

# Proposed Rules

Federal Register

Vol. 73, No. 175

Tuesday, September 9, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-142333-07]

RIN 1545-BH28

#### Implementation of Form 990

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations necessary to implement the redesigned Form 990, "Return of Organization Exempt From Income Tax." The temporary regulations make revisions to the regulations under section 6033 and section 6043 to allow for new threshold amounts for reporting compensation, to require that compensation be reported on a calendar year basis, and to modify the scope of organizations subject to information reporting requirements upon a substantial contraction. The temporary regulations also eliminate the advance ruling process for new organizations, change the public support computation period for organizations described in sections 170(b)(1)(A)(vi) and 509(a)(1) and in section 509(a)(2) to five years, consistent with the revised Form 990, and clarify that support must be reported using the organization's overall method of accounting. All tax exempt organizations required under section 6033 of the Internal Revenue Code (Code) to file annual information returns are affected by the temporary regulations. The text of the temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 10, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-142333-07), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-142333-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-142333-07).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Terri Harris, at (202) 622-6070; concerning submissions of comments or requests for a hearing, Oluwafunmilayo Taylor, at (202) 622-3401 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2117. 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:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 10, 2008. 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 collection 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 collection of information in this proposed regulation is in § 1.6033-2T. The information collected under § 1.6033-2T relates to compensation reporting by tax exempt organizations. The information that is required to be collected for purposes of § 1.6033-2T is required to be submitted on Form 990, "Return of Organization Exempt From Income Tax." The estimated number of recordkeepers that will submit Form 990 is approximately 105,000.

*Estimated total annual reporting burden:* One hour.

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 and Explanation of Provision

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 170(b), 507, 509(a), 6033, and 6043. The amendments to §§ 1.170A-9, 1.507-2 and 1.509(a)-3 eliminate the advance ruling process, clarify that support must be reported using the organization's overall method of accounting, eliminate the exception for material changes in sources of support, and change the public support computation period for organizations described in sections 170(b)(1)(A)(vi) and 509(a)(1) and in section 509(a)(2) to five years, consistent with the revised Schedule A to the redesigned Form 990, "Return of Organization Exempt From Income Tax." The amendments to §§ 1.6033-2(a)(2)(ii)(g) and (h) allow for new threshold amounts for reporting compensation and require that organizations use a calendar year basis or a basis that is prescribed by publication, form or instruction when

reporting listed officer, director, trustee, key employee and independent contractor compensation. The amendments to §§ 1.6043-3(b)(8) and (d) expand the scope of organizations subject to information reporting requirements upon a substantial contraction. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply. It is hereby certified that the collection of information in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that burden on tax-exempt entities will be reduced by (1) eliminating the separate advance ruling process and the additional process for subsequently seeking a definitive ruling, (2) clarifying rules regarding the method of accounting and period for reporting certain items, and (3) providing discretion for the IRS to narrow or clarify circumstances under which reporting is required. Accordingly, 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, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Requests for Public Hearing

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

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public

hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of this regulation is Terri Harris of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

### List of Subjects for 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### 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 1.170A-9 is amended by revising paragraphs (f) and (k) to read as follows:

#### § 1.170A-9 Definition of section 170(b)(1)(A) organization.

\* \* \* \* \*

(f) [The text of this proposed amendment to § 1.170A-9(f) is the same as the text of § 1.170A-9T(f) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(k) [The text of this proposed amendment to § 1.170A-9(k) is the same as the text of § 1.170A-9T(k)(1) and (k)(2) published elsewhere in this issue of the **Federal Register**.]

**Par. 3.** Section 1.507-2 is revised to read as follows:

#### § 1.507-2 Special rules; transfer to, or operation as, public charity.

[The text of this proposed amendment to § 1.507-2 is the same as the text of § 1.507-2T(a) through (f)(2) published elsewhere in this issue of the **Federal Register**.]

**Par. 4.** Section 1.509(a)-3 is amended by revising paragraphs (a)(2), (a)(3)(i), (c), (d), (e), (k), and (n) and adding paragraph (o) to read as follows:

#### § 1.509(a)-3 Broadly, publicly supported organizations.

(a) \* \* \*

(2) [The text of this proposed amendment to § 1.509(a)-3(a)(2) is the same as the text of § 1.509(a)-3T(a)(2) published elsewhere in this issue of the **Federal Register**.]

(3) \* \* \*

(i) [The text of this proposed amendment to § 1.509(a)-3(a)(3)(i) is the same as the text of § 1.509(a)-3T(a)(3)(i) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(c) [The text of this proposed amendment to § 1.509(a)-3(c) is the same as the text of § 1.509(a)-3T(c) published elsewhere in this issue of the **Federal Register**.]

(d) [The text of this proposed amendment to § 1.509(a)-3(d) is the same as the text of § 1.509(a)-3T(d) published elsewhere in this issue of the **Federal Register**.]

(e) [The text of this proposed amendment to § 1.509(a)-3(e) is the same as the text of § 1.509(a)-3T(e) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(k) [The text of this proposed amendment to § 1.509(a)-3(k) is the same as the text of § 1.509(a)-3T(k) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(n) [The text of this proposed amendment to § 1.509(a)-3(n) is the same as the text of § 1.509(a)-3T(n) published elsewhere in this issue of the **Federal Register**.]

(o) [The text of this proposed § 1.509(a)-3(o) is the same as the text of § 1.509(a)-3T(o)(1) and (o)(2) published elsewhere in this issue of the **Federal Register**.]

**Par. 5.** Section 1.6033-2 is amended by revising paragraphs (a)(2)(ii)(g), (a)(2)(ii)(h) and (k) to read as follows:

#### § 1.6033-2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(g) [The text of this proposed amendment to § 1.6033-2(a)(2)(ii)(g) is the same as the text of § 1.6033-2T(a)(2)(ii)(g) published elsewhere in this issue of the **Federal Register**.]

(h) [The text of this proposed amendment to § 1.6033-2(a)(2)(ii)(h) is the same as the text of § 1.6033-2T(a)(2)(ii)(h) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(k) [The text of this proposed amendment to § 1.6033-2(k) is the same as the text of § 1.6033-2T(k)(1) and (k)(2) published elsewhere in this issue of the **Federal Register**.]

**Par. 6.** Section 1.6043-3 is amended by revising paragraphs (b)(8) and (d) and adding paragraph (e) to read as follows:

**§ 1.6043-3 Returns regarding liquidation, dissolution, termination, or substantial contraction of organizations exempt from taxation under section 501(a).**

\* \* \* \* \*

(b) \* \* \*

(8) [The text of this proposed amendment to § 1.6043-3(b)(8) is the same as the text of § 1.6043-3T(b)(8) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(d) [The text of this proposed amendment to § 1.6043-3(d) is the same as the text of § 1.6043-3T(d) published elsewhere in this issue of the **Federal Register**.]

(e) [The text of this proposed amendment to § 1.6043-3(e) is the same as the text of § 1.6043-3T(e)(1) and (e)(2) published elsewhere in this issue of the **Federal Register**.]

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8-20556 Filed 9-8-08; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-128841-07]

RIN 1545-BG91

#### Public Approval Guidance for Tax-Exempt Bonds

**AGENCY:** Internal Revenue Service (IRS), Treasury.

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

**SUMMARY:** This document contains proposed regulations on the public approval requirements under section 147(f) of the Internal Revenue Code (Code) applicable to tax-exempt private activity bonds issued by State and local governments. The proposed regulations affect State and local governmental issuers of tax-exempt private activity bonds. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by December 8, 2008. Outlines of topic to be discussed at the public hearing scheduled for January 26, 2009, at 10 a.m., must be received by December 29, 2008.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-128841-07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station,

Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-128841-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-128841-07). The public hearing will be held in the auditorium beginning at 10 a.m. at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, David White, (202) 622-3980; concerning submissions of comments and the hearing, contact Fummi Taylor at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in the proposed regulations has been submitted to the Office of Management and Budget 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:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 10, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, 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 collection 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 services to provide information.

The collection of information in this proposed regulation is in § 1.147(f)-1(b). This information is required to meet the

public approval requirement under section 147(f). The likely respondents are issuers of qualified private activity bonds.

*Estimated total annual reporting burden:* 2,600 hours.

*Estimated average annual burden per respondent:* 1.3 hours.

*Estimated number of respondents:* 2,000.

*Estimated frequency of responses:* Not applicable (this is a third-party disclosure requirement).

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 the Income Tax Regulations (26 CFR part 1) to add new § 1.147(f)-1 (the "Proposed Regulations") relating to the public approval requirement for tax-exempt private activity bonds under section 147(f) of the Internal Revenue Code.

#### Explanation of Provisions

##### I. Introduction

In general, interest on State and local bonds is excludable from gross income under section 103 of the Internal Revenue Code of 1986 (the "Code"). Interest on a private activity bond is excludable from gross income under section 103 only if the bond meets the requirements for a "qualified bond" under section 141(e) and other applicable requirements under section 103. Section 141(e) requires that a bond meet the public approval requirement of section 147(f), among other requirements, to be a qualified bond.

##### II. Statutory Predecessor and Existing Regulations

The predecessor to section 147(f) was section 103(k) of the Internal Revenue Code of 1954 ("1954 Code"), which was added by the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248, 96 Stat. 324 (1982). Section 103(k) of the 1954 Code imposed a public approval requirement on industrial development bonds. Temporary Income Tax Regulations § 5f.103-2 were published under section