

## § 1.148-6A

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or similar fee paid on behalf of either an issuer or the provider is treated as an administrative cost and, except in the case of an issue that satisfies section 148(f)(4)(D)(i), is not a qualified administrative cost to the extent that the present value of the commission, as of the date the contract is allocated to the issue, exceeds the present value of annual payments equal to .05 percent of the weighted average amount reasonably expected to be invested each year of the term of the contract. For this purpose, present value is computed using the taxable discount rate used by the parties to compute the commission or, if not readily ascertainable, a reasonable taxable discount rate.

[T.D. 8538, 59 FR 24045, May 10, 1994. Redesignated by T.D. 8718, 62 FR 25507, May 9, 1997]

### § 1.148-6A General allocation and accounting rules.

(a) through (d)(3)(iii)(B) [Reserved]. For guidance see § 1.148-6.

(d)(3)(iii)(C) *Qualified endowment funds treated as unavailable.* For a 501(c)(3) organization, a qualified endowment fund is treated as unavailable. A fund is a qualified endowment fund if—

(1) The fund is derived from gifts or bequests, or the income thereon, that were neither made nor reasonably expected to be used to pay working capital expenditures;

(2) Pursuant to reasonable, established practices of the organization, the governing body of the 501(c)(3) organization designates and consistently operates the fund as a permanent endowment fund or quasi-endowment fund restricted as to use; and

(3) There is an independent verification (e.g., from an independent certified public accountant) that the fund is reasonably necessary as part of the organization's permanent capital.

[T. D. 8538, 59 FR 24045, May 10, 1994. Redesignated by T.D. 8718, 62 FR 25507, May 9, 1997]

### § 1.148-9A Arbitrage rules for refunding issues.

(a) through (c)(2)(ii)(A) [Reserved]. For guidance see § 1.148-9.

(c)(2)(ii)(B) *Permissive allocation of non-proceeds to earliest expenditures.* Excluding amounts covered by § 1.148-9(c)(2)(i)(A) and subject to any re-

quired earlier expenditure of those amounts, any amounts in a mixed escrow that are not proceeds of a refunding issue may be allocated to the earliest maturing investments in the mixed escrow, provided that those investments mature and the proceeds thereof are expended before the date of any expenditure from the mixed escrow to pay any principal of the prior issue.

(d) through (h)(4)(v) [Reserved]. For guidance see § 1.148-9.

(h)(4)(vi) *Exception for refundings of interim notes.* Section 1.148-9(h)(4)(v) need not be applied to refunding bonds issued to provide permanent financing for one or more projects if the prior issue had a term of less than 3 years and was sold in anticipation of permanent financing, but only if the aggregate term of all prior issues sold in anticipation of permanent financing was less than 3 years.

[T.D. 8538, 59 FR 24045, May 10, 1994. Redesignated by T.D. 8718, 62 FR 25507, May 9, 1997]

### § 1.148-10A Anti-abuse rules and authority of Commissioner.

(a) through (b)(1) [Reserved]. For guidance see § 1.148-10.

(b)(2) *Application.* The provisions of § 1.148-10(b) only apply to the portion of an issue that, as a result of actions taken (or actions not taken) after the issue date, overburdens the market for tax-exempt bonds, except that for an issue that is reasonably expected as of the issue date to overburden the market, those provisions apply to all of the gross proceeds of the issue.

(c) through (c)(2)(viii) [Reserved]. For guidance see § 1.148-10.

(c)(2)(ix) For purposes of § 1.148-10(c)(2), excess gross proceeds do not include gross proceeds allocable to fees for a qualified hedge for the refunding issue.

[T.D. 8538, 59 FR 24046, May 10, 1994. Redesignated by T.D. 8718, 62 FR 25507, May 9, 1997]

### § 1.148-11A Effective dates.

(a) through (c)(3) [Reserved]. For guidance see § 1.148-11.

(c)(4) *Retrospective application of overpayment recovery provisions.* An issuer may apply the provisions of § 1.148-3(i) to any issue that is subject to section

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148(f) or to sections 103(c)(6) or 103A(i) of the Internal Revenue Code of 1954.

(d) through (h) [Reserved]. For guidance see §1.148-11.

(i) *Transition rules for certain amendments*—(1) *In general.* Section 1.103-8(a)(5), §§1.148-1, 1.148-2, 1.148-3, 1.148-4, .148-5, 1.148-6, 1.148-7, 1.148-8, 1.148-9, 1.148-10, 1.148-11, 1.149(d)-1, and 1.150-1 as in effect on June 7, 1994 (see 26 CFR part 1 as revised April 1, 1997), and §§1.148-1A through 1.148-11A, 1.149(d)-1A, and 1.150-1A apply, in whole, but not in part—

(i) To bonds sold after June 6, 1994, and before July 8, 1997;

(ii) To bonds issued before July 1, 1993, that are outstanding on June 7, 1994, if the first time the issuer applies §§1.148-1 through 1.148-11 as in effect on June 7, 1994 (see 26 CFR part 1 as revised April 1, 1997), to the bonds under §1.148-11 (b) or (c) is after June 6, 1994, and before July 8, 1997;

(iii) At the option of the issuer, to bonds to which §§1.148-1 through 1.148-11, as in effect on July 1, 1993 (see 26 CFR part 1 as revised April 1, 1994), apply, if the bonds are outstanding on June 7, 1994, and the issuer applies §1.103-8(a)(5), §§1.148-1, 1.148-2, 1.148-3, 1.148-4, 1.148-5, 1.148-6, 1.148-7, 1.148-8, 1.148-9, 1.148-10, 1.148-11, 1.149(d)-1, and 1.150-1 as in effect on June 7, 1994 (see 26 CFR part 1 as revised April 1, 1997), and §§1.148-1A through 1.148-11A, 1.149(d)-1A, and 1.150-1A to the bonds before July 8, 1997.

(2) *Special rule.* For purposes of paragraph (i)(1) of this section, any reference to a particular paragraph of §§1.148-1T, 1.148-2T, 1.148-3T, 1.148-4T, 1.148-5T, 1.148-6T, 1.148-9T, 1.148-10T, 1.148-11T, 1.149(d)-1T, or 1.150-1T shall be applied as a reference to the corresponding paragraph of §§1.148-1A, 1.148-2A, 1.148-3A, 1.148-4A, 1.148-5A, 1.148-6A, 1.148-9A, 1.148-10A, 1.148-11A, 1.149(d)-1A, or 1.150-1A, respectively.

(3) *Identification of certain hedges.* For any hedge entered into after June 18, 1993, and on or before June 6, 1994, that would be a qualified hedge within the meaning of §1.148-4(h)(2), as in effect on June 7, 1994 (see 26 CFR part 1 as revised April 1, 1997), except that the hedge does not meet the requirements of §1.148-4A(h)(2)(ix) because the issuer failed to identify the hedge not later

than 3 days after which the issuer and the provider entered into the contract, the requirements of §1.148-4A(h)(2)(ix) are treated as met if the contract is identified by the actual issuer on its books and records maintained for the hedged bonds not later than July 8, 1997.

[T.D. 8538, 59 FR 24046, May 10, 1994. Redesignated and amended by T.D. 8718, 62 FR 25507, 25513, May 9, 1997]

## § 1.149(d)-1A Limitations on advance refundings.

(a) through (f)(2) [Reserved]. For guidance see §1.149(d)-1.

(f)(3) *Application of savings test to multipurpose issues.* Except as otherwise provided in this paragraph (f)(3), the multipurpose issue rules in §1.148-9(h) apply for purposes of the savings test. If any separate issue in a multipurpose issue increases the aggregate present value debt service savings on the entire multipurpose issue or reduces the present value debt service losses on that entire multipurpose issue, that separate issue satisfies the savings test.

[T.D. 8538, 59 FR 24046, May 10, 1994. Redesignated by T.D. 8718, 62 FR 25513, May 9, 1997]

## § 1.150-1A Definitions.

(a) through (b) [Reserved]. For guidance see §1.150-1.

(c) *Definition of issue*—(1) *In general.* Except as otherwise provided, the provisions of this paragraph (c) apply for all purposes of sections 103 and 141 through 150. Except as otherwise provided in this paragraph (c), two or more bonds are treated as part of the same issue if all of the following factors are present:

(i) *Sold at substantially the same time.* The bonds are sold at substantially the same time. Bonds are treated as sold at substantially the same time if they are sold less than 15 days apart. For this purpose only, a variable yield bond is treated as sold on its issue date.

(ii) *Sold pursuant to the same plan of financing.* The bonds are sold pursuant to the same plan of financing. Factors material to the plan of financing include the purposes for the bonds and the structure of the financing. For example, generally—