *Request for Taxpayer Identification Number and Certification*.

Section 5: Tax-exempt Original Issue Discount and Tax-exempt Bearer Bonds

This Section makes special provision for "original issue discount" on tax-exempt bonds within the meaning of section 1288 (tax-exempt OID) and for tax-exempt interest on State or local bonds that are not subject to the bond registration requirement under section 149(a) (tax-exempt bearer bonds). For tax-exempt OID and tax-exempt bearer bonds, no information reporting under section 6049 or backup withholding under section 3406 will be required for calendar year 2006 or thereafter until such time as the Service and the Treasury Department provide future guidance.

Section 6: Effective Date

This notice is effective as of October 30, 2006.

Section 7: Paperwork Reduction Act

The collection of information required in connection with reporting of information regarding tax-exempt interest on Form 1099–INT, as referenced in this notice, has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C.

3507(d)) under OMB control number 1545–0112. The provisions of Section 3 of this notice, which provide a permissive alternative way to report information regarding tax-exempt interest on a substitute statement, require the same kind of information as required by Form 1099–INT and do not impose any requirement to report additional information beyond that required by Form 1099–INT.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Section 8: Contact Information

The principal author of this notice is Karen E. Briscoe of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, contact Mrs. Briscoe at (202) 622–8117 (not a toll-free call).

Appeals Arbitration Program

Rev. Proc. 2006–44

SECTION 1. PURPOSE

This revenue procedure formally establishes the Appeals arbitration program, which is designed to improve tax administration, provide customer service and reduce taxpayer burden. Arbitration is available for cases within Appeals jurisdiction that meet the operational requirements of the program. Generally, this program is available for cases in which a limited number of factual issues remain unresolved following settlement discussions in Appeals. Within Appeals, the Office of Tax Policy and Procedure will be responsible for the management of the Appeals arbitration program.

SECTION 2. BACKGROUND

.01 Section 7123(b)(2) of the Internal Revenue Code, as enacted by § 3465 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, 112 Stat. 685, provides that the Secretary shall establish a pilot program under which a taxpayer and Appeals may jointly request binding arbitration on certain unresolved issues. On January 18, 2000, Appeals began a two-year test of an initial arbitration procedure. *See* Announcement 2000–4, 2000–1 C.B. 317. On July 1, 2003, Appeals completed an additional one-year test of its arbitration procedure. *See* Announcement 2002–60, 2002–2 C.B. 28. During these test periods, the IRS allowed taxpayers to request arbitration for certain factual issues that were already subject to the Appeals administrative process.

.02 This revenue procedure supersedes Announcements 2000–4 and 2002–60.

SECTION 3. SCOPE OF ARBITRATION

.01 The arbitration procedure may be used to resolve issues while a case is in Appeals, after settlement discussions are unsuccessful and, generally, when all other issues are resolved but for the specific factual issue(s) for which arbitration is being requested.

.02 The arbitration procedure does not create any special authority for settlement by Appeals. During the arbitration process, Appeals is still subject to the procedures that would be applicable if the issue were being considered by Appeals, including procedures in the Internal Revenue Manual and existing published guidance.

.03 Arbitration is available:

(1) Only for factual issues;

(2) For factual issues for which a request for competent authority assistance has not yet been filed. Taxpayers are cautioned that if they enter into a settlement with Appeals (including an Appeals settlement through the arbitration process), and then request competent authority assistance, the U.S. competent authority will endeavor only to obtain a correlative adjustment with the treaty country and will not take any actions that would otherwise change the settlement. *See* section 7.05 of Rev. Proc. 2002–52, 2002–2 C.B. 242, or the corresponding provision of any successor guidance. If a taxpayer enters into the Appeals arbitration program, the taxpayer may not request competent authority assistance until the arbitration process is completed, unless the taxpayer demonstrates that a request for competent authority assistance is necessary to keep open a statute of limitations in the treaty country. If so, competent authority assistance may be requested while arbitration is pending and the U.S. competent authority will suspend action on the case until arbitration is completed; and

(3) For factual issues unresolved at the conclusion of unsuccessful attempts to enter into a closing agreement under I.R.C. § 7121.

.04 Arbitration will not be available for:

(1) Legal issues;

(2) Cases in which arbitration is not appropriate under either 5 U.S.C. § 572 or 5 U.S.C. § 575, which provide the general authority and guidelines for the use of alternative of dispute resolution in the administrative process.

(3) Issues docketed in any court;

(4) Issues in a taxpayer's case designated for litigation;

(5) Compliance Coordinated (formerly Industry Specialization Program) Issues (CCI) or Appeals Coordinated Issues (ACI) listed at *http://www.irs.gov/irs/article/0,,id=128327,00.html*; *see* §§ 8.7.3.2.1 and 8.7.3.2.2 of the Internal Revenue Manual, found at *http://www.irs.gov/irm/index.html*;

(6) Issues for which a request for competent authority assistance has been filed under the provisions of Rev. Proc. 2002–52, or any successor guidance, including issues in cases submitted to the competent authority under the simultaneous appeals procedure. If the competent authority declines assistance, the competent authorities fail to agree, or if the taxpayer does not accept the mutual agreement reached by the competent authorities, the taxpayer is permitted to refer the unresolved issues to Appeals for further consideration and may submit a request to arbitrate unresolved factual issues under this revenue procedure;

(7) Collection cases, except for those involving: (i) an unsuccessful attempt to enter into a compromise under I.R.C. § 7122; and (ii) trust fund recovery penalty (TFRP) cases that involve whether a per-

son: (a) was required to collect, truthfully account for, and pay over income, employment, or excise taxes; (b) was willful in attempting in any manner to evade or defeat any aforementioned tax or the payment thereof; and (c) is liable for the TFRP under I.R.C. § 6672; as provided for in any subsequent guidance issued by the Service;

(8) Issues for which arbitration would not be consistent with sound tax administration, *e.g.*, issues governed by closing agreements, by *res judicata*, or controlling Supreme Court precedent;

(9) "Whipsaw" issues, *i.e.*, issues for which resolution with respect to one party might result in inconsistent treatment in the absence of the participation of another party;

(10) Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2001–41, 2001–2 C.B. 173, which defines frivolous issues and sets forth the Service's policy against making technical rulings on such issues.

(11) Cases in which the taxpayer did not act in good faith during Appeals settlement negotiations, *e.g.*, failure to respond to document requests, failure to respond timely to offers to settle, failure to address arguments and precedents raised by Appeals; or

(12) Issues that have been otherwise identified as excluded from the arbitration program.

SECTION 4. APPLICATION PROCESS

.01 Arbitration is optional for both the taxpayer and Appeals. Either the taxpayer or Appeals may submit a request to arbitrate after consulting with the other party.

.02 A taxpayer may submit a request to arbitrate by sending a written request to the appropriate Appeals Team Manager and a copy to the Chief, Appeals, 1099 14th Street, NW, Suite 4200 East, Washington, DC 20005, Attn: Office of Tax Policy and Procedure. The request to arbitrate should:

(1) Provide the taxpayer's name, TIN, address, and the name, title, address and telephone number of a person to contact;

(2) Provide the Appeals Team Case Leader's, Appeals Officer's, or Settlement Officer's name;

(3) Identify the taxable period(s) involved;

(4) Describe the issue for which the taxpayer is requesting arbitration, including the dollar amount of the adjustment in dispute; and

(5) Contain a representation that the issue is not an excluded issue listed in section 3.04, above.

.03 The Appeals Team Manager will respond to the taxpayer and the Appeals Team Case Leader, Appeals Officer, or Settlement Officer, generally, within two weeks after the Appeals Team Manager receives the taxpayer's request for arbitration. The Appeals Team Manager will secure the concurrence of the Chief, Appeals — Office of Tax Policy and Procedure, prior to notifying the taxpayer and the Appeals Team Case Leader, Appeals Officer, or Settlement Officer of the decision.

(1) If Appeals approves the request to arbitrate, the Appeals Team Manager will schedule a conference or conference call that will include a representative from the Chief, Appeals — Office of Tax Policy and Procedure. This representative will act as the Administrator to manage and supervise the arbitration proceeding and to act as liaison between the taxpayer and Appeals (the Parties) and between the Parties and the Arbitrator. At a later date, pursuant to section 6.02, the Parties may select another Administrator, including non-IRS persons.

(2) Although no formal appeal procedure exists for the denial of a request to arbitrate, a taxpayer may request a conference with the Appeals Team Manager to discuss the denial. The denial of a request to arbitrate is not subject to judicial review.

SECTION 5. AGREEMENT TO ARBITRATE

.01 Upon approval of the request to arbitrate, the Parties will enter into a written agreement to arbitrate. *See* Exhibit 1 of this revenue procedure for a model agreement to arbitrate. The attached model agreement is designed to serve as a basic framework; if there is mutual agreement, the Parties are free to eliminate or modify existing provisions and add new provisions as necessary. Each Party enters an agreement to arbitrate in reliance on the other Party's agreement to be bound by the decision of the Arbitrator. The agreement to arbitrate will, at minimum:

(1) Specify the issue(s) that the Parties have agreed to arbitrate;

(2) Assign to the Arbitrator the prescribed task of finding facts;

(3) Describe with precision the answer the Parties seek; *e.g.*, a specific dollar amount, range of dollar values, a 'yes' or 'no' finding, etc.

(4) Describe and limit the kind of information the Arbitrator may consider, *e.g.*, the Parties' agreement as to any legal guidance the Arbitrator must rely upon in reaching a decision;

(5) Contain an initial list of witnesses, attorneys, representatives, and observers for each Party (collectively known as Participants);

(6) Provide that the time and place of any hearing will be determined by mutual agreement of the Parties, and;

(7) Prohibit *ex parte* contacts between the Arbitrator and the Parties.

.02 The agreement to arbitrate may limit the number, identity and participation of Participants. In addition, the agreement may stipulate the subsequent tax or other treatment resulting from the Arbitrator's decision and clarify any other issues that may result from the Arbitrator's decision.

.03 The Appeals Team Manager, in consultation with the Appeals Team Case Leader, Appeals Officer, or Settlement Officer, will sign the agreement to arbitrate on behalf of Appeals.

.04 Generally, the Parties will complete the agreement to arbitrate within four weeks after the taxpayer is notified that Appeals has approved the request to arbitrate, and proceed to arbitration within 90 days after signing the agreement to arbitrate. A taxpayer's inability to adhere to these timeframes, without reasonable cause, may result in Appeals' withdrawal from the arbitration process.

.05 In executing the agreement to arbitrate, the taxpayer consents to the disclosure by the IRS of the taxpayer's returns and return information incident to the arbitration to any Participant for the taxpayer identified in the initial list of Participants and to any Participants for the taxpayer identified in writing by the taxpayer subsequent to execution of the agreement to arbitrate. If the agreement to arbitrate is executed by a person pursuant to a power of attorney executed by the taxpayer, that power of attorney must clearly express the taxpayer's grant of authority to consent to disclose the taxpayer's returns and return

information by the IRS to third parties, and a copy of that power of attorney must be attached to the agreement.

SECTION 6. ARBITRATION PROCESS

.01 A Party must notify the other Party and the Administrator, in a signed writing, not later than thirty (30) days before the arbitration session, of any change to the initial list of Participants contained in the agreement to arbitrate. The Parties, by mutual agreement, may modify the list of Participants at any time up to and including the date of the arbitration session. The Administrator will forward each Party's list(s) to the Arbitrator. Appeals reserves the right to have an observer attend any arbitration. If a taxpayer does not accept observers, the taxpayer's request for arbitration may be denied. Taxpayers may also have an observer attend any arbitration session. The identity and affiliation of all observers will be established in the agreement to arbitrate signed prior to the arbitration session. *See* section 5.01(5); section 2 of Exhibit 1. All observers affiliated with Appeals will be bound by the confidentiality provisions of the Internal Revenue Code. *See* section 9.01. Appeals also reserves the right to have the Office of Chief Counsel assist and participate in the arbitration proceeding.

.02 The Parties, by mutual agreement, may select an Arbitrator from Appeals, or from any local or national organization that provides a roster of neutrals. In the event such local or national organization provides an Arbitrator, this organization may also provide the Administrator for the arbitration, in lieu of the Administrator from the Chief, Appeals — Office of Tax Policy and Procedure. In obtaining the services of a non-IRS Arbitrator, the IRS will follow all applicable provisions of the Federal Acquisition Regulation. An Arbitrator shall have no official, financial, or personal conflict of interest with respect to the Parties, unless such interest is fully disclosed in writing to the taxpayer and the Appeals Team Manager and they agree that the Arbitrator may serve. *See* 5 U.S.C. § 573.

.03 If the Parties select a non-IRS Arbitrator, the Parties will share equally the compensation, expenses, and related fees and costs of the Arbitrator, as well as any reasonable costs for the services of a non-IRS Administrator subject to applicable rules and regulations for Government procurement. The non-IRS Arbitrator and non-IRS Administrator will be contractors subject to the disclosure restrictions of I.R.C. § 6103(n).

.04 If the Parties select an Appeals Arbitrator, the Arbitrator shall be from another Appeals office, or from the office of the Chief, Appeals. Appeals will pay all expenses associated with an Appeals Arbitrator. Due to the inherent conflict that results because the Appeals Arbitrator is an employee of the IRS, the Appeals Arbitrator will provide to the taxpayer a statement confirming the proposed service as an Arbitrator and status as a current employee of the IRS, and that a conflict results from the continued status as an IRS employee.

.05 Criteria for selecting an Arbitrator may include some or all of the following: completion of arbitration training, previous arbitration experience, a substantive knowledge of tax law and knowledge of industry practices. The Arbitrator's qualifications and potential conflicts of interest should be thoroughly reviewed prior to selection. The projected travel costs, hourly fees and other expenses of a non-IRS Arbitrator are subject to the applicable rules and regulations for Government procurement. The non-IRS Arbitrator shall look solely to each Party for one-half of the compensation, expenses and related reasonable fees and costs.

SECTION 7. ARBITRATION SESSION

.01 Each Party will prepare a summary of its position for consideration by the Arbitrator. The Parties should submit their summaries to the Administrator no later than thirty (30) days before the scheduled arbitration session.

.02 The Arbitrator will look solely to the legal guidance identified by the Parties. If the Arbitrator desires further legal guidance, both Parties must agree to provide the guidance and the manner in which it is to be communicated to the Arbitrator.

.03 The arbitration process is confidential. Therefore, all information concerning any dispute resolution communication related to the arbitration proceeding is confidential and may not be disclosed by any Party, Participant, or Arbitrator, except as provided under 5 U.S.C § 574. A dispute resolution communication includes all oral or written communications prepared for purposes of a dispute resolution proceeding. *See* 5 U.S.C. § 571(5).

.04 The Parties agree that there shall be no *ex parte* communications between the Arbitrator and either Party or agent for a Party. In addition, the Arbitrator may not have contact with any other individuals, including Participants, outside the arbitration session, concerning the arbitration matter without the express approval of the Parties. Any contact with the Arbitrator by either Party must be in the presence of the other Party and the Administrator. Written submissions should be sent simultaneously to the Administrator and the other Party. The Administrator will in turn send the submissions to the Arbitrator. *See* section 6 of Exhibit 1. Should the Parties require additional information or clarification regarding the arbitration process, they shall contact the Administrator.

.05 By mutual agreement, the Parties may withdraw from the arbitration process to reach a final Appeals settlement at any time prior to the date of the arbitration session. Postponements for good cause shall be determined by agreement between the Parties.

SECTION 8. POST-SESSION PROCEDURE

.01 Generally, no later than thirty (30) days after completion of the arbitration proceeding, the Arbitrator will prepare a written report and submit a copy to the Administrator. Because the Arbitrator is limited to the task of finding facts, the report will not provide any decision or reasoning that represents an interpretation of the law. Neither Party may appeal the decision of the Arbitrator or contest the decision in any judicial proceeding, including, but not limited to, the Tax Court, United States Court of Federal Claims or a federal district or appellate court.

.02 Once the Arbitrator renders a decision on all or some issues through the arbitration process, Appeals will use established procedures to close the case, including preparation of a specific matters closing agreement (Form 906). Delegation Order 236 (Rev. 3), or any successor delegation order, may apply to settlements resulting from the arbitration process.

.03 If applicable, Appeals will report a settlement reached as a result of the arbi-

tration process to the Joint Committee on Taxation in accordance with I.R.C. § 6405.

SECTION 9. GENERAL PROVISIONS

.01 All IRS and Treasury employees, including the Appeals Administrator, who participate in or observe in any way the arbitration process and any person under contract to the IRS as described in I.R.C. § 6103(n), including the non-IRS Arbitrator and non-IRS Administrator will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including I.R.C. §§ 6103, 7213, and 7431.

.02 Under I.R.C. § 7214(a)(8), IRS employees who have knowledge or information of the violation of any revenue law of the United States must report in writing such knowledge or information to the Secretary. The agreement to arbitrate will state this duty and the Parties will acknowledge it.

.03 The Arbitrator will be disqualified from representing the taxpayer in any pending or future action that involves the transactions or issues that are the particular subject matter of the arbitration. This disqualification extends to representing any other parties involved in the transactions or issues that are the particular subject matter of the arbitration. Moreover, the Arbitrator's firm will be disqualified from representing the taxpayer or any other parties involved in the transactions or issues that are the particular subject matter of the arbitration in an action that involves the transactions or issues that are the particular subject matter of the arbitration. The Arbitrator's firm will not be disqualified from representing the taxpayer or any other parties in any future action that involves the same transactions or issues that are the particular subject matter of the arbitration, provided that: (i) the Arbitrator disclosed the potential of such representation prior to the Parties' acceptance of the Arbitrator; (ii) such action relates to a taxable year that is different from the taxable year under arbitration; (iii) the firm's internal controls preclude the Arbitrator from any form of participation in the matter; and (iv) the firm does not allocate to the Arbitrator any part of the fee therefrom. In the event the Arbitrator has been selected prior to learning the identity of any Party involved in the arbitration, requirement (i) will be deemed satisfied if the Arbitrator promptly notifies the Parties of the potential representation.

.04 Although the Arbitrator may not receive a direct allocation of the fee from the taxpayer (or other party) in the matter for which the internal controls are in effect, the Arbitrator will not be prohibited from receiving a salary, partnership share, or corporate distribution established by prior independent agreement. The Arbitrator and the firm are not disqualified from representing the taxpayer or any other parties involved in the arbitration in any matters unrelated to the transactions or issues that are the particular subject matter of the arbitration.

.05 The disqualifications described in sections 9.03 and 9.04 only apply to representations on matters before the IRS. The provisions of these sections are in addition to any other applicable disqualification provisions including, for example, the rules of the American Bar Association Model Code of Professional Conduct and the applicable canons of ethics.

.06 The decision by the Arbitrator will neither be binding on nor otherwise control, the Parties for taxable years not covered by the arbitration. Except as provided in the agreement to arbitrate, no Party may use the arbitration findings as precedent.

SECTION 10. EFFECTIVE DATE

This revenue procedure is effective October 30, 2006.

SECTION 11. CONTACT INFORMATION

For further information concerning the drafting of this revenue procedure, please contact Wendy Ryan, from the Chief, Appeals — Office of Tax Policy and Procedure, (202) 435–5671 (not a toll-free number) or Jason Spitzer, from the Office of Chief Counsel, Procedure and Administration, Administrative Provisions and Judicial Practice, (202) 622–7950 (not a toll-free number). For further information about the operation of the Appeals Arbitration program, contact Sandy Cohen, listed above.

Exhibit 1

Model Arbitration Agreement

1. THE ARBITRATION PROCESS. Arbitration is optional and will be used to assist [NAME OF TAXPAYER] and the Internal Revenue Service—Appeals (the Parties) in resolving certain factual issues that are currently in the Appeals administrative process. This arbitration process will be conducted pursuant to Rev. Proc. 2006–44, 2006–44 I.R.B. 800. The Parties to this agreement will submit the issues for arbitration and agree to be bound by the Arbitrator's findings on these issues. Each Party enters this agreement in reliance on the other Party's agreement to be bound by the decision of the Arbitrator. There can be no *ex parte* communication between the Arbitrator and any Party, third party, witness, agent, or other person regarding the issues for arbitration. All communications between the Arbitrator and either Party, including requesting and transferring documentation and information, will be made through an Administrator.

2. PARTICIPANTS. The participants in the arbitration session will be:

For Taxpayer:

For Appeals:

Appeals reserves the right to have an observer attend any arbitration. Taxpayers or their representatives may also have an observer attend the arbitration.

All witnesses, attorneys, representatives and observers (Participants) who will attend the arbitration on behalf of or at the request of a Party must be set forth in the list of Participants. If a Party subsequently modifies its list, then, no later than thirty (30) days before commencement of the arbitration session, such Party will submit to the Administrator a complete and final list of Participants who will attend the arbitration session. The list must identify, for each Participant, his or her position with the Party or other affiliation and address, telephone and fax numbers. The Administrator will simultaneously submit each Party's list to the other Party and to the Arbitrator by facsimile or other arrangement agreed to by the Parties. The Parties, by mutual agreement, may modify the list of Participants in writing at any time up to and including the date of the commencement of the arbitration session. Witnesses will be identified in accordance with section 6 of this agreement.

3. SELECTION OF ARBITRATOR, COSTS. The Parties have agreed to select an Arbitrator from Appeals or from any local or national organization that provides a roster of neutrals. On behalf of the Parties, the Administrator will arrange for the hiring of the Arbitrator. The fees and costs of the Arbitrator will be shared equally by the taxpayer and Appeals, subject to applicable rules and regulations for Government procurement.

4. ISSUES TO BE ARBITRATED. The Parties agree that the issues submitted for resolution by the Arbitrator are factual in nature and do not require the Arbitrator to interpret any law, regulation, ruling or other legal authority. The following issues shall be resolved separately for each of the taxable years at issue:

5. GUIDANCE FOR ARBITRATOR. The Arbitrator is not permitted to make any determinations of law or provide reasoning that represents an interpretation of the law; however, it may be necessary for the Arbitrator to refer to the existing applicable law in making a finding on the factual issues. In doing so, the Arbitrator shall look solely to the following legal guidance specified by the Parties:

a. Findings of facts shall be consistent with the legal authorities identified in [Appendix A].

b. The Parties will follow the Federal Rules of Evidence when proffering testimonial and documentary evidence at the arbitration session. The Arbitrator, in his or her sole discretion, shall apply the Rules with the objective of admitting only evidence that is reliable and credible. The Arbitrator will make final rulings on evidentiary disputes. To the extent the conduct of the Arbitration session is not governed by this agreement, the Parties agree to follow the Federal Rules of Civil Procedure.

c. At the request of the Arbitrator, the Parties may agree to provide further legal guidance. The Administrator shall determine, after consultation with the Arbitrator and the Parties, the appropriate manner (*i.e.*, verbal or written form and timing) to submit the further legal guidance to the Arbitrator. If no agreement can be reached with respect to the further legal guidance and it is determined by the Arbitrator that further guidance from the Parties is necessary to decide the matter, then the matter cannot be arbitrated and this agreement will terminate.

d. When legal guidance provided by the Parties is in conflict, the Arbitrator, where practicable, will ignore the guidance and decide the factual issue. If it is not practicable to set aside the Parties' guidance, then during the arbitration session, the Parties will attempt to agree on the guidance needed to resolve the issue. If the Parties cannot agree and the guidance is necessary to decide the matter, then the matter cannot be arbitrated and this agreement will terminate.

6. SUBMISSION OF MATERIALS. Each Party agrees to provide a written summary of the case and their position (not to exceed 25 pages) to the Administrator at least thirty (30) days prior to the date of commencement of the arbitration session. On the due date for the summaries, the Parties will simultaneously exchange the summaries by facsimile or other arrangement agreed to by the Parties and submit a copy to the Administrator for transmittal to the Arbitrator by facsimile or by means of an overnight express delivery service. The Parties will submit testimonial and documentary evidence to the Arbitrator in accordance with the procedures set forth in sections 6 a. and 6 b. below.

The Arbitrator may order a Party to produce a summary of their documents and other evidence which the Party intends to present in support of its position and may order a Party to produce other documents, exhibits or evidence deemed necessary or appropriate. Any and all information and materials that a Party provides must be submitted to the other Party and Administrator who will simultaneously forward such to the Arbitrator.

The Parties will attempt to stipulate to as many facts, documents or conclusions as possible prior to the arbitration session. A stipulation shall be submitted to the Arbitrator, through the Administrator, prior to the commencement of the arbitration session. The Parties may jointly submit supplemental stipulations to the Arbitrator, through the Administrator, at any time prior to the date that the report is issued pursuant to section 14.

a. The Parties may, with mutual agreement and the consent of the Arbitrator, offer witnesses at the arbitration session:

(1) Witnesses shall be subject to direct examination, cross examination and questions by the Arbitrator. In the discretion of the Arbitrator, Parties may request the opportunity to redirect and recross a witness. The Parties shall submit to the Administrator a listing of potential fact witnesses no later than thirty (30) days prior to the date of commencement of the arbitration session. The listing should include the name, current position (if an employee of [NAME OF COMPANY], current and former positions with the applicable company and period such position(s) were held), and brief description of the anticipated testimony.

(2) The Administrator shall forward the witness lists to the Arbitrator and the opposing Party on the due date for such documents.

(3) Once the witness lists have been submitted to the Arbitrator, a Party shall not add additional persons except upon joint agreement of both Parties. A witness will not be entitled to testify at the arbitration session if that person is not included on the listing of witnesses timely submitted to the Administrator.

b. The Parties may, with mutual agreement, submit to the Arbitrator any reliable and credible documents that are relevant to the issues to be decided by the Arbitrator. Issues of relevance, reliability and credibility shall be resolved by the Arbitrator. All documents shall be based solely on information contained within the existing record.

(1) All documents to be submitted to the Arbitrator prior to the commencement of the arbitration session shall be by joint agreement of the Parties, unless otherwise ordered by the Arbitrator. The time and manner of the submission shall be by joint agreement of the Parties.

(2) All documents to be offered by a Party during the arbitration session shall be identified and, if not previously provided, exchanged with the opposing Party no later than thirty (30) days prior to the date of commencement of the arbitration session. The Parties shall submit their documents to the Administrator who will immediately and simultaneously forward them to the Arbitrator. The Parties shall exchange documents directly. Failure to timely exchange documents not previously provided shall preclude the use of such document(s) in the arbitration session, except by a showing of good cause and lack of prejudice to the opposing Party, as determined by the Arbitrator.

c. The Parties agree that the methodology to be used by the Arbitrator in deciding any issue described in section 4 of this agreement must follow these principles:

[For example, language describing the answer sought by the Parties from the Arbitrator, *e.g.*, a specific dollar value, a range of values, a 'yes' or 'no' finding, etc.]

d. The Parties agree to clarify issues that may arise in calculating any deficiency or overpayment resulting from the Arbitrator's findings and agree to the tax treatment of the Arbitrator's findings as follows:

[For example, the Parties should specify how to calculate the taxpayer's deficiency based on the Arbitrator's determination of the value of a particular asset.]

7. CONTACT WITH ARBITRATOR. The Parties agree that there shall be no *ex parte* communication between the Arbitrator and either Party or any Participant. In addition, the Arbitrator may not have contact with any other individuals, except the Administrator, concerning the substance of the arbitration or the arbitration process without the express approval of the Parties. Any contact with the Arbitrator by either Party must be in the presence of the other Party and such contact must be arranged by the Administrator.

8. ARBITRATION SESSION. Subject to the approval of the Arbitrator, the arbitration session will commence on the date and time agreed to by the Parties. The procedures for the arbitration session shall be determined by the Arbitrator, *e.g.*, length and order of opening and closing statements, presentation of witnesses, etc. The postponement or continuance of the arbitration session for good cause shall be determined by agreement between the Parties, subject to the final approval of the Arbitrator.

9. PLACE OF ARBITRATION. The Parties prefer [NAME OF LOCATION] as the site for the arbitration session, subject to change by agreement among the Parties and the Arbitrator.

10. CONFIDENTIALITY. IRS and Treasury employees who participate in any way in the arbitration process and any person under contract to the IRS pursuant to Section 6103(n) of the Internal Revenue Code of 1986, as amended, including the Arbitrator, that the IRS invites to participate will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including Sections 6103, 7213, and 7431. See also 5 U.S.C. § 574. All information concerning any dispute resolution communication related to the arbitration proceeding is confidential and may not be disclosed by any Party, Participant, Administrator, or Arbitrator except as provided under 5 U.S.C. § 574. A dispute resolution communication includes all oral or written communications prepared for purposes of a dispute resolution proceeding. See 5 U.S.C. § 571(5).

[NAME OF TAXPAYER] consents to the disclosure by the IRS of the taxpayer's returns and return information incident to the arbitration to any Participant for the taxpayer identified in the initial list of Participants in section 2 of this agreement, to any Participant identified in writing by the taxpayer subsequent to execution of this agreement, and to any other persons who participate in this arbitration proceeding on behalf of either Party. If the arbitration agreement is executed by a person pursuant to a power of attorney executed by [NAME OF TAXPAYER], that power of attorney must clearly express the grant of authority by [NAME OF TAXPAYER] to consent to disclose the returns and return information of [NAME OF TAXPAYER] by the IRS to third parties, and a copy of that power of attorney must be attached to this agreement.

11. I.R.C. SECTION 7214(a)(8) DISCLOSURE. The Parties acknowledge that IRS and all other Treasury employees involved in this arbitration are bound by Section 7214(a)(8) and must report information concerning violations of any revenue law to the Secretary.

12. RECORD. The Arbitrator may request a stenographic or other record of the arbitration session. If a record is requested, the Administrator will make the arrangements and the Parties shall bear equally the costs of such record. The Parties agree that any stenographic record or other recording of the arbitration proceeding shall remain confidential and shall be destroyed by the Administrator following the issuance of the Arbitrator's report pursuant to section 14.

13. WITHDRAWALS AND POSTPONEMENT. By mutual agreement, the Parties may withdraw from the arbitration process in order to reach a final Appeals settlement any time before the scheduled arbitration session. Established Appeals procedures apply to any resolution reached by the Parties. The Arbitrator may grant postponements for good cause after a hearing before both Parties.

14. REPORT BY ARBITRATOR. The Arbitrator's report will identify each issue described in section 4 of this agreement, will state the findings of facts for each issue for each tax year, and explain any methodology referred to in section 6 c. of this agreement that was utilized in reaching such findings. The report shall be issued and submitted to the Administrator within thirty (30) days after the conclusion of the arbitration session, unless the Arbitrator requests additional time and the Parties approve such request. The Parties may not unreasonably withhold such approval. The Administrator shall forward the Arbitrator's report to the Parties.

15. FINALITY OF ARBITRATOR'S DECISION. The Parties agree to be bound by the Arbitrator's findings, as set forth in the report described in section 14 and to incorporate those findings and the final computations determined under section 6 d. of this agreement into an Appeals closing agreement that the Parties will execute. Delegation Order 236 (Rev. 3), or successor delegation order, may apply to settlements resulting from the arbitration process. Neither Party may appeal the findings of the Arbitrator nor contest the finding(s) in any judicial proceeding, including but not limited to the United States Tax Court, United States Court of Federal Claims, or a federal district or federal appellate court.

16. PRECEDENTIAL USE. The findings by the Arbitrator will not be binding on, or otherwise control, the Parties for taxable years not covered by the arbitration. Except as provided in this agreement, the findings of facts made by the Arbitrator may not be used as precedent by any Party.

INTERNAL REVENUE SERVICE, APPEALS

By:

Date:

[NAME OF TAXPAYER]

By:

Date:

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

General Allocation and Accounting Regulations Under Section 141

REG–140379–02; REG–142599–02

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations on the allocation of, and accounting for, tax-exempt bond proceeds for purposes of the private activity bond restrictions that apply under section 141 of the Internal Revenue Code (Code) and that apply in modified form to qualified 501(c)(3) bonds under section 145 of the Code. The proposed regulations provide State and local governmental issuers of tax-exempt bonds with guidance for applying the private activity bond restrictions. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 26, 2006. Requests to speak with outlines of topics to be discussed at the public hearing scheduled for January 11, 2007, must be received by December 26, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–140379–02; REG–142599–02), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8:00 a.m. to 4:30 p.m. to CC:PA:LPD:PR (REG–140379–02; REG–142599–02), Internal Revenue Service, Crystal Mall 4, 1941 Jefferson Davis Hwy., 1901 S. Bell St., room 108, Arlington, Virginia 22202. Alternatively, submissions may be made electronically to the IRS Internet Site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS-REG–140379–02). The public hearing will be held in the auditorium of the New Carrollton Federal Building, 5000 Ellin Rd., Lanham, Maryland 20706.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Johanna Som de Cerff (202) 622–3980; concerning submissions and the hearing, Kelly D. Banks, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by December 26, 2006. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The recordkeeping requirement in this proposed regulation is in §1.141–6(a)(4). The recordkeeping requirement will apply only to State and local governmental issuers of tax-exempt bonds used to finance a facility that will be used for both governmental use and more than a *de minimis* amount of private business use. The recordkeeping is voluntary to obtain a benefit. The records will enable the Service to examine compliance by State and local governmental issuers of tax-exempt bonds used to finance a facility that will be used for both governmental use and more than a *de minimis* amount of private business use.

Estimated total annual recordkeeping burden: 3000 hours.

Estimated average annual burden hours per recordkeeper: 3 hours.

Estimated number of recordkeepers: 1000.

Estimated annual frequency of responses: the frequency of responses will depend on how often the recordkeeper issues tax-exempt bonds used to finance a facility that will be used for both governmental use and more than a *de minimis* amount of private business use, which will vary from rarely to a few times a year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1. Final regulations (T.D. 8712, 1997–12 I.R.B. 35) under section 141 of the Internal Revenue Code (Code) were published in the **Federal Register** on January 16, 1997 (62 FR 2275) (the 1997 Final Regulations) to provide comprehensive guidance on most aspects of the private activity bond restrictions. The 1997 Final Regulations, however, reserved most of the general allocation and accounting rules for purposes of section 141. An advance notice of proposed rulemaking was published in the

Federal Register on September 23, 2002 (REG–142599–02, published in the I.R.B. as Announcement 2002–91, 2002–2 C.B. 685) (67 FR 59767) (the 2002 Advance Notice) regarding allocation and accounting rules for tax-exempt bond proceeds used to finance mixed-use output facilities.

This document amends the Income Tax Regulations under section 141 by proposing rules for the allocation of, and accounting for, tax-exempt bond proceeds. Special rules for allocating proceeds used to finance mixed-use facilities and rules regarding the treatment of partnerships as owners or users of facilities for purposes of section 141 are also included. This document also amends regulations under section 145 by proposing rules on certain related matters that apply to qualified 501(c)(3) bonds. These regulations are published as proposed regulations (the Proposed Regulations) to provide an opportunity for public review and comment.

Explanation of Provisions

I. *Introduction*

In general, the interest on State and local governmental bonds is excludable from gross income under section 103 of the Code upon satisfaction of certain requirements. Interest on a private activity bond, other than a qualified private activity bond within the meaning of section 141, is not excludable under section 103. Section 141 provides certain tests used to determine whether a State or local bond is a private activity bond. These tests look to whether the proceeds of tax-exempt bonds comply with certain restrictions, including private business use restrictions, private payment restrictions, and private loan restrictions. Similar restrictions apply in modified form to qualified 501(c)(3) bonds under section 145.

In general, these private activity bond restrictions permit certain *de minimis* amounts of private business use for proceeds of tax-exempt governmental bonds without causing such bonds to be classified as private activity bonds under section 141 (*de minimis* permitted private business use). *De minimis* permitted private business use generally means private business use of not more than 10% of the proceeds. Section 141(b)(3) further limits this *de minimis* permitted private business use to a 5% amount for certain unrelated or disproportionate use. Sections 141(b)(4) and 141(b)(5) further limit this *de minimis* permitted private business use to a prescribed $15 million nonqualified amount for certain output facility issues generally and for certain larger issues absent volume cap allocations for private business use in excess of the $15 million nonqualified amount.

The Proposed Regulations provide guidance regarding general allocation and accounting rules for purposes of the private activity bond restrictions under section 141. The Proposed Regulations provide guidance regarding allocations of proceeds of an issue of tax-exempt bonds (proceeds) and other funds to expenditures (as contrasted with investments), to property, and to uses (that is, governmental use or private business use).

The Proposed Regulations include certain special accounting rules for projects which have both governmental use and private business use (mixed-use projects), as described further herein. One purpose of these special accounting rules is to provide flexibility to allow issuers to use tax-exempt governmental bonds to finance the portion of a mixed-use project to be used for governmental use where private business use of the entire project may exceed the amount of *de minimis* permitted private business use.

The Proposed Regulations provide several general allocation rules. First, proceeds and other sources of funds generally may be allocated to expenditures using any reasonable, consistently applied accounting method that is consistent with how proceeds are allocated for purposes of the arbitrage investment restrictions of section 148. Second, under a general *pro rata* allocation method (which also applies to mixed-use projects absent an election to use one of two elective special allocation rules), proceeds and other sources allocated to capital expenditures for a capital project generally are treated as allocated ratably throughout the project in proportion to the relative amounts of proceeds and other funds spent on that project (general *pro rata* allocation method). Third, allocations of sources of funds to uses, that is, governmental use and private business use, generally are made in a manner that reasonably corresponds to the relative amounts of the sources of funding spent on the property.

The Proposed Regulations provide special elective allocation rules for mixed-use projects. In general, the intent of these special allocation rules is to provide reasonable flexibility to allow issuers to finance portions of projects that are reasonably expected to be used for governmental use with tax-exempt governmental bonds, provided that the portions can be reasonably determined and measured in administrable ways. In particular, the Proposed Regulations provide two special elective allocation methods, the discrete physical portion allocation method and the undivided portion allocation method. These two special elective allocation methods permit proceeds to be allocated to a portion of a mixed-use project using certain prescribed reasonable, consistent allocation methods that properly reflect the proportionate benefit to be derived by the various users of the mixed-use project. These two special allocation methods for dividing mixed-use projects for financing purposes are based on principles similar to those used for measuring ongoing use under §1.141–3(g) and are closely coordinated with those measurement rules. These methods may be elected for mixed-use projects only if they meet certain eligibility criteria. Absent a proper election to use one of these two special elective allocation methods, the general *pro rata* allocation method applies to a mixed-use project. The special allocation rules for mixed-use projects are described further herein.

In addition to general allocation and accounting rules and special allocation rules for mixed-use projects, the Proposed Regulations also provide guidance on certain related topics.

II. *General Allocation Rules for Proceeds: General Pro Rata Allocation Method*

The Proposed Regulations provide a general *pro rata* allocation method under which proceeds and other funds, if any, allocated under section 148 and §1.141–6(a)(1) to capital expenditures for a project are treated as being allocated ratably throughout the project in proportion to the relative amounts of proceeds and other funds spent on the project. Generally, the project is the bond-financed property for purposes of section 141. Ex-

cept where the issuer has elected to use one of the special allocation methods permitted for certain mixed-use projects, the Proposed Regulations provide that a general *pro rata* allocation method applies to mixed-use projects. Except as otherwise provided in the Proposed Regulations, if financed property is financed with two or more sources of funding (including two or more tax-exempt governmental bond issues), those sources of funding must be allocated to multiple uses (that is, governmental use and private business use) of that financed property in proportion to the relative amounts of those sources of funding expended on that financed property.

The Proposed Regulations prescribe the manner and timing of elections to use the special allocation rules for mixed-use projects and rules regarding final allocations of sources of funding to a project generally.

III. *Mixed-use Projects*

(A) *In general*

The Proposed Regulations provide two special allocation methods that issuers may elect to use for certain mixed-use projects. Here, a mixed-use project refers to a project (as defined in the Proposed Regulations) that, absent the application of the special proposed rules, is reasonably expected to have both governmental use and private business use, and where the private business use is expected to be in excess of the amount of *de minimis* permitted private business use under section 141 for a project financed with an issue of tax-exempt governmental bonds.

The Proposed Regulations treat property as part of the same defined project if the property consists of capital projects that have reasonable nexus characteristics based upon functional and physical proximity, time of placement in service, and a common plan of financing for proceeds and other sources of funds expended on the capital projects.

The Proposed Regulations provide two special elective methods of allocating proceeds of tax-exempt governmental bonds and other funds, that is, proceeds of taxable bonds and funds that are not derived from proceeds of a borrowing (qualified equity), to capital expenditures within mixed-use projects: the discrete physical portion allocation method and the undivided portion allocation method. Absent eligibility and a proper election by an issuer to use one of these special elective allocation methods for mixed-use projects, the general *pro rata* allocation method applies.

(B) *Discrete physical portion allocation method*

In general, the discrete physical portion allocation method allows allocations for a mixed-use project based on dividing the project into physically discrete portions. Under the discrete physical portion allocation method, the percentage of capital expenditures that is allocable to a particular discrete portion of a mixed-use project is determined using a reasonable, consistently applied method that reflects the proportionate benefit to be derived by the various users of the mixed-use project. The Proposed Regulations provide several objective proportionate benchmarks (for example, cost, space, or fair market value) to determine the measure of a discrete portion.

An anti-abuse rule requires use of relative fair market values to measure the discrete portions when an allocation to a discrete portion expected to be used by a private business is significantly greater using relative fair market values than such allocation would be under the otherwise-chosen measure. This anti-abuse rule is comparable to a similar existing anti-abuse rule regarding the ongoing measurement of private business use under §1.141–3(g)(4)(v). The Treasury Department and the IRS solicit public comment on this anti-abuse rule and whether quantifying the significantly greater than under fair market value standard (for example, an allocation under the fair market value standard is significantly greater if it exceeds an allocation made under another measure by more than X percent) would assist taxpayers in making effective use of the discrete physical portion allocation method.

In order to allow for targeting of tax-exempt bond proceeds to governmental use, an issuer generally may determine which source or sources of funds spent on a mixed-use project are allocated to a particular discrete portion. For example, an issuer may allocate tax-exempt bond proceeds to one discrete portion of a mixed-use courthouse project which will be used in public court proceedings for governmental use and the issuer may allocate qualified equity to another discrete portion of the courthouse which will be used in private retail business operations as a restaurant for private business use.

Further, while final allocations generally may not be changed, an issuer may reallocate funds from one discrete portion to another if the discrete portions are comparable under certain criteria. For administrability reasons, the Proposed Regulations limit such reallocations to a frequency of not more than once every five years.

(C) *Undivided portion allocation method*

In general, the undivided portion allocation method permits separating a mixed-use project into a governmental use portion and a private business use portion, each of which represents a fixed percentage of the use of the entire mixed-use project (for example, a fixed percentage of unreserved parking spaces in a parking garage). Unlike the discrete physical portion method, the undivided portion allocation method involves the allocation of a mixed-use project between portions that are not physically distinct but that can be notionally represented by percentages based on objective proportionate measures. Certain eligibility conditions apply to the undivided portion allocation method. This method may be used only for mixed-use projects where private business use and governmental use may be measured under §1.141–3(g) because that use occurs: (1) at the same time and on the same basis (within the meaning of §1.141–3(g)(4)(iii)); or (2) at different times (within the meaning of §1.141–3(g)(4)(ii)). The issuer must reasonably expect as of the issue date that the undivided portion of the mixed-use project to be financed with proceeds of tax-exempt governmental bonds will not have private business use in excess of the amount of *de minimis* permitted private business use. The total capital expenditures for the mixed-use project are allocated between two undivided portions based on measures of the proportionate benefit to be derived by the various users. The Proposed Regulations list some reasonable allocation methods for determining the relative size of the portions. The undivided portion allocation method has an anti-abuse rule

similar to that described previously with respect to the discrete physical portion allocation method which requires use of relative fair market values to measure the portions in certain circumstances.

Proceeds are allocated only to the undivided portion that is reasonably expected to be used for governmental use (and any *de minimis* permitted private business use). Qualified equity is allocated to the other undivided portion.

A number of special rules apply to the undivided portion allocation method for purposes of allocating sources to uses. In general, the entire mixed-use project is treated as the bond-financed property whose use must be measured. Also, in measuring ongoing use of a mixed-use project under the undivided portion allocation method, the measurement rules in §1.141–3(g) (or §1.141–7 in the case of a mixed-use output facility) apply. The issuer must use the same method for measuring use that it used for determining the allocation of funds to the undivided portions of the mixed-use project. After use of the entire mixed-use project is measured, however, the governmental use and private business use are generally allocated to the undivided portions financed with proceeds and qualified equity, respectively. Generally, in any year, the percentage of governmental use and private business use that is specially allocated to an undivided portion is limited. That percentage of use cannot exceed the percentage of capital expenditures for the mixed-use project that makes up that undivided portion. For example, the percentage of private business use that is specially allocated to the undivided portion financed with qualified equity cannot exceed the percentage of capital expenditures for the mixed-use project that makes up that undivided portion. In determining whether the private business use test is met, only use of the undivided portion to which proceeds are allocated is taken into account.

(D) *Operating rules for mixed-use projects*

The Proposed Regulations provide certain general operating rules for mixed-use project allocations. An issuer may elect to apply the discrete physical portion allocation method or the undivided portion allocation method only if the mixed-use project is wholly-owned by governmental persons. An exception to this rule applies to certain mixed-use output facilities. (See paragraph E. *Special rules for mixed-use output facilities*.) Consistent with §1.141–1(b), common areas cannot be treated as discrete portions of the project. Proceeds and other sources of funds spent on common areas are allocated to the discrete portions in the same proportion as funds spent for the discrete portions are allocated.

Under the Proposed Regulations, the funds that may be allocated under the discrete physical portion allocation method or the undivided portion allocation method to a particular mixed-use project include proceeds of one or more issues of tax-exempt governmental bonds and qualified equity. If a project is financed with more than one issue of governmental bonds, proceeds of those issues are allocated ratably to a discrete portion or undivided portion to which any proceeds are allocated in proportion to the amounts of proceeds from each issue used for the project.

(E) *Special rules for mixed-use output facilities*

The Proposed Regulations provide special rules for the application of the undivided portion allocation method to mixed-use projects that are output facilities. An issuer may apply the undivided portion allocation method to a mixed-use project that is an output facility if the facility is wholly-owned by governmental persons or if undivided ownership interests in the facility are owned by governmental persons or private businesses, provided that all owners of the undivided ownership interests share the ownership, output, and operating expenses in proportion to their contributions to the costs of the facility. The relative measures of the undivided portions of a mixed-use output facility are determined using the proportionate benefit to be derived by the users of the mixed-use project. For an output facility in which private business use arises from a private business owning an undivided ownership interest in the facility (with a governmental person owning the other undivided portion of the facility), the undivided portions are based on the ownership percentages. This rule implements the principles illustrated by §1.141–7(i), *Example 1*. When private business use of a facility solely owned by a governmental person or of an undivided ownership interest of a facility owned by a governmental person arises from an output contract that meets the benefits and burdens tests under §1.141–7, the undivided portions of that facility or ownership interest are determined by the proportionate shares of the available output of that project to be used for governmental use (and any *de minimis* permitted private business use) and for private business use. Section 1.141–7(h) controls allocation of output contracts to output facilities.

IV. *Redemption of bonds in anticipation of nonqualified private business use*

The Proposed Regulations provide a new special rule which permits certain proceeds of taxable bonds and certain funds that are not derived from proceeds of a borrowing that are used to retire tax-exempt governmental bonds (anticipatory redemption bonds) to be treated as qualified equity. In prescribed circumstances, this new special rule allows targeting of funds other than tax-exempt bond proceeds to redeem outstanding tax-exempt bonds and thereby to finance portions of projects which are expected to be used for nonqualified private business use in the future. This special rule has certain eligibility requirements. In general, the intent of this proposed rule is to encourage retirement of tax-exempt bonds before the occurrence of unqualified use to reduce the burden on the tax-exempt market. The eligibility requirements for this special rule address when the anticipatory redemption bond must be retired, the issuer's reasonable expectations regarding use of the project and actual use of the project prior to the redemption, and the length of the term of the issue of which the anticipatory redemption bond is a part.

Amounts that are treated as qualified equity under this special rule may be allocated to a discrete portion or undivided portion of the project in a manner provided in the discrete physical portion allocation method or undivided portion allocation method if such allocation would have satisfied the applicable allocation method had that portion been identified for purposes of financing it in a new issue at the time of the retirement of the anticipatory redemption bond.

V. *Allocations of private payments, common costs, and bonds*

The Proposed Regulations provide that private payments generally are allocated in accordance with §1.141–4, subject to certain special rules for allocating payments under output contracts. Private payments from output contracts that meet the benefits and burdens test under §1.141–7 are allocated to the undivided portion financed with qualified equity (notwithstanding §1.141–4(c)(3)(v)) in the same manner as is the private business use from such contracts. Thus, private business use and private payments arising under such an output contract are both allocated to the undivided portion financed with qualified equity (to the extent all such contracts do not exceed the percentage of such portion) without regard to whether the qualified equity consists of proceeds of taxable bonds or funds that are not derived from proceeds of a borrowing.

The Proposed Regulations provide ratable allocation rules for common costs (for example, issuance costs).

The Proposed Regulations provide that proceeds generally are allocated to bonds in accordance with the rules for allocations of proceeds to bonds in multipurpose issues under §1.141–13(d). In the case of an issue that is not a multipurpose issue, proceeds are allocated to bonds ratably in a manner similar to the allocation of proceeds to projects under the general *pro rata* allocation method.

VI. *Partnerships*

The Proposed Regulations generally treat a partnership as a separate entity that is a nongovernmental person for purposes of section 141. For purposes of section 141, a limited exception disregards a partnership as a separate entity if each of the partners is a governmental person and treats such a partnership as an aggregate of its partners (that is, as governmental persons) for these purposes. In applying the private business tests for purposes of qualified 501(c)(3) bonds, the Proposed Regulations generally treat a partnership as an aggregate if each of the partners is either a governmental person or a section 501(c)(3) organization. The Proposed Regulations, however, do not apply such aggregate treatment for purposes of the ownership test under section 145(a)(1).

In general, the proposed treatment of partnerships reflects certain administrability concerns with partnerships which have both governmental persons and private businesses as partners and the associated potential for shifting allocations of various partnership items. The Treasury Department and the IRS understand that governmental persons or section 501(c)(3) organizations may be partners in partnerships that include private businesses. Permitting tax-exempt bonds used to finance facilities owned by such partnerships to qualify as governmental bonds rather than private activity bonds would raise administrability issues, including but not limited to, questions of how to measure use by an owner and questions regarding common profit or cost reduction motives and allocation of partnership items. Permitting such ownership by partnerships without administrable rules for tracking these items has the potential to allow the benefits of tax-exempt financing to inure to private business users.

One limited circumstance in which the Treasury Department and the IRS are considering favorable aggregate treatment for partnerships (that is, disregarding eligible partnerships as separate private business entities) and are soliciting specific comment is that of a partnership of governmental persons (or section 501(c)(3) organizations for 501(c)(3) bonds) and private businesses in which the respective partners receives the same distributive share of each partnership item for Federal tax purposes (including income, gain, deduction, loss, credit and basis) as their respective interests in the partnership and this share remains the same for the entire measurement period for the bonds or the entire period that the person is a partner. The Treasury Department and the IRS solicit specific public comment regarding whether it would be useful to treat such a partnership as an aggregate in this limited circumstance involving straight-up allocations of all partnership items in accordance with constant percentage interests in the partnership.

The contemplated limited circumstance in which the Treasury Department and the IRS are considering aggregate treatment for partnerships for private activity bond purposes involves partnership allocations similar to those treated as qualified allocations to tax-exempt entities for purposes of the tax-exempt use property provisions under section 168(h)(6).

VII. *Multipurpose Issue Allocations*

In general, §1.141–13(d) provides guidance on multipurpose issue allocations for purposes of section 141. That guidance was included as part of the final regulations (T.D. 9234, 2006–4 I.R.B. 329) under section 141 that were published in the **Federal Register** on December 19, 2005 (70 FR 242) (the 2005 Final Refunding Regulations) and that mainly provided rules for refunding bonds.

The Proposed Regulations also make a clarifying change to §1.141–13(d). In response to the 2005 Final Refunding Regulations, the Treasury Department and the IRS have received comments seeking clarification of how those multipurpose rules work under section 141 in relation to an existing general multipurpose issue allocation rule under §1.150–1(c)(3). The Proposed Regulations provide certain clarifying guidance on the multipurpose issue allocation rule under §1.141–13(d) and provide an expanded example to illustrate how those rules operate in various circumstances.

In particular, the Proposed Regulations modify §1.141–13(d) regarding multipurpose issue allocations to clarify how that provision applies when an issuer wants to elect the multi-purpose issue rule for an issue that would consist of qualified private activity bonds in part and governmental bonds in part with an appropriate allocation. The Proposed Regulations amend §1.141–13(d) to eliminate a requirement that a multipurpose issue must consist of tax-exempt bonds prior to being allocated into separate issues. The Proposed Regulations retain the requirement that, after the multipurpose issue allocation, each of the separate issues must consist of tax-exempt bonds. This proposed amendment clarifies that an issuer may issue bonds intended to be qualified private activity bonds in part and governmental bonds in part as one issue (within the meaning of §1.150–1(c)(1)) and make allocations under the section 141 multipurpose issue allocation rule in §1.141–13(d) in conjunction with the general multipurpose issue allocation rule in §1.150–1(c)(3), to treat the

qualified private activity bonds and governmental bonds as separate issues, respectively.

VIII. *Proposed Effective Dates*

The Proposed Regulations are proposed to apply to bonds (1) that are sold on or after the date that is 60 days after the date of publication in the **Federal Register** of final regulations under §1.141–6 and (2) that are subject to the 1997 Final Regulations. Issuers may apply §§1.141–13(d) and 1.141–13(g) *Example 5* of the Proposed Regulations to bonds sold before the date of publication of final regulations in the **Federal Register** to which §1.141–13 applies. Except as otherwise provided in the preceding sentence, issuers may not apply or rely upon the rules contained in these Proposed Regulations until these rules are adopted as final regulations and made effective pursuant to a Treasury decision published in the **Federal Register**.

IX. *Continued Reliance on Mixed-Use Output Notice*

Pursuant to the 2002 Advance Notice, the Treasury Department and the IRS provided previous limited guidance regarding certain allocation and accounting rules for mixed-use output facilities. Issuers may continue to rely on the rules in the 2002 Advance Notice for bonds sold before the date of publication in the **Federal Register** of final regulations under §1.141–6 (or such later effective date as may be specified in those final regulations or in future proposed regulations).

Special Analyses

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 5 U.S.C. 553(b) does not apply to this notice of proposed rulemaking. It is hereby certified that the collection of information (recordkeeping requirement) in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small governmental jurisdictions. This certification is based upon the fact few small governmental jurisdictions issue tax-exempt bonds to finance facilities that will be used for both governmental use and more than the amount of *de minimis* permitted private business use. Also, the amount of time required to meet the recordkeeping requirement is not significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Small Business Administration for comment on its impact on small governmental jurisdictions.

Comments and Public Hearing

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

A public hearing has been scheduled for January 11, 2007 at 10:00 a.m., in the auditorium of the New Carrollton Federal Building, 5000 Ellin Rd., Lanham, Maryland 20706. Due to building security procedures, visitors must enter at the main 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 30 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 or electronic comments by December 26, 2006, and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by December 26, 2006. 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 authors of these regulations are Rebecca L. Harrigal, Johanna Som de Cerff, and Michael P. Brewer, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

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. Section 1.141–0 is amended by adding an entry for §1.141–1(e), revising entries for §1.141–6, and adding an entry for §1.141–15(k) and (l) as follows:

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* * * * *

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* * * * *

(e) Partnerships.

(1) In general.

(2) Governmental partnerships.

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§1.141–6 Allocation and accounting rules

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(2) Allocations within property; general *pro rata* allocation method.

(3) Allocations of sources of funds to ultimate uses of financed property.

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(1) In general.

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(1) In general.

(2) The measure of a discrete portion.

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(d) The undivided portion allocation method.

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(e) Certain general operating rules for mixed-use project allocations.

(1) In general.

(2) Governmental ownership requirement for undivided portion and discrete portion allocations.

(3) Sources of funds for mixed-use project allocations.

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(f) Special rules for bond redemptions in anticipation of unqualified use.

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(1) In general.

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(k) Examples.

§1.141–7 Special Rules for Output Facilities

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§1.141–15 Effective dates

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(k) Effective date for certain regulations related to allocation and accounting.

(l) Permissive retroactive application of certain regulations.

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Par. 3. Section 1.141–1 is amended by adding additional definitions under paragraph (b) and by adding a new paragraph (e) as follows:

§1.141–1 Definitions and rules of general application

* * * * *

(b) *Certain general definitions*

* * * * *

De minimis permitted private business use means the amount of private business use permitted for proceeds of tax-exempt bonds without causing such bonds to be classified as private activity bonds under section 141.

* * * * *

Financed property means, except as otherwise provided, any project (as defined in §1.141–6(b)(2)(ii)) to which proceeds of an issue of tax-exempt bonds are allocated under §1.141–6.

* * * * *

Governmental use or *government use* means any use that is not private business use under §1.141–3.

* * * * *

Private business use means use by a person other than a governmental person in a trade or business, as more particularly defined in §1.141–3.

* * * * *

(e) *Partnerships*—(1) *In general*. Except as provided in paragraph (e)(2) of this section, a partnership (as defined under section 7701(a)(2)) is treated as a separate entity that is a nongovernmental person for purposes of section 141.

(2) *Governmental partnerships*. For purposes of section 141, in the case of a partnership (as defined in section 7701(a)(2)) in which each of the partners is a governmental person (as defined in §1.141–1(b)), the partnership is disregarded as a separate entity and is treated as an aggregate of its partners.

Par. 4. Section 1.141–6 is revised to read as follows:

§1.141–6 Allocation and accounting rules

(a) *Allocations of proceeds to expenditures, property, and uses in general*—(1) *Allocations to expenditures*. Except as otherwise provided in this section, for purposes of §§1.141–1 through 1.141–15, the provisions of §1.148–6(d) apply for purposes of allocating proceeds and other sources of funds to expenditures (as contrasted with investments). Except as otherwise provided in this section, allocations of proceeds and other sources of funds to expenditures generally may be made using any reasonable, consistently applied accounting method. Allocations of proceeds to expenditures under section 141 and section 148 must be consistent with each other. For purposes of the consistency requirements in this paragraph (a), it is permissible to employ an allocation method under paragraph (a)(2), (c), or (d) of this section (for example, the general *pro rata* allocation method under paragraph (a)(2) of this section) to allocate sources of funds within a particular project for purposes of section 141 in conjunction with an accounting method allowed under §1.148–6(d) (for example, the first-in, first-out method) to determine the allocation of proceeds or other sources of funds to expenditures for that project.

(2) *Allocations within property; the general pro rata allocation method*. Except as otherwise provided in this section, proceeds and other sources of funds allocated to capital expenditures for a project (as defined in paragraph (b)(2)(ii) of this section) under section 148 and paragraph (a)(1) of this section are treated as allocated ratably throughout that project in proportion to the relative amounts of proceeds and other funds spent on that project (the general *pro rata* allocation method). For example, if a building is financed with proceeds and other funds and the issuer allocates the proceeds and other funds to the capital expenditures of the building using a gross proceeds spent first allocation method under section 148 and paragraph (a)(1) of this section, the proceeds and other sources of funds so allocated to the building are treated as being allocated ratably throughout the building under this paragraph (a)(2).

(3) *Allocations of sources of funds to ultimate uses of financed property*. Except as otherwise provided in this section, if financed property is financed with two or more sources of funding (including two or more tax-exempt governmental bond issues), those sources of funding must be al-

located to multiple uses (for example, governmental use and private business use) of that financed property in proportion to the relative amounts of those sources of funding expended on that financed property.

(4) *Manner and time for electing to apply special allocation methods for mixed-use projects; final allocations generally*. If an issuer is making an election under paragraph (c) or (d) of this section to use one of the special allocation methods for mixed-use projects, the issuer must make this election in writing by noting in its records the method of allocation chosen and the preliminary amounts and sources of funds it expects to allocate to specific discrete or undivided portions within the mixed-use project. The time for making this election is on or before the start of the measurement period. An issuer must make final allocations of proceeds and other funds under this section by noting in its records the final amounts of such allocations. The time for making these final allocations is set forth in the timing rules under §1.148–6(d)(1)(iii). Except as otherwise provided in this section, once the time for making final allocations under §1.148–6(d)(1)(iii) has passed, allocations cannot be changed.

(5) *References to proceeds*. For purposes of this section, except where the context clearly requires otherwise (for example, in references to "proceeds" of taxable bonds) and regardless of whether expressly specified, references to proceeds generally are intended to refer to proceeds of tax-exempt governmental bonds.

(b) *Special rules on reasonable proportionate allocation methods for mixed-use projects*—(1) *In general*. Once proceeds and other sources of funds are allocated to a mixed-use project (as defined in paragraph (b)(2) of this section) under section 148 and paragraph(a)(1) of this section, there are three methods for allocating those proceeds and other sources of funds to capital expenditures (as defined in §1.150–1(b)) within the mixed-use project. These methods are the general *pro rata* allocation method in paragraph (a)(2) of this section, the discrete physical portion allocation method, and the undivided portion allocation method. Allocations will be made under the general *pro rata* allocation method unless the issuer elects to use either the discrete portion method or the undivided portion method and meets the requirements for making such election under paragraph (a)(4) of this section and using such a method. The discrete portion and undivided portion allocation methods are elective and permit, to the extent provided, proceeds to be allocated to a portion of a mixed-use project based on a consistent application of a permitted reasonable allocation method that properly reflects the proportionate benefit to be derived by the various users of those portions of the mixed-use project. Paragraph (c) of this section sets forth the rules for the discrete physical portion allocation method and paragraph (d) of this section sets forth the rules for the undivided portion allocation method. Paragraph (e) of this section sets forth certain general operating rules for all mixed-use project allocations. Paragraph (g) of this section provides special rules for applying the undivided portion allocation method to output facilities.

(2) *Definition of a mixed-use project*—(i) *In general*. For purposes of this section, the term *mixed-use project* means a project (as defined in paragraph (b)(2)(ii) of this section) that, absent the application of the special elective allocation methods for mixed-use projects under paragraphs (c) and (d) of this section, is reasonably expected as of the issue date to have private business use in excess of *de minimis* permitted private business use.

(ii) *Definition of project*—(A) *In general*. For purposes of this section, the term *project* means one or more facilities or capital projects, including land, buildings, equipment, or other property, that meets each of the following requirements:

(1) The facilities or capital projects are functionally related or integrated and are located on the same site or on reasonably proximate adjacent sites;

(2) The facilities or capital projects are reasonably expected to be placed in service within the same 12-month period; and

(3) The proceeds and other sources of funds that are expended on the facilities or capital projects are expended pursuant to the same plan of financing.

(B) *Subsequent improvements or replacements*. Subsequent improvements and replacements of portions of a project that are within the size, function, and usable space of the original design of the project are treated as part of that same project even if placed in service beyond the 12-month period in paragraph (b)(2)(ii)(A)(2) of this section. Thus, for example, improvements and replacements of damaged walls or worn-out fixtures within an original building that do not expand the scope or function of usable space are part of the original project.

(c) *Discrete physical portion allocation method*—(1) *In general*. An issuer may elect the discrete physical portion allocation method when a mixed-use project can be separated into discrete portions (as defined in §1.141–1(b)). With a proper election, an issuer may use the discrete physical portion allocation method to allocate proceeds and qualified equity to capital expenditures for a discrete portion within a mixed-use project and to allocate those sources of funds to uses. The issuer must use a reasonable, consistently applied allocation method that reflects the proportionate benefits to be derived by the various users of the discrete portions to determine the aggregate amount of proceeds and qualified equity allocable to a particular discrete portion in a mixed-use project.

(2) *The measure of a discrete portion*. An issuer is treated as using a reasonable allocation method that reflects the proportionate benefits if the issuer determines the amount of proceeds and qualified equity to be allocated to the discrete portions based on reasonable discrete portion benchmarks. These benchmarks generally include expected actual costs of the discrete portions, a percentage of total space of the mixed-use project to be used in the discrete portion, a percentage of the total fair market value of the mixed-use project that will be associated with the discrete portion, or another objective measure that is reasonable based on all the facts and circumstances. A discrete portion benchmark other than relative fair market value may not be used to make an allocation to a discrete portion that is reasonably expected to be used for private business use if an allocation to that same discrete portion using relative fair market value, determined as of the start of the measurement period, would result in a significantly greater percentage of the total capital expenditures of the project being allocated to such discrete portion.

(3) *Allocations to expenditures for discrete portions*. Except as otherwise provided in this section, an issuer may determine how each source of funds (for ex-

ample, proceeds or qualified equity) spent on a mixed-use project is allocated among discrete portions of that project. For example, proceeds may be specially allocated to capital expenditures for costs of a discrete portion that is reasonably expected to be used for governmental use (or for *de minimis* permitted private business use), and qualified equity may be specially allocated to capital expenditures for costs of a discrete portion that is reasonably expected to be used for private business use.

(4) *Allocations of uses to discrete portions*. In applying the measurement rules under §1.141–3(g) to measure ongoing use of a discrete portion of a mixed-use project, the measurement rules under §1.141–3(g) generally apply to the same extent and in the same manner that they otherwise would. If an issuer properly elects to apply the discrete physical portion allocation method, the financed property is limited to the discrete portion to which any proceeds are allocated under paragraph (c)(3) of this section, and under §1.141–3(g)(4)(iv), the only use of the mixed-use project that is taken into account is the use of the discrete portions to which proceeds are specially allocated.

(5) *Certain reallocations among discrete portions*. An issuer may reallocate in whole, but not in part, proceeds and qualified equity that it allocated to capital expenditures for one discrete portion of a mixed-use project under paragraph (c)(3) of this section to another discrete portion of the same mixed-use project if the proportionate benefits to be derived by the users of the two discrete portions are reasonably comparable both at the time of the original allocation and at the time of the reallocation. For purposes of this paragraph (c)(5), the proportionate benefits are reasonably comparable only if the measures of the discrete portion benchmarks are within five percent of each other. In determining whether the proportionate benefits of the discrete portions are reasonably comparable at the time of the reallocation, the same discrete portion benchmark used originally to determine the discrete portions and the fair market value of the discrete portions as of the time of the reallocation must be used. Reallocations under this paragraph (c)(5) may be made only once every five years.

(d) *The undivided portion allocation method*—(1) *In general*. An issuer may elect the undivided portion allocation method to make allocations with respect to a mixed-use project, provided that the undivided portions to which the allocations are made generally represent fixed percentages of the use of the entire mixed-use project (for example, a fixed percentage of unreserved parking spaces in a parking garage). The measures of the undivided portions may be based on physical or nonphysical characteristics of the project. In addition, the undivided portion allocation method may be applied separately to a discrete portion within a mixed-use project for which the issuer has elected to apply the discrete physical portion allocation method in which event the references in this paragraph (d) to mixed-use project generally shall be deemed to mean that discrete portion within which the undivided portion allocation method is applied separately. Upon a proper election, an issuer may, to the extent provided, use the undivided portion allocation method both to allocate proceeds or qualified equity to capital expenditures for the undivided portions and to allocate those sources of funds to uses of the mixed-use project. The issuer must use a reasonable consistently applied allocation method that properly reflects the proportionate benefit to be derived by the various users of the mixed-use project to determine the amount of proceeds or qualified equity allocable to a particular undivided portion of a mixed use project. See paragraph (g) of this section for special rules for output facilities. To apply the undivided portion allocation method, the following conditions must be met:

(A) The issuer must reasonably expect as of the start of the measurement period that private business use and governmental use of the mixed-use project will occur simultaneously and be on the same basis (within the meaning of §1.141–3(g)(4)(iii)) or will occur at different times (within the meaning of §1.141–3(g)(4)(ii)); and

(B) The issuer must reasonably expect as of the start of the measurement period that private business use allocated to the proceeds under paragraph (d)(4) of this section will not exceed *de minimis* permitted private business use.

(2) *The measure of an undivided portion*. An issuer is treated as using a reasonable allocation method that reflects the proportionate benefits if the issuer determines the amount of proceeds and qualified equity to be allocated to the undivided portions based on reasonable undivided portion benchmarks. Such benchmarks generally include a measure of how many units produced from the facility will be used by the various users, a percentage of the space in the mixed-use project to be used by the various users (for example, a percentage of the number of parking spaces or a percentage of square feet of usable leased office space), a percentage of the fair market value of the mixed-use project that will be used by the various users (for example, a dollar amount per parking space for a percentage of a total number of parking spaces or a dollar amount per square foot for a percentage of usable leased office space), a percentage of time that the project will be used by the various users (determined in a manner consistent with §1.141–3(g)(4)(ii)), or another objective measure, which may include the present value of reasonably expected revenues associated with each user's use in circumstances in which no other measure is reasonably workable (for example, expected revenues from space in a research facility in which the qualified and nonqualified research is operationally fungible), that is reasonable based on all the facts and circumstances. An undivided portion benchmark other than relative fair market value may not be used to make an allocation to an undivided portion that is reasonably expected to be used for private business use if an allocation to that same undivided portion using relative fair market values, determined as of the start of the measurement period, would result in a significantly greater percentage of the total capital expenditures of the project being allocated to such undivided portion. For example, if a private business and a governmental person use a financed facility each for 50 percent of the time, but the relative fair market value of the private business use is significantly greater than 50 percent because the private business uses the facility during prime hours, the relative fair market values of the undivided portions must be used as the undivided portion benchmark.

(3) *Allocations to expenditures for undivided portions*. Except as otherwise provided in this section, proceeds are specially allocated to capital expenditures for costs

of an undivided portion that is reasonably expected to be used for governmental use (or for *de minimis* permitted private business use). Qualified equity is specially allocated to capital expenditures for costs of an undivided portion of a mixed-use project that is reasonably expected to be used for private business use.

(4) *Allocations of uses to undivided portions*—(i) *General rule*. If an issuer elects to apply the undivided portion allocation method, then for purposes of section 141, the financed property is the mixed-use project. In measuring ongoing use of a mixed-use project, the measurement rules under §1.141–3(g) (or §1.141–7 in the case of an undivided portion of a mixed-use project that is an output facility) apply to the same extent and in the same manner that they otherwise would to the mixed-use project. However, under the undivided portion allocation method, after measuring private business use of the mixed-use project, subject to the limits in paragraph (d)(4)(ii) of this section, private business use of the mixed-use project is specially allocated to the undivided portion of that project financed with qualified equity (as contrasted with the entire mixed-use project) for purposes of determining whether the issue meets the private business use test. Corresponding allocation rules apply to the undivided portion of a mixed-use project that is financed with proceeds and that is reasonably expected to be used for governmental use (or for *de minimis* permitted private business use). Thus, subject to the limitations in paragraph (d)(4)(ii) of this section, governmental use is specially allocated to the undivided portion that is financed with proceeds. Private business use of the mixed-use project that is properly allocated under this paragraph to an undivided portion financed with qualified equity is not private business use of proceeds. To determine whether the undivided portion to which proceeds are allocated is used for private business use, the measurement rules under §1.141–3(g) (or §1.141–7 for output facilities) apply, taking into account the special allocation rules for the undivided portion allocation method under this section.

(ii) *Limit on amount targeted*. In any year, the percentage of private business use of the mixed-use project, as determined under the measurement rules for any one-year period under §1.141–3(g)(4), that is specially allocated to an undivided portion financed with qualified equity cannot exceed the percentage of capital expenditures of the mixed-use project used to determine that undivided portion and allocated to that undivided portion. The percentage of governmental use (and *de minimis* permitted private business use), as determined in the same manner, that is specially allocated to an undivided portion financed with proceeds cannot exceed the percentage of capital expenditures of the mixed-use project used to determine that undivided portion and allocated to that undivided portion. Similarly, for output facilities, the percentage of private business use of the mixed-use project, as determined under §1.141–7, that may be targeted to an undivided portion cannot exceed the percentage of capital expenditures of the mixed-use project allocated to that undivided portion.

(iii) *Consistency requirement*. In applying the measurement rules under §1.141–3(g) to a mixed-use project for which an issuer has employed the undivided portion allocation method, the issuer must use the same measurement method (for example, costs, quantity, or fair market value) that it used as its benchmark measure to make the allocations to the undivided portions of the mixed-use project under this section. For example, if the issuer made an allocation to an undivided portion using a time-based allocation, the issuer must measure private business use using a time-based allocation.

(e) *Certain general operating rules for mixed-use project allocations*—(1) *In general*. This paragraph (e) provides certain general operating rules for allocations regarding mixed-use projects under this section.

(2) *Governmental ownership requirement for discrete physical portion and undivided portion allocation methods*. Except in the case of an output facility, an issuer may make an election to apply the discrete physical portion or the undivided portion allocation method only if the mixed-use project is wholly-owned by governmental persons. An issuer may elect to apply the undivided portion method to a mixed-use project that is an output facility in which non-governmental persons own undivided ownership interests if those interests meet the requirements of paragraph (g)(2) of this section.

(3) *Sources of funds for mixed-use project allocations*—(i) *In general*. For purposes of applying the permitted allocation methods for mixed-use projects under paragraphs (c) and (d) of this section, the only sources of funds that may be allocated to the mixed-use project are proceeds and qualified equity (as defined in paragraph (e)(3)(ii) of this section).

(ii) *Definition of qualified equity*. Except as otherwise provided in special rules for anticipatory redemption bonds in paragraph (f) of this section, for purposes of this section, the term *qualified equity* means only proceeds of taxable bonds and funds that are not derived from proceeds of a borrowing that are spent on the same mixed-use project as the proceeds of the applicable tax-exempt governmental bonds. By contrast, for example, qualified equity does not include equity interests in real property or tangible personal property. Further, qualified equity does not include any funds spent on subsequent improvements and replacements (including any subsequent improvements or replacements described in paragraph (b)(2)(ii)(B) of this section).

(4) *Common areas*. Common areas may not be treated as separate discrete portions of mixed-use projects. Proceeds or qualified equity used to finance capital expenditures for common areas are allocated ratably to the discrete portions of the mixed-use project in the same manner that funds for other capital expenditures of the mixed-use project are allocated.

(5) *Allocations regarding multiple issues*. If proceeds of more than one issue are allocated under section 148 and paragraph (a)(1) of this section to capital expenditures of a mixed-use project, and the issuer elects to apply the discrete portion or undivided portion allocation method to such mixed-use project, then proceeds of those issues are allocated ratably to capital expenditures for a discrete portion or undivided portion to which any proceeds are allocated in proportion to their relative shares of the total proceeds of such issues in the aggregate used for such mixed-use project.

(f) *Special rules for bond redemptions in anticipation of unqualified use*—(1) *In general*. Amounts other than proceeds of tax-exempt bonds that are used to retire a

tax-exempt governmental bond (anticipatory redemption bond) are treated as qualified equity if the following requirements are met:

(i) Allocations to anticipatory redemption bonds are made in a manner similar to §1.141–12(j)(2), and the anticipatory redemption bonds are retired within the time prescribed below in anticipation of a deliberate action that otherwise would cause the project to have private business use in excess of *de minimis* permitted private business use. An anticipatory redemption bond is redeemed in anticipation of the deliberate act when it is retired at least five years before its otherwise-scheduled maturity date or mandatory sinking fund redemption date and it is retired within a period that starts one year before the deliberate act occurs and ends 91 days before the deliberate act occurs;

(ii) The issuer must not reasonably expect at the start of the measurement period that the project would be a mixed-use project, and for the first five years of the measurement period, the project must not be used in a manner that would cause private business use of the project to exceed *de minimis* permitted private business use; and

(iii) The term of the issue of which the anticipatory redemption bond is a part must be no longer than is reasonably necessary for the governmental purpose of the issue (within the meaning of §1.148–1(c)(4)).

(2) *Allocation of qualified equity*. Amounts that are treated as qualified equity under this paragraph (f) may be allocated to a discrete portion or undivided portion of a project in a manner provided in the discrete physical portion allocation method under paragraph (c) of this section or the undivided portion allocation method under paragraph (d) of this section if such allocation would have satisfied the applicable allocation method had that portion been identified for purposes of financing it in a new issue at the time of the retirement of anticipatory redemption bond. Allocations under this paragraph (f) cannot later be changed.

(3) *Allocations of use*. Use of a project to which this paragraph (f) applies is allocated in accordance with the discrete physical portion allocation method or undivided portion allocation method, as applied under the immediately preceding paragraph.

(4) *Relationship to §1.141–12*. Anticipatory redemption bonds that are treated as qualified equity under this paragraph (f) have a comparable effect on continuing compliance as remedial actions under §1.141–12 and need not be further remediated under §1.141–12.

(g) *Special rules for applying the undivided portion allocation method to mixed-use output facilities*—(1) *In general*. This paragraph (g) sets forth certain special rules regarding how to apply the undivided portion allocation method to a mixed-use project that is an output facility.

(2) *Governmental ownership requirement for mixed-use output facilities*. An issuer may elect to apply the undivided portion method to a mixed-use project that is an output facility if it is wholly-owned by governmental persons or if it has multiple undivided ownership interests which are owned by governmental persons or private businesses, provided that all owners of the undivided ownership interests share the ownership, output, and operating expenses in proportion to their contributions to the costs of the output facility.

(3) *The measure of an undivided portion of a mixed-use output facility*. The measure of an undivided portion of a mixed-use project that is an output facility is based on a reasonable proportionate allocation method that properly reflects the proportionate benefit to be derived by the various users of the mixed-use project. For an output facility that has multiple undivided ownership interests that meet the requirements of paragraph (g)(2) of this section, those undivided ownership interests are treated as undivided portions. In addition, for purposes of determining the measure of proportionate benefit to be derived from users of an output facility (or of an undivided ownership interest in an output facility treated as an undivided portion) as a result of output contracts, the measure of an undivided portion is based on a benchmark equal to the proportionate share of available output (as defined in §1.141–7(b)(1)) to be received by the user. For purposes of determining the measure of an undivided portion of an output facility based on the proportionate share of available output, the facts and circumstances test under §1.141–7(h) governs allocations of output contracts to output facilities.

(h) *Allocations of private payments*. Private payments for financed property are allocated in accordance with §1.141–4. Thus, private payments for a mixed-use project for which an election is made to apply the discrete physical portion allocation method are allocated under §1.141–4(c)(3)(ii), and private payments for a mixed-use project for which an election is made to apply the undivided portion allocation method are allocated under 1.141–4(c)(3) without regard to the undivided portions. However, payments under output contracts that result in private business use are allocated to the undivided portion financed with qualified equity (notwithstanding §1.141–4(c)(3)(v) (regarding certain allocations of private payments to equity)) in the same manner as the private business use from such contracts is allocated to that undivided portion under paragraph (d)(4) of this section.

(i) *Allocations of proceeds to common costs of an issue*. Proceeds of tax-exempt bonds allocated to expenditures for common costs (for example, issuance costs, qualified guarantee fees, or reasonably required reserve or replacement funds) are allocated in accordance with §1.141–3(g)(6). Common costs allocable to a mixed-use project for which an election has been made to apply the undivided portion or discrete physical portion allocation method are allocated ratably to the discrete portions or undivided portion of the mixed-use project to which proceeds are allocated.

(j) *Allocations of proceeds to bonds*. In general, proceeds of tax-exempt bonds are allocated to bonds in accordance with the rules for allocations of proceeds to bonds for separate purposes of multipurpose issues in §1.141–13(d). In the case of an issue that is not a multipurpose issue, proceeds are allocated to bonds ratably in a manner similar to the allocation of proceeds to projects under the general *pro rata* allocation method in paragraph (a)(2) of this section.

(k) *Examples*. The following examples illustrate the application of this section:

Example 1. Discrete portions of a mixed-use project. City A constructs a 10-story office building, having 100x square foot of office space, and costing $100x. Each floor has an equal amount of office space. Assume the building has no common areas. City A reasonably expects to use the first six floors

for governmental use (and possibly for *de minimis* permitted private business use). City A will lease the top four floors to Corporation B for private business use. City A wants to divide the mixed-use project into two discrete portions and to allocate proceeds to the first six floors and qualified equity to the top four floors. City A treats the first six floors as one discrete portion (the Governmental Portion) and the top four floors as another discrete portion (the Private Business Portion). City A proposes to determine how much of the $100x can be allocated to each discrete portion using relative square feet of usable office space. The percentage of the $100x that would be allocated to the Private Business Portion using relative fair market values, determined at the start of the measurement period, would not be significantly greater than the amount that will be allocated using relative square footage. Relative square footage is an appropriate discrete portion benchmark because it is an objective measure that properly reflects the proportionate benefit to be derived by the various users. City A finances the costs of the Governmental Portion ($60x) with proceeds of tax-exempt governmental bonds (the Bonds) and the costs of the Private Business Portion ($40x) with qualified equity which consists of taxable bonds (the qualified equity). City A allocates Bond proceeds to capital expenditures for the costs of the Governmental Portion (that is, $60x for capital costs of six specific floors of the building). City A allocates the qualified equity to capital expenditures for the costs of the Private Business Portion (that is, $40x for capital costs of four specific floors of the building). The financed property to which proceeds of the Bonds are allocated is the Governmental Portion. For purposes of measuring ongoing use of the Bond proceeds, use of the Private Business Portion will be disregarded, but any private business use of the six specific floors which comprise the Governmental Portion will be taken into account during the measurement period. The proceeds of the Bonds are treated as used for the Governmental Portion and ongoing compliance depends on the amount of private business use of that Governmental Portion over the term of the applicable measurement period. Thus, if more than 10 percent of the specific physically discrete floors which comprise the Governmental Portion of the mixed-use project (that is, more than $6x of the proceeds or 6x square feet of the office space within the Governmental Portion) were used for private business use during the measurement period as a result of deliberate actions, then the Bonds would violate the private business use test.

Example 2. Reallocations among discrete portions. City A constructs a 10-story office building having 100x square feet of office space, and costing $100x. The top five floors are to be leased to a private business, Corporation B. Before the start of the measurement period, City A appropriately elected a discrete physical portion allocation method using a relative square footage measure and allocated $50x of proceeds to the first five floors (the Governmental Portion) and $50x in qualified equity to the top five floors (the Private Business Portion). After the time for finalizing allocations has passed, Corporation B defaults on its lease for the top five floors of the building and vacates the building. Corporation C, another private business, expresses interest in leasing office space, but Corporation C wants to lease the first five floors of the building rather than the top five floors previously leased by Corporation B. City A wants to reallocate the proceeds used for the Private Business Portion to the Governmental Portion. City A plans to use the Private Business Portion for governmental use. At the time of both the original allocation and this reallocation the measures of the Private Business Portion and Governmental Portion under the applicable discrete portion benchmarks are within five percent of each other. City A determines that the measures of the two discrete portions are reasonably comparable at the time of the reallocation by using the benchmarks of relative square footage and the then-current fair market values of the two discrete portions. This reallocation between discrete portions is permissible.

Example 3. Undivided portions of a mixed-use project. City A constructs a 10-story office building, having 100x square foot of office space, and costing $100x. City A has not identified specific space to be leased to any specific private business. Instead, City A reasonably expects to use 70 percent of the office space in the building for governmental use (or possibly for *de minimis* permitted private business use) (the Governmental Portion). City A reasonably expects that it will lease out a maximum of 30 percent of the office space to one or more private businesses in unspecified locations in the building (the Private Business Portion). City A wants to allocate this mixed-use project between two undivided portions and target the expected private business use to the undivided portion financed with qualified equity. City A determines how much of the $100x can be financed with tax-exempt governmental bonds based on relative square feet of usable office space. This undivided portion benchmark is an objective measure that properly reflects the proportionate benefit to be derived by the various users. City A finances 70 percent of the costs of the building ($70x) with proceeds (the Bonds) and 30 percent ($30x) of those costs with qualified equity which consists of taxable bonds (the Qualified Equity). Bond proceeds are allocated to capital expenditures for the costs of the Governmental Portion. Qualified Equity is allocated to capital expenditures for the costs of the Private Business Portion. For purposes of measuring ongoing use of the mixed-use project, private business use and governmental use of the entire 10-story office building is considered. As long as average private business use of the mixed-use project under the measurement rules does not exceed 30 percent in a particular year, that private business use is allocated to the Private Business Portion. Thus, none of that private business use is allocated to the Governmental Portion, and that private business use is disregarded for purposes of determining whether there is private business use of the proceeds allocated to the Governmental Portion. If average private business use of the mixed-use project increases to 45 percent in a subsequent year, a maximum of 30 percent of that private business use is properly allocable to the Private Business Portion and thereby disregarded in determining ongoing use of the Governmental Portion. Private business use in excess of the 30 percent properly allocable to the Private Business Portion (that is, 15 percent of private business use) would be allocated to the Governmental Portion. Conversely, if private business use of the mixed-use project in a subsequent year decreased to 20 percent, all 20 percent of the private use would be allocated to the Private Business Portion and thereby disregarded for purposes of measuring private use of the proceeds in that year. Because there would be governmental use in that year in excess of the 70 percent that is properly allocable to the Governmental use Portion, the governmental use in excess of 70 percent (that is, 10 percent of governmental use) would be allocated to the Private Business Portion.

Example 4. Revenue-based undivided portion of research facility. University A is a state university. University A owns and operates research facilities. In 2008, University A plans to build a new research facility (the 2008 Mixed-Use Research Project), which it expects will be used for both qualified research arrangements for governmental use (Governmental Research) and nonqualified research arrangements for private business use (Private Business Research). University A wants to allocate the 2008 mixed-use research facility between two undivided portions for Governmental Research and for Private Business Research and to target Private Business Research to the undivided portion financed with equity. University A proposes to make this allocation using a revenue-based undivided portion benchmark. All of University A's research activities will have the following operational characteristics:

(i) The research facilities are continuously available for both Governmental Research and Private Business Research;

(ii) Governmental Research and Private Business Research take place simultaneously in the same research facilities; and

(iii) The same research may relate to one or more research projects involving both Governmental Research and Private Business Research. University A also has a reasonable basis for determining the percentage of revenues that will be derived from Private Business Research and Governmental Research. During the past five years, of the total revenues, net of royalties and licenses, from University A's research facilities, the percentage of revenues from Governmental Research and the percentage of revenues from Private Business Research (on a present value basis) have not changed. University A reasonably expects that this split of revenues will continue with the 2008 Mixed-Use Research Project. Under all the facts and circumstances, including, among other things, the nature of the particular research arrangements (for example, the governmental or private business nature of particular research grantors or contractual terms that result in governmental use or private business use) and historic actual revenues and future expected revenues from research arrangements of a particular nature, net of royalties and licenses, the only objective measurable benchmark that can reasonably distinguish the Governmental Research portion from the Private Business Research portion is the expected percentage of revenues each will generate. Therefore, University A will be using a reasonable method for determining the undivided portions of the 2008 mixed-use research facility if it bases the portions on the revenues each is expected to generate.

Example 5. Output facility. Authority A is a governmental person that owns and operates an electric transmission facility. Prior to 2009, Authority A used its equity to pay capital expenditures of $1000x for the facility. In 2009, Authority A wants to make capital improvements to the facility in the amount of $100x. Authority A reasonably expects that, after completion of such capital improvements, 54 per-

cent of the available output from the facility, as determined under §1.141–7, will be sold under output contracts for governmental use and that 46 percent of such available output will be sold under output contracts for private business use. Authority A wants to allocate this 2009 project for capital improvements (the 2009 Mixed-Use Output Project) between two undivided portions based on proportionate measures of available output and to finance the maximum eligible undivided portion with tax-exempt governmental bonds (assuming use of the maximum 10 percent *de minimis* amount of private business use permitted for tax-exempt governmental bonds). Authority A treats a 60 percent undivided portion of the 2009 Mixed-Use Output Project as one undivided portion (the Governmental Portion), which it reasonably expects to use for output contracts involving 90 percent governmental use (representing 54 percent of the available output), plus 10 percent private business use (representing 6 percent of the available output). Authority A treats a 40 percent undivided portion of the 2009 Mixed-Use Output Project as another undivided portion (the Private Business Portion), which it reasonably expects to use for output contracts involving private business use. Authority A determines the measures of these two undivided portions based on relative shares of available output, as determined under §1.141–7. This measure uses a reasonable proportionate allocation method which properly reflects the proportionate benefit to be derived by the various users. On January 1, 2009, Authority A issues bonds with proceeds of $60x (the Bonds) to finance the Governmental Portion of the 2009 Mixed-Use Output Project and uses $40 million of funds that are not derived from proceeds of a borrowing (the Qualified Equity) to finance the Private Business Portion of the 2009 Mixed-Use Output Project. Authority A allocates Bond proceeds to capital expenditures for the costs of the Governmental Portion and Qualified Equity to capital expenditures for the costs of the Private Business Portion. For purposes of measuring ongoing use of the Governmental Portion financed with the Bond proceeds, use of the Private Business Portion is disregarded, but any private business use of the Governmental Portion will be taken into account during the measurement period. So long as the actual amount of private business use of the Governmental Portion's share of available output does not exceed 6 percent, the Bonds will not be private activity bonds.

Example 6. Treatment of retirement of bonds. City B issues bonds to build a parking garage (the Garage), costing $100x, that it will own and operate. At the start of the measurement period, City B reasonably expects that the only use of the garage will be governmental use. The term of the issue is no longer than reasonably necessary for the governmental purpose of the issue. During the first six years of the measurement period, the garage is used as the issuer expected. In year seven of the measurement period, however, City B expects that in less than one year it will enter into a contract with Corporation C, a private business, which will cause 20 percent of the Garage to be used for private business use. More than 90 days before entering into a binding contract with Corporation C, City B uses $20x of funds other than proceeds of tax-exempt bonds to retire bonds and City B determines the bonds to be retired on a *pro rata* basis. The applicable bonds will be retired at least 5 years prior to their scheduled maturity dates. As of the date of the anticipatory redemption, the Garage qualifies as a mixed-use project, and City B applies paragraph (f) of this section and allocates the $20x that was used to redeem the bonds to an undivided portion to which the private business use will be allocated. If City B failed to meet the requirements of paragraph (f) of this section, amounts that City B used to redeem the bonds would not be qualified equity.

Par. 5. Section 1.141–13 is amended by revising paragraph (d)(1) and paragraph (g) *Example 5* to read as follows:

§1.141–13 Refunding issues

* * * * *

(d) *Multipurpose issue allocations*—(1) *In general.* For purposes of section 141, unless the context clearly requires otherwise, §1.148–9(h) applies to allocations of multipurpose issues (as defined in §1.148–1(b)), including allocations involving the refunding purposes of the issue. An allocation under this paragraph (d) may be made at any time, but once made may not be changed. An allocation is not reasonable under this paragraph (d) if it achieves more favorable results under section 141 than could be achieved with actual separate issues. Each of the separate issues under the allocation must consist of one or more tax-exempt bonds. Allocations made under this paragraph (d) and §1.148–9(h) must be consistent for purposes of section 141 and section 148.

* * * * *

(g) *Examples.* * * *

Example 5. Multipurpose issue. (i) In 2006, State D issues bonds to finance the construction of two office buildings, Building 1 and Building 2. D expends an equal amount of the proceeds on each building. D enters into arrangements that result in private business use of 8 percent of Building 1 and 12 percent of Building 2 during the measurement period under §1.141–3(g). In addition, D enters into arrangements that result in private payments in percentages equal to that private business use. These arrangements result in a total of 10 percent of the proceeds of the 2006 bonds being used for a private business use and for private payments. In 2007, D purports to make a multipurpose issue allocation under paragraph (d) of this section of the outstanding 2006 bonds, allocating the issue into two separate issues of equal amounts with one issue allocable to Building 1 and the second allocable to Building 2. An allocation is unreasonable under paragraph (d) of this section if it achieves more favorable results under section 141 than could be achieved with actual separate issues. D's allocation is unreasonable because, if permitted, it would allow more favorable results under section 141 for the 2006 bonds (that is, private business use and private payments which exceeds the aggregate 10 percent permitted *de minimis* amounts for the 2006 bonds allocable to Building 2) than could be achieved with actual separate issues. In addition, if D's purported allocation was intended to result in two separate issues of tax-exempt governmental bonds (versus tax-exempt private activity bonds), the allocation would violate paragraph (d) of this section in the first instance because the allocation to the separate issue for Building 2 would fail to qualify separately as an issue of tax-exempt governmental bonds as a result of its 12 percent of private business use and private payments, which exceed the 10 percent permitted *de minimis* amounts.

(ii) The facts are the same as in paragraph (i) of this *Example 5*, except that D enters into arrangements that result in 8 percent private business use for Building 1, and it expects no private business use of Building 2. In 2007, D allocates an equal amount of the outstanding 2006 bonds to Building 1 and Building 2. D selects particular bonds for each separate issue such that the allocation does not achieve a more favorable result than could have been achieved by issuing actual separate issues. D uses the same allocation for purposes of both section 141 and 148. D's allocation is reasonable.

(iii) The facts are the same as in paragraph (ii) of this *Example 5*, except that as part of the same issue, D issues bonds for a privately used airport. The airport bonds if issued as a separate issue would be qualified private activity bonds. The remaining bonds if issued separately from the airport bonds would be governmental bonds. Treated as one issue, however, the bonds are taxable private activity bonds. Therefore, D makes its allocation of the bonds under §§1.141–13(d) and 1.150–1(c)(3) into 3 separate issues on or before the issue date. Assuming all other applicable requirements are met, the bonds of the respective issues will be tax-exempt qualified private activity bonds or governmental bonds.

* * * * *

Par. 6. Section 1.141–15 is amended by revising paragraph (a) and (i) and adding paragraphs (k) and (l) to read as follows:

§1.141–15 Effective Dates

(a) *Scope.* The effective dates of this section apply for purposes of §§1.141–1 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in §1.150–1(b).

* * * * *

(i) *Permissive application of certain regulations relating to output facilities.*

(1) Issuers may apply §1.141–7(f)(3) and §1.141–7(g) to any bonds used to finance output facilities.

(2) Issuers may apply §1.141–6 to any bonds used to finance output facilities that are sold on or after the date that is 60 days after the date of publication of the Treasury decisions adopting these rules as final regulations in the **Federal Register**

* * * * *

(k) *Effective date for certain regulations relating to allocation and accounting*. Except as otherwise provided in this section, §§1.141–1(e), 1.141–6, 1.141–13(d), and 1.145–2(b)(4), (b)(5), and (c)(3) apply to bonds that are sold on or after the date that is 60 days after the date of publication of the Treasury decisions adopting these rules as final regulations in the **Federal Register** and that are subject to the 1997 Final Regulations.

(l) *Permissive retroactive application of certain regulations*. Issuers may apply §1.141–13(d) to bonds to which §1.141–13 applies.

Par. 7. Section 1.145–2 is amended by adding paragraphs (b)(4), (b)(5), and (c)(3) to read as follows:

§1.145–2 Application of Private Activity Bond Regulations

* * * * *

(b) * * *

(4) References to *governmental bonds* in §1.141–6 mean qualified 501(c)(3) bonds.

(5) References to *ownership by governmental persons* in §1.141–6 mean ownership by governmental persons or 501(c)(3) organizations.

(c) * * *

(3) *Partnerships*. Section 1.141–1(e)(2) does not apply for purposes of section 145(a)(1). For purposes of section 145(a)(2), in the case of a partnership (as defined in section 7701(a)(2)) in which each of the partners is a governmental person or a section 501(c)(3) organization, the partnership is disregarded as a separate entity and is treated as an aggregate of its partners.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on September 25, 2006, 8:45 a.m., and published in the issue of the Federal Register for September 26, 2006, 71 F.R. 56072)

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2006–81

The Internal Revenue Service has revoked its determination that the organization listed below qualifies as an organization described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on June 27, 2005, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

University Lithotripsy Affiliates, Inc.
Newark, NJ

Determination of Interest Expense Deduction of Foreign Corporations; Correction

Announcement 2006–82

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains a correction to final and temporary regulations (T.D. 9281, 2006–39 I.R.B. 517), that were published in the **Federal Register** on Thursday, August 17, 2006 (71 FR 47443). This regulation revised the Income Tax Regulations relating to the determination of the interest expense deduction of foreign corporations and applies to foreign corporations engaged in a trade or business within the United States.

DATES: This correction is effective August 17, 2006.

FOR FURTHER INFORMATION CONTACT: Gregory Spring or Paul Epstein, (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (T.D. 9281) that is the subject of this correction are under sections 882 and 884 of the Internal Revenue Code.

Need for Correction

As published, T.D. 9281 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (T.D. 9281), that were the subject of FR Doc. E6–13402, is corrected as follows:

On page 47443, column 1, in the preamble under the caption "DATES: *Effective Date*:", lines 1 through 5, the language, "These regulations are effective starting

the tax year end for which the original tax return due date (including extensions) is after August 17, 2006." is corrected to read "These regulations are effective August 17, 2006.".

Cynthia E. Grigsby,
Senior Federal Register Liaison Officer,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on September 27, 2006, 8:45 a.m., and published in the issue of the Federal Register for September 28, 2006, 71 F.R. 56868)

Flat Rate Supplemental Wage Withholding; Correction

Announcement 2006–83

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (T.D. 9276, 2006–37 I.R.B. 423), that were published in the **Federal Register** on Tuesday, July 25, 2006 (71 FR 142). These regulations apply to all employers and others making supplemental wage payments to employees.

DATES: This correction is effective January 1, 2007.

FOR FURTHER INFORMATION CONTACT: A. G. Kelley, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (T.D. 9276) that is the subject of this correction are under sections 3401 and 3402 of the Internal Revenue Code.

Need for Correction

As published, T.D. 9276 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 9276), that were the subject of FR Doc. E6–11764, is corrected as follows:

On page 42051, column 2, in the preamble under the paragraph heading "Special Rules for Determining Applicability of Mandatory Flat Rate Withholding", lines 2 and 3 from the top of the column, the language, "the final regulations and the revenue procedure provide employers with a" is corrected to read "the final regulations provide employers with a".

Cynthia E. Grigsby,
Senior Federal Register Liaison Officer,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on October 2, 2006, 8:45 a.m., and published in the issue of the Federal Register for October 3, 2006, 71 F.R. 58276)

Request for Applications to Participate in the 2007 IRS Individual e-file Partnership Program

Announcement 2006–87

The Stakeholder Partnerships, Education and Communication (SPEC) function within the Internal Revenue Service (IRS) is continuing its efforts to establish IRS e-file partnerships with various entities. The IRS is seeking non-monetary e-file partnerships for Filing Season 2007. No applications for funding (monetary compensation) will be considered. A commercial business, non-profit organization, state government or local government may submit applications. Applications are not solicited from other Federal government agencies. The program is an annual program and covers the period **January through October 15, 2007**. **All prior year partners must reapply for Filing Season 2007**.

BACKGROUND

The IRS Restructuring and Reform Act of 1998 (RRA 98) requires the IRS to receive 80 percent of all returns electronically by 2007. RRA 98 authorized the IRS Commissioner to promote the benefits of and encourage the use of e-file services. RRA 98 enables the IRS to enter into non-monetary partnerships with businesses to offer low cost income tax preparation and electronic filing for qualified taxpayers.

Continued opportunities for growth in electronic tax administration are evident. For Filing Season 2006, the IRS received more than 72 million electronically filed returns, an increase of 6.26% over the previous year. Visit the IRS web site, ***http://www.irs.gov***, for the most current results from market research on individual taxpayers, including demographic data and psychographic studies. This research includes attitudinal surveys, customer satisfaction surveys, Public Service communications, tracking studies and any focus group results.

The IRS accepts many forms and schedules for electronic filing. Visit the IRS web site for a complete listing of accepted forms and schedules.

FILING SEASON 2007

For Filing Season 2007, the IRS will focus on the 1040 series income tax returns covering "IRS *e-file* Using a Tax Preparer" and "IRS *e-file* Using a Personal Computer." Additional emphasis continues to be placed on the following features: electronic signature options, Federal/State e-file, and electronic payment options for balance due and estimated payment options.

A major area of emphasis is to reach those taxpayers who continue to file computer prepared paper returns (v-code). Research indicates that the number of v-code returns continues to increase (76% of all v-code returns are prepared by paid preparers). Emphasis should be placed on converting v-code filers to electronically file their returns through advertising the benefits of e-file.

Participants should also reach those individuals eligible for the Earned Income Tax Credit (EITC). It's important to note that military families may qualify for EITC since supplemental payments and combat pay are exempt from the income calculations.

Participants are encouraged to focus on reducing the number of errors made on electronically filed returns, including those

returns claiming EITC. The "EITC Assistant" is an interactive web-based tool designed to help tax professionals determine whether or not their clients are eligible for EITC, and why. The "EITC Assistant" is a step taken by the IRS to maximize taxpayer participation, minimize EITC errors while increasing compliance. You can find the "EITC Assistant" on the IRS web site at ***http://www.irs.gov/eitc***.

The Hispanic population is the fastest growing minority segment in the U.S. Participants are encouraged to market their e-file services to this segment and offer the Spanish versions for online filing and/or downloadable software.

The IRS expects all accepted partners to market, promote and offer e-file product and services through October 15, 2007. The IRS will supply the partners with the key marketing messages that support electronic filing during the Filing Season (January through April 16, 2007) and post-Filing Season (April through October 15, 2007). These messages should be used in your promotion of electronic filing and displayed on the web sites of Participants. Utilization of these messages will ensure uniformity and maximize public awareness. For additional information on the various e-file programs, features, and market research, visit the IRS web site at ***http://www.irs.gov***.

Participants will receive hyperlinks from the IRS web site — *irs.gov* (Partners Page) — to the Participant's web site. Potential Participants may request links for the following categories:

- IRS *e-file* Partners for Taxpayers
- IRS *e-file* Partners for Tax Professionals
- IRS *e-file* Partners for Financial Institutions/Employers
- IRS *e-file* Partners for Credit Card Payment Options.

Safeguarding Taxpayer Data

The security of taxpayer accounts and personal information is a top priority for the IRS. Tax professionals must implement safeguards to protect taxpayer's data. It is not only the law, but it is good business practice, as it increases customer confidence and trust. Refer to Publication 4557, *Safeguarding Taxpayer Data, a Guide for Your Business*, which describes the various security provisions and rules that impact tax professionals. The document assists tax professionals in understanding their requirements for protecting the privacy and confidentiality of taxpayer data, and provides guidance on implementing the necessary security controls within their business to satisfy these requirements. Publication 4557 can be accessed at ***http://www.irs.gov***.

PARTICIPATION STANDARDS & REQUIREMENTS

Participants will abide by the following standards and requirements, if applicable:

- The Participant was actively engaged in the electronic tax preparation and filing industry in 2005 and 2006.
- The Participant (Electronic Return Originator, Intermediate Service Provider, Software Developer, and Transmitter) must be in good standing with the IRS, comply with the e-file requirements stated in the IRS Revenue Procedure 2005–60, current versions of Publications 1345, 1345A, 3112, and pass the annual Suitability and Participants Acceptance Testing (PATS) conducted by the IRS. You can find the IRS e-file technical publications on the IRS web site at ***http://www.irs.gov***.
- The Participant will comply with the privacy provisions of 26 U.S.C. § 7216 and U.S.C. § 6103.
- The Participant will be required to prove and display third-party certifications for the privacy/security/authenticity of its online service. The Participant's web site should display the third-party certification and privacy seals. Participants must use software that will enable their web sites to state their privacy practices in a standard machine-readable format that can be retrieved automatically and interpreted easily by users.
- Participants will comply with the security provisions in applicable Department of Treasury/IRS rules including, but not limited to, 31 C.F.R. Part 10, IRS Rev. Proc. 2005–60, current versions of IRS Publications 1345, 1345A, and 3112, and 26 U.S.C. § 7216. In addition, Participants must comply with the Federal Trade Commission's Gramm-Leach-Bliley Act to protect the security of taxpayer information. Refer to Publication 4557, *Safeguarding Taxpayer Data, a Guide for Your Business*, for guidance on various security rules and provisions that impact tax professionals. The document can be accessed at ***http://www.irs.gov***.
- The Participant will offer their products and services to filers of the 1040 Series returns, including complex returns, balance due returns, Federal/State returns, and 1040EZ returns.
- The Participant will clearly disclose its customer service support options (including associated fees, if any) and privacy policy on the landing page of its web site. Participants must provide taxpayers with a business contact point by on-line form, email, mail, facsimile or telephone number which the Participant maintains and reviews.
- The Participant is encouraged to offer the Spanish versions for online filing and/or downloadable software. The Participant who offers Spanish versions for online filing and/or downloadable software will have customer service support to assist Hispanic taxpayers.
- The Participant will target v-coders and individuals eligible for EITC.
- The Participant will focus on reducing the number of errors on electronically prepared returns, including those returns claiming EITC.
- The Participant will offer a variety of e-file features including the Self-Select PIN, Electronic Payment Options, Federal/State e-file, Direct Deposit of Refunds, etc.
- The Participant will market, promote and offer e-file services through October 15, 2007. The Participant should use the key marketing messages, provided by the IRS, for the promotion of Filing Season and Post Filing Season electronic filing and place them on your web site.
- The Participant may choose to offer either free tax preparation or free e-file services, but not both.
- The Participant will be permitted only **one (1)** hyperlink on the IRS *e-file* Partners Page per category:
  - IRS *e-file* Partners for Taxpayer
  - IRS *e-file* Partners for Tax Professionals
  - IRS *e-file* Partners for Financial Institutions/Employers

- IRS *e-file* Partners for Electronic Payment Options
- The Participant will provide the IRS with a description (**not to exceed 200 characters including spaces**) for each hyperlink placed on the IRS *e-file* Partners Page. The hyperlink description may describe multiple offers/services.

- The Participant will not have a URL(s) containing the word "IRS."
- The Participant will be required to supply the IRS with a link to their web site in their application or **no less than ten (10) business days** before the site is expected to go live (start date of electronic filing). All sites must be examined before they can be posted on the IRS *e-file* Partners Page. The purpose of the review is to ensure each Participant's web site complies with the standards and requirements set forth in this announcement.
- The Participant's web site will not contain inappropriate content. Participant web sites must meet the following criteria:
  - The site clearly relates to and complements existing information, products and services on irs.gov.
  - The site contains relevant and useful content that will benefit our customers.
  - The site contains accurate and timely information.
  - The site provides information at no cost. The Participant will not link to sites whose primary purpose is to sell products or services (unless it is part of an approved agreement with IRS).
  - The site has an excellent overall quality and professional image.
  - The site is easy to navigate.
  - The site is a credible source for information. The site must be free of typos and errors so that it does not detract from the readability of the site.
  - The site does not exhibit hate, bias, or discrimination.
  - The site does not contain misleading or unsubstantiated claims or conflict with the mission of the IRS.
- A Participant's web site must be functionally adequate and consistent with the Participant's offer in permitting a taxpayer to complete their return. Failure to comply may result in the Participant's removal from the Partners Page.
- The Participant will adhere to industry best practices to ensure the taxpayer return information entrusted to them is secure and the privacy of such information is maintained. In any instance where a Participant contracts with a service provider to obtain technology services, it will adhere to this standard. To the extent multiple Participants rely on a single service provider for front or back office services (not ISP services), it is even more critical that such taxpayer security and privacy be maintained with respect to others who share these services.
- Whenever taxpayers are requested or required to provide their SSN, it must be part of a secure session. Participants are not permitted to use SSNs as a requested field for registration purposes or for establishing a taxpayer account on-line.
- The Participant will display the IRS *e-file* logo on the landing page of its web site. The e-file logo and guidelines can be downloaded from ***http://www.irs.gov***.
- The Participant will have a link(s) to the IRS web site, ***http://www.irs.gov***, from its web site.
- The Participant must provide taxpayers a method to obtain the status of their tax return. Taxpayers can be directed to **"Where's My Tax Refund?"** located on the Homepage of the IRS web site at ***http://www.irs.gov***.
- The Participant will prominently display on the landing page of its web site the promotion of income tax preparation and electronic filing for individuals eligible for EITC.
- The Participant is encouraged to offer a monetary incentive (reduced return preparation and electronic filing costs) to attract taxpayers.
- The Participant will disclose limitations in the forms and schedules that are likely to be needed to support their offerings. The Participant should clearly display a listing of the forms and schedules that will be offered either visible or accessible from the Participant's landing page.
- The Participant will clearly disclose a listing of the States that their software supports either visible or accessible from the Participant's landing page.
- The Participant is permitted to offer commercial products and services consistent with obtaining the positive consent of the user as described in 26 U.S.C. 7616 before offering fee-based products and services not related to tax preparation.
- The Participant will include a feature in their tax preparation software that will "time out" the session after no changes are made for a period of time consistent with best practices approved by privacy seal certification programs.
- The Participant that learns of an inappropriate disclosure of a taxpayer's return information to an unauthorized Person must report the unauthorized disclosure to the IRS immediately but no later than five (5) hours after detection; and immediately shut down its program at the time of detection.
- The Participant will submit written notification (*e.g.*, email) to the IRS of changes, additions and deletions to URLs, link descriptions, etc.
- The Participant will submit Performance Reports to the IRS Point of covering Filing Season and post Filing Season activity. The reports will cover information such as e-file statistics, web site activity and anything else the IRS deems necessary. The IRS Point of Contact will provide written reporting instructions and requirements to accepted Participants.

PERFORMANCE STANDARDS

- The IRS will have the accepted Participant's hyperlink(s) available on the IRS web site for the start of electronic filing, subject to the participant's passing of the annual Suitability, PATS testing, and web site review. Hyperlinks will remain on the IRS *e-file* Partners Page through **October 15, 2007, or at the discretion of the IRS**.
- The IRS will randomize on a daily basis the Participants' offers listed on the IRS *e-file* Partners Page.
- The IRS may establish a link from the IRS *e-file* Partners Page to the Free File web page.
- The IRS will accept, if appropriate, the Participant's written request for

changes/additions/deletions to a URL, link description, etc.
- The IRS will review the Participant's web site(s) at any time to ensure that participation requirements are met.
- The IRS will not endorse specific offerings or products, but will promote the IRS *e-file* Partners Page. A "Site Disclaimer" will be displayed upon exiting the IRS web site before the user enters the Participant's web site.

PARTICIPATION TERMS

The IRS Individual *e-file* Partnership Program is an annual program, and all prospective Participants, including returning Participants, must reapply each year following the guidelines in the Internal Revenue Bulletin announcement advertised on ***http://www.irs.gov***. If the IRS determines that the Participant is not meeting the "Participation Standards & Requirements," the IRS may terminate its partnership with the Participant and remove the participant's hyperlink(s) from the IRS *e-file* Partners Page.

- The Participant will notify the IRS immediately if it wishes to terminate its partnership with the IRS. The notification should be submitted through email to the IRS Point of Contact or sent to the Point of Contact's address indicated below in "IRS Point of Contact/Application Submission."

APPLICATION PROCESS

Applications should contain the following information, **if applicable**:

- Provide Primary and Secondary Points of Contact (name, title, address, cell/telephone number, fax number and email address) for discussion of your application and program participation.
- Identify the Applicant's secure web site.
- Identify the Applicant's tax preparation software and the States it will support.
- Identify the IRS forms and schedules that support your offering(s).
- Include the Applicant's Electronic Filer Identification Number(s) (EFIN) and/or Electronic Transmitter Identification Number (ETIN).
- Indicate if the Applicant will offer the Spanish versions for online filing and/or downloadable software. Describe customer service support for assisting Hispanic taxpayers.
- Identify the Applicant's hyperlink(s) and provide a short description **(not to exceed 200 characters including spaces)** of the services and products to be promoted on the IRS *e-file* Partners Page. In addition, the Applicant should provide the associated URL(s). **The URL(s) cannot contain the word "IRS."** Indicate the category for each hyperlink:
  - IRS *e-file* Partners for Taxpayers
  - IRS *e-file* Partners for Tax Professionals
  - IRS *e-file* Partners for Financial Institutions/Employers
  - IRS *e-file* Partners for Electronic Payment Options.
- Identify the Applicant's third party administrators (*i.e.*, VeriSign, Thawte, Truste) that certify the privacy/security/authenticity of its online service and provide certification that the Applicant's current status is active and in good standing.
- Identify the Applicant's communication vehicle(s) (*i.e.*, web site, marketing/promotional products, etc.) to market and promote your products and services and IRS *e-file*. Describe the incentives, discounts, offers, benefits to taxpayers or other specific approaches to increase *e-file* volumes.
- Describe steps the Applicant will take to reach taxpayers that claim EITC. This can include marketing/promotional efforts, monetary incentives (reduced return preparation and electronic filing costs).
- Describe steps the Applicant will take to reduce errors on electronically filed returns, including those returns claiming EITC.
- Certify the Applicant's compliance with the privacy and disclosure provisions of 26 U.S.C. 7216 and 26 U.S.C. 6103.
- Certify the Applicant's compliance with the Federal Trade Commission's Gramm-Leach-Bliley (GLB) Act of 1999, Financial Privacy Rule and Safeguard Rules.

IRS POINT OF CONTACT/APPLICATION SUBMISSION

Applications to participate in the IRS Individual *e-file* Partnership Program should be submitted as a Word document through email at ****WIe-filepartners@irs.gov*** (Please make sure there is an asterisk before the WI (Wage and Investment) when submitting an application.) An application may also be sent to:

Internal Revenue Service
5000 Ellin Road
Lanham, MD 20706
Attention: Karen Bradley C4–132
SE:W:CAR:SPEC:FO:IMS

If you wish to have a hyperlink(s) on the IRS *e-file* Partners Page for the start of electronic filing, your application must be submitted by November 30, 2006. If your application is received after the deadline, there is no guarantee that it will be accepted by the IRS.

Any questions regarding the development of applications, the submission of Performance Reports, or any other type of contact for this program should be directed to Karen Bradley at (202) 283–7034 or through email to ****WIe-filepartners@irs.gov***. Please make sure there is an asterisk (*) before the WI (Wage and Investment) for any type of email contact.

APPLICATION EVALUATION

All applications will be evaluated based on the required information provided to the IRS and the applicant's ability to fulfill their responsibilities. Prior year performance will also be considered when evaluating applications from returning partners.

ACCEPTANCE/DENIAL OF APPLICATION

If your application is accepted, you will receive written notification from the IRS. If your application is denied, you will receive written notification from the IRS with an explanation of the denial.

e-Help

If you have any questions related to e-products/electronic filing, you can

contact the e-Help Desk toll-free at **1–866–255–0654**. The e-Help desk assistors are ready to respond to non-account related questions and issues. You can also go to ***http://www.irs.gov*** where the IRS houses a variety of information which impacts the tax professional.

Disclosure of Return Information by Certain Officers and Employees for Investigative Purposes; Correction

Announcement 2006–89

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document corrects final regulations (T.D. 9274, 2006–33 I.R.B. 244) that were published in the **Federal Register** on Tuesday, July 11, 2006 (71 FR 38985). The document contains final regulations relating to the disclosure of return information pursuant to section 6103(k)(6) of the Internal Revenue Code.

DATES: This correcting amendment is effective October 17, 2006.

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of final regulations (T.D. 9274) that is the subject of these corrections is under section 6103(k)(6) of the Internal Revenue Code.

Need for Correction

As published, T.D. 9274 contains errors that may prove to be misleading and are in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR Part 301 is corrected by making the following correcting amendments:

Paragraph 1. On page 38985, column 1, in the preamble, under the caption "DATES", second line, the language "are effective July 11, 2006." is corrected to read "are effective July 6, 2006.".

Par. 2. On page 38986, column 2, in the preamble, under the paragraph heading "Special Analyses", sixth line from the top of the column, the language "and because the regulation does not" is corrected to read "and because the regulations do not".

Part 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 1 continues to read in part as follows:

Authority: 26 USC 7805 * * *

Par. 4. Section 301.6103(k)(6)–1(e) is revised to read as follows:

§ 301.6103(k)(6)–1 Disclosure of return information by certain officers and employees for investigative purposes.

* * * * *

(e) *Effective date*. This section is applicable on July 6, 2006.

Guy R. Traynor,
Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

(Filed by the Office of the Federal Register on October 16, 2006, 8:45 a.m., and published in the issue of the Federal Register for October 17, 2006, 71 F.R. 60827)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z —Corporation.

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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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