

**§ 1.142-0 Table of contents.**

This section lists the captioned paragraphs contained in §§1.142-1 through 1.142-3.

*§ 1.142-1 Exempt facility bonds.*

- (a) Overview.
- (b) Scope.
- (c) Effective dates.

*§ 1.142-2 Remedial actions.*

- (a) General rule.
- (b) Reasonable expectations requirement.
- (c) Redemption or defeasance.
  - (1) In general.
  - (2) Notice of defeasance.
  - (3) Special limitation.
  - (4) Special rule for dispositions of personal property.
  - (5) Definitions.
  - (d) When a failure to properly use proceeds occurs.
    - (1) Proceeds not spent.
    - (2) Proceeds spent.
    - (e) Nonqualified bonds.

*§ 1.142-3 Refunding issues.* [Reserved]

[T.D. 8712, 62 FR 2302, Jan. 16, 1997]

**§ 1.142-1 Exempt facility bonds.**

(a) *Overview.* Interest on a private activity bond is not excludable from gross income under section 103(a) unless the bond is a qualified bond. Under section 141(e)(1)(A), an exempt facility bond issued under section 142 may be a qualified bond.

Under section 142(a), an exempt facility bond is any bond issued as a part of an issue using 95 percent or more of the proceeds for certain exempt facilities.

(b) *Scope.* Sections 1.142-0 through 1.142-3 apply for purposes of the rules for exempt facility bonds under section 142, except that, with respect to net proceeds that have been spent, § 1.142-2 does not apply to bonds issued under section 142(d) (relating to bonds issued to provide qualified residential rental projects) and section 142(f) (2) and (4) (relating to bonds issued to provide local furnishing of electric energy or gas).

(c) *Effective dates.* For effective dates of §§1.142-0 through 1.142-2, see § 1.141-16.

[T.D. 8712, 62 FR 2302, Jan. 16, 1997]

**§ 1.142-2 Remedial actions.**

(a) *General rule.* If less than 95 percent of the net proceeds of an exempt facility bond are actually used to provide an exempt facility, and for no

other purpose, the issue will be treated as meeting the use of proceeds requirement of section 142(a) if the issue meets the condition of paragraph (b) of this section and the issuer takes the remedial action described in paragraph (c) of this section.

(b) *Reasonable expectations requirement.* The issuer must have reasonably expected on the issue date that 95 percent of the net proceeds of the issue would be used to provide an exempt facility and for no other purpose for the entire term of the bonds (disregarding any redemption provisions). To meet this condition the amount of the issue must have been based on reasonable estimates about the cost of the facility.

(c) *Redemption or defeasance—(1) In general.* The requirements of this paragraph (c) are met if all of the nonqualified bonds of the issue are redeemed on the earliest call date after the date on which the failure to properly use the proceeds occurs under paragraph (d) of this section. Proceeds of tax-exempt bonds (other than those described in paragraph (d)(1) of this section) must not be used for this purpose. If the bonds are not redeemed within 90 days of the date on which the failure to properly use proceeds occurs, a defeasance escrow must be established for those bonds within 90 days of that date.

(2) *Notice of defeasance.* The issuer must provide written notice to the Commissioner of the establishment of the defeasance escrow within 90 days of the date the escrow is established.

(3) *Special limitation.* The establishment of a defeasance escrow does not satisfy the requirements of this paragraph (c) if the period between the issue date and the first call date is more than 10½ years.

(4) *Special rule for dispositions of personal property.* For dispositions of personal property exclusively for cash, the requirements of this paragraph (c) are met if the issuer expends the disposition proceeds within 6 months of the date of the disposition to acquire replacement property for the same qualifying purpose of the issue under section 142.

(5) *Definitions.* For purposes of paragraph (c)(4) of this section, *disposition*

**§ 1.142-3**

**26 CFR Ch. I (4-1-02 Edition)**

*proceeds* means disposition proceeds as defined in § 1.141-12(c).

(d) *When a failure to properly use proceeds occurs*—(1) *Proceeds not spent*. For net proceeds that are not spent, a failure to properly use proceeds occurs on the earlier of the date on which the issuer reasonably determines that the financed facility will not be completed or the date on which the financed facility is placed in service.

(2) *Proceeds spent*. For net proceeds that are spent, a failure to properly use proceeds occurs on the date on which an action is taken that causes the bonds not to be used for the qualifying purpose for which the bonds were issued.

(e) *Nonqualified bonds*. For purposes of this section, the nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the failure to properly use the proceeds occurs, at least 95 percent of the net proceeds of the remaining bonds would be used to provide an exempt facility. If no proceeds have been spent to provide an exempt facility, all of the outstanding bonds are nonqualified bonds. The nonqualified bonds must be determined on a pro rata allocation basis, except that an issuer may treat bonds with longer maturities (determined on a bond-by-bond basis) as the nonqualified bonds.

[T.D. 8712, 62 FR 2302, Jan. 16, 1997]

**§ 1.142-3 Refunding Issues. [Reserved]**

**§ 1.142-4 Use of proceeds to provide a facility.**

(a) *In general*. [Reserved]

(b) *Reimbursement allocations*. If an expenditure for a facility is paid before the issue date of the bonds to provide that facility, the facility is described in section 142(a) only if the expenditure meets the requirements of § 1.150-2 (relating to reimbursement allocations). For purposes of this paragraph (b), if the proceeds of an issue are used to pay principal of or interest on an obligation other than a State or local bond (for example, temporary construction financing of the conduit borrower), that issue is not a refunding issue, and, thus, § 1.150-2(g) does not apply.

(c) *Limitation on use of facilities by substantial users*—(1) *In general*. If the original use of a facility begins before the issue date of the bonds to provide the facility, the facility is not described in section 142(a) if any person that was a substantial user of the facility at any time during the 5-year period before the issue date or any related person to that user receives (directly or indirectly) 5 percent or more of the proceeds of the issue for the user's interest in the facility and is a substantial user of the facility at any time during the 5-year period after the issue date, unless—

(i) An official intent for the facility is adopted under § 1.150-2 within 60 days after the date on which acquisition, construction, or reconstruction of that facility commenced; and

(ii) For an acquisition, no person that is a substantial user or related person after the acquisition date was also a substantial user more than 60 days before the date on which the official intent was adopted.

(2) *Definitions*. For purposes of paragraph (c)(1) of this section, *substantial user* has the meaning used in section 147(a)(1), *related person* has the meaning used in section 144(a)(3), and a user that is a governmental unit within the meaning of § 1.103-1 is disregarded.

(d) *Effective date*—(1) *In general*. This section applies to bonds sold on or after July 8, 1997. See § 1.103-8(a)(5) for rules applicable to bonds sold before that date.

(2) *Elective retroactive application*. An issuer may apply this section to any bond sold before July 8, 1997.

[T.D. 8718, 62 FR 25506, May 9, 1997]

**§ 1.142(a)(5)-1 Exempt facility bonds: Sewage facilities.**

(a) *In general*. Under section 103(a), a private activity bond is a tax-exempt bond only if it is a qualified bond. A qualified bond includes an exempt facility bond, defined as any bond issued as part of an issue 95 percent or more of the net proceeds of which are used to provide a facility specified in section 142. One type of facility specified in section 142(a) is a sewage facility. This section defines the term *sewage facility* for purposes of section 142(a).