

Standard Federal Tax Reporter (2018), Regulation, §1.148-6., Internal Revenue Service, General allocation and accounting rules



Reg. § 1.148-6 is applicable to certain bonds sold on or after July 8, 1997.



(a) *In general*

(1) **Reasonable accounting methods required.**— An issuer may use any reasonable, consistently applied accounting method to account for gross proceeds, investments, and expenditures of an issue.

(2) **Bona fide deviations from accounting method.**— An accounting method does not fail to be reasonable and consistently applied solely because a different accounting method is used for a bona fide governmental purpose to consistently account for a particular item. Bona fide governmental purposes may include special state law restrictions imposed on specific funds or actions to avoid grant forfeitures.

(3) **Absence of allocation and accounting methods.**— If an issuer fails to maintain books and records sufficient to establish the accounting method for an issue and the allocation of the proceeds of that issue, the rules of this section are applied using the specific tracing method. This paragraph (a)(3) applies to bonds issued on or after May 16, 1997.

(b) *Allocation of gross proceeds to an issue*

(1) **One-issue rule and general ordering rules.**— Except as otherwise provided, amounts are allocable to only one issue at a time as gross proceeds, and if amounts simultaneously are proceeds of one issue and replacement proceeds of another issue, those amounts are allocable to the issue of which they are proceeds. Amounts cease to be allocated to an issue as proceeds only when those amounts are allocated to an expenditure for a governmental purpose, are allocated to transferred proceeds of another issue, or cease to be allocated to that issue at retirement of the issue or under the universal cap of paragraph (b)(2) of this section. Amounts cease to be allocated to an issue as replacement proceeds only when those amounts are allocated to an expenditure for a governmental purpose, are no longer used in a manner that causes those amounts to be replacement proceeds of that issue, or cease to be allocated to that issue because of the retirement of the issue or the application of the universal cap under paragraph (b)(2) of this section. Amounts that cease to be allocated to an issue as gross proceeds are eligible for allocation to another issue. Under § 1.148-10(a), however, the rules in this paragraph (b)(1) do not apply in certain cases involving abusive arbitrage devices.

(2) *Universal cap on value of nonpurpose investments allocated to an issue*

(i) **Application.**— The rules in this paragraph (b)(2) provide an overall limitation on the amount of gross proceeds allocable to an issue. Although the universal cap generally may be applied at any time in the manner described in this paragraph (b)(2), it need not be applied on any otherwise required date of application if its application on that date would not result in a reduction or reallocation of gross proceeds of an issue. For this purpose, if an issuer reasonably expects as of the issue date that the universal cap will not reduce the amount of gross proceeds allocable to the issue during the term of the issue, the universal cap need not be applied on any date on which an issue actually has all of the following characteristics—

(A) No replacement proceeds are allocable to the issue, other than replacement proceeds in a bona fide debt service fund or a reasonably required reserve or replacement fund;

(B) The net sale proceeds of the issue—

(1) Qualified for one of the temporary periods available for capital projects, restricted working capital expenditures, or pooled financings under §§1.148-2(e)(2), (e)(3), or (e)(4), and those net sales proceeds were in fact allocated to expenditures prior to the expiration of the longest applicable temporary period; or

(2) were deposited in a refunding escrow and expended as originally expected;

(C) The issue does not refund a prior issue that, on any transfer date, has unspent proceeds allocable to it;

(D) None of the bonds are retired prior to the date on which those bonds are treated as retired in computing the yield on the issue; and

(E) No proceeds of the issue are invested in qualified student loans or qualified mortgage loans.

(ii) **General rule.**— Except as otherwise provided below, amounts that would otherwise be gross proceeds allocable to an issue are allocated (and remain allocated) to the issue only to the extent that the value of the nonpurpose investments allocable to those gross proceeds does not exceed the value of all outstanding bonds of the issue. For this purpose, gross proceeds allocable to cash, tax-exempt bonds that would be nonpurpose investments (absent section 148(b)(3)(A)), qualified student loans, and qualified mortgage loans are treated as nonpurpose investments. The values of bonds and investments are determined under § 1.148-4(e) and § 1.148-5(d), respectively. The value of all outstanding bonds of the issue is referred to as the *universal cap*. Thus, for example, the universal cap for an issue of plain par bonds is equal to the outstanding stated principal amount of those bonds plus accrued interest.

(iii) **Determination and application of the universal cap.**— Except as otherwise provided, beginning with the first bond year that commences after the second anniversary of the issue date, the amount of the universal cap and the value of the nonpurpose investments must be determined as of the first day of each bond year. For refunding and refunded issues, the cap and values must be determined as of each date that, but for this paragraph (b)(2), proceeds of the refunded issue would become transferred proceeds of the refunding issue, and need not otherwise be determined in the bond year in which that date occurs. All values are determined as of the close of business on each determination date, after giving effect to all payments on bonds and payments for and receipts on investments on that date.

(iv) **General ordering rule for allocations of amounts in excess of the universal cap**

(A) **In general.**— If the value of all nonpurpose investments allocated to the gross proceeds of an issue exceeds the universal cap for that issue on a date as of which the cap is determined under paragraph (b)(2)(iii) of this section, nonpurpose investments allocable to gross proceeds necessary to eliminate that excess cease to be allocated to the issue, in the following order of priority—

(1) First, nonpurpose investments allocable to replacement proceeds;

(2) Second, nonpurpose investments allocable to transferred proceeds; and

(3) Third, nonpurpose investments allocable to sale proceeds and investment proceeds.

(B) **Re-allocation of certain amounts.**— Except as provided in § 1.148-9(b)(3), amounts that cease to be allocated to an issue as a result of the application of the universal cap may only be allocated to another issue as replacement proceeds.

(C) Allocations of portions of investments.— Portions of investments to which this paragraph (b)(2)(iv) applies are allocated under either the ratable method or the representative method in the same manner as allocations of portions of investments to transferred proceeds under § 1.148-9(c).

(v) Nonpurpose investments in a bona fide debt service fund not counted.— For purposes of this paragraph (b)(2), nonpurpose investments allocated to gross proceeds in a bona fide debt service fund for an issue are not taken into account in determining the value of the nonpurpose investments, and those nonpurpose investments remain allocated to the issue.

(c) Fair market value limit on allocations to nonpurpose investments.— Upon a purchase or sale of a nonpurpose investment, gross proceeds of an issue are not allocated to a payment for that nonpurpose investment in an amount greater than, or to a receipt from that nonpurpose investment in an amount less than, the fair market value of the nonpurpose investment as of the purchase or sale date. For purposes of this paragraph (c) only, the fair market value of a nonpurpose investment is adjusted to take into account qualified administrative costs allocable to the investment.

(d) Allocation of gross proceeds to expenditures

(1) Expenditures in general

(i) General rule.— Reasonable accounting methods for allocating funds from different sources to expenditures for the same governmental purpose include any of the following methods if consistently applied: a specific tracing method; a gross proceeds spent first method; a first-in, first-out method; or a ratable allocation method.

(ii) General limitation.— An allocation of gross proceeds of an issue to an expenditure must involve a current outlay of cash for a governmental purpose of the issue. A *current outlay of cash* means an outlay reasonably expected to occur not later than 5 banking days after the date as of which the allocation of gross proceeds to the expenditure is made.

(iii) Timing.— An issuer must account for the allocation of proceeds to expenditures not later than 18 months after the later of the date the expenditure is paid or the date the project, if any, that is financed by the issue is placed in service. This allocation must be made in any event by the date 60 days after the fifth anniversary of the issue date or the date 60 days after the retirement of the issue, if earlier. This paragraph (d)(1)(iii) applies to bonds issued on or after May 16, 1997.

(2) Treatment of gross proceeds invested in purpose investments

(i) In general.— Gross proceeds of an issue invested in a purpose investment are allocated to an expenditure on the date on which the conduit borrower under the purpose investment allocates the gross proceeds to an expenditure in accordance with this paragraph (d).

(ii) Exception for qualified mortgage loans and qualified student loans.— If gross proceeds of an issue are allocated to a purpose investment that is a qualified mortgage loan or a qualified student loan, those gross proceeds are allocated to an expenditure for the governmental purpose of the issue on the date on which the issuer allocates gross proceeds to that purpose investment.

(iii) Continuing allocation of gross proceeds to purpose investments.— Regardless of whether gross proceeds of a conduit financing issue invested in a purpose investment have been allocated to an expenditure under paragraph (d)(2)(i) or (ii) of this section, with respect to the actual issuer those gross proceeds continue to be allocated to the purpose investment until the sale, discharge, or other disposition of the purpose investment.

(3) Expenditures for working capital purposes

(i) In general.— Except as otherwise provided in this paragraph (d)(3) or paragraph (d)(4) of this section, proceeds of an issue may only be allocated to working capital expenditures as of any date to the extent that those working capital expenditures exceed available amounts (as defined in paragraph (d)(3)(iii) of this section) as of that date (i.e., a "proceeds-spent-last" method). For this purpose, proceeds include replacement proceeds described in § 1.148-1(c)(4).

(ii) Exceptions

(A) General de minimis exception.— Paragraph (d)(3)(i) of this section does not apply to expenditures to pay—

- (1)** Any issuance costs of the issue or any qualified administrative costs within the meaning of §§1.148-5(e)(2)(i) or (ii), or § 1.148-5(e)(3)(ii)(A);
- (2)** Fees for qualified guarantees of the issue or payments for a qualified hedge for the issue;
- (3)** Interest on the issue for a period commencing on the issue date and ending on the date that is the later of three years from the issue date or one year after the date on which the project is placed in service;
- (4)** Amounts paid to the United States under §§ 1.148-3, 1.148-5(c), or 1.148-7 for the issue;
- (5)** Costs, other than those described in paragraphs (d)(3)(ii)(A)(1) through (4) of this section, that do not exceed 5 percent of the sale proceeds of an issue and that are directly related to capital expenditures financed by the issue (e.g., initial operating expenses for a new capital project);
- (6)** Principal or interest on an issue paid from unexpected excess sale or investment proceeds; and
- (7)** Principal or interest on an issue paid from investment earnings on a reserve or replacement fund that are deposited in a bona fide debt service fund.

(B) Exception for extraordinary items.— Paragraph (d)(3)(i) of this section does not apply to expenditures for extraordinary, nonrecurring items that are not customarily payable from current revenues, such as casualty losses or extraordinary legal judgments in amounts in excess of reasonable insurance coverage. If, however, an issuer or a related party maintains a reserve for such items (e.g., a self-insurance fund) or has set aside other available amounts for such expenses, gross proceeds within that reserve must be allocated to expenditures only after all other available amounts in that reserve are expended.

(C) Exception for payment of principal and interest on prior issues.— Paragraph (d)(3)(i) of this section does not apply to expenditures for payment of principal, interest, or redemption prices on a prior issue and, for a crossover refunding issue, interest on that issue.

(D) No exceptions if replacement proceeds created.— The exceptions provided in this paragraph (d)(3)(ii) do not apply if the allocation merely substitutes gross proceeds for other amounts that would have been used to make those expenditures in a manner that gives rise to replacement proceeds. For example, if a purported reimbursement allocation of proceeds of a reimbursement bond does not result in an expenditure under § 1.150-2, those proceeds may not be allocated to pay interest on an issue that, absent this allocation, would have been paid from the issuer's current revenues.

(iii) Definition of available amount

(A) In general.— For purposes of this paragraph (d)(3), *available amount* means any amount that is available to an issuer for working capital expenditure purposes of the type financed by an issue. Except as otherwise provided, available amount excludes proceeds of any issue but includes cash, investments, and other amounts held in accounts or otherwise by the issuer or a related party if those amounts may be used by the issuer for working capital expenditures of the type being financed by an issue without legislative or judicial action and without a legislative, judicial, or contractual requirement that those amounts be reimbursed.

(B) Reasonable working capital reserve treated as unavailable.— A reasonable working capital reserve is treated as unavailable. Any working capital reserve is reasonable if it does not exceed 5 percent of the actual working capital expenditures of the issuer in the fiscal year before the year in which the determination of available amounts is made. For this purpose only, in determining the working capital expenditures of an issuer for a prior fiscal year, any expenditures (whether capital or working capital expenditures) that are paid out of current revenues may be treated as working capital expenditures.

(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 that the fund is reasonably necessary as part of the organization's permanent capital.

(D) Application to statutory safe harbor for tax and revenue anticipation bonds.— For purposes of section [148\(f\)\(4\)\(B\)\(iii\)\(II\)](#), *available amount* has the same meaning as in paragraph (d)(3)(iii) of this section, except that the otherwise-permitted reasonable working capital reserve is treated as part of the available amount.

(4) Expenditures for grants

(i) In general.— Gross proceeds of an issue that are used to make a grant are allocated to an expenditure on the date on which the grant is made.

(ii) Characterization of repayments of grants.— If any amount of a grant financed by gross proceeds of an issue is repaid to the grantor, the repaid amount is treated as unspent proceeds of the issue as of the repayment date unless expended within 60 days of repayment.

(5) Expenditures for reimbursement purposes.— In allocating gross proceeds of issues of reimbursement bonds (as defined in § [1.150-2](#)) to certain expenditures, § [1.150-2](#) applies. In allocating gross proceeds to an expenditure to reimburse a previously paid working capital expenditure, paragraph (d)(3) of this section applies. Thus, if the expenditure is described in paragraph (d)(3)(ii) of this section or there are no available amounts on the date a working capital expenditure is made and there are no other available amounts on the date of the reimbursement of that expenditure, gross proceeds are allocated to the working capital expenditure as of the date of the reimbursement.

(6) Expenditures of certain commingled investment proceeds of governmental issues.— This paragraph (d)(6) applies to any issue of governmental bonds, any issue of private activity bonds issued to finance a facility that is required by section 142 to be owned by a governmental unit, and any portion

of an issue that is not treated as consisting of private activity bonds under section [141\(b\)\(9\)](#). Investment proceeds of the issue (other than investment proceeds held in a refunding escrow) are treated as allocated to expenditures for a governmental purpose when the amounts are deposited in a commingled fund with substantial tax or other revenues from governmental operations of the issuer and the amounts are reasonably expected to be spent for governmental purposes within 6 months from the date of the commingling. In establishing these reasonable expectations, an issuer may use any reasonable accounting assumption and is not bound by the *proceeds-spent-last* assumption generally required for working capital expenditures under paragraph (d)(3) of this section.

(7) Payments to related parties.— Any payment of gross proceeds of the issue to a related party of the payor is not an expenditure of those gross proceeds.

(e) Special rules for commingled funds

(1) In general.— An accounting method for gross proceeds of an issue in a commingled fund, other than a bona fide debt service fund, is reasonable only if it satisfies the requirements of paragraphs (e)(2) through (6) of this section in addition to the other requirements of this section.

(2) Investments held by a commingled fund

(i) Required ratable allocations.— Not less frequently than as of the close of each fiscal period, all payments and receipts (including deemed payments and receipts) on investments held by a commingled fund must be allocated (but not necessarily distributed) among the different investors in the fund. This allocation must be based on a consistently applied, reasonable ratable allocation method.

(ii) Safe harbors for ratable allocation methods.— Reasonable ratable allocation methods include, without limitation, methods that allocate these items in proportion to either—

(A) The average daily balances of the amounts in the commingled fund from different investors during a fiscal period (as described in paragraph (e)(4) of this section); or

(B) The average of the beginning and ending balances of the amounts in the commingled fund from different investors for a fiscal period that does not exceed one month.

(iii) Definition of investor.— For purposes of this paragraph (e), the term *investor* means each different source of funds invested in a commingled fund. For example, if a city invests gross proceeds of an issue and tax revenues in a commingled fund, it is treated as two different investors.

(3) Certain expenditures involving a commingled fund.— If a ratable allocation method is used under paragraph (d) of this section to allocate expenditures from the commingled fund, the same ratable allocation method must be used to allocate payments and receipts on investments in the commingled fund under paragraph (e)(2) of this section.

(4) Fiscal periods.— The fiscal year of a commingled fund is the calendar year unless the fund adopts another fiscal year. A commingled fund may use any consistent fiscal period that does not exceed three months (e.g., a daily, weekly, monthly, or quarterly fiscal period).

(5) Unrealized gains and losses on investments of a commingled fund

(i) Mark-to-market requirement for internal commingled funds with longer-term investment portfolios.— Except as otherwise provided in this paragraph (e), in the case of a commingled fund in which the issuer and any related party own more than 25 percent of the beneficial interests in the fund (an *internal commingled fund*), the fund must treat all its investments as if sold at fair market value either on the last day of the fiscal year or the last day of each fiscal period. The net gains or losses

from these deemed sales of investments must be allocated to all investors of the commingled fund during the period since the last allocation.

(ii) Exception for internal commingled funds with shorter-term investment portfolios.— If the remaining weighted average maturity of all investments held by a commingled fund during a particular fiscal year does not exceed 18 months, and the investments held by the commingled fund during that fiscal year consist exclusively of obligations, the mark-to-market requirement of paragraph (e)(5)(i) of this section does not apply.

(iii) Exception for commingled reserve funds and sinking funds.— The mark-to-market requirement of paragraph (e)(5)(i) of this section does not apply to a commingled fund that operates exclusively as a reserve fund, sinking fund, or replacement fund for two or more issues of the same issuer.

(6) Allocations of commingled funds serving as common reserve funds or sinking funds

(i) Permitted ratable allocation methods.— If a commingled fund serves as a common reserve fund, replacement fund, or sinking fund for two or more issues (a *commingled reserve*), after making reasonable adjustments to account for proceeds allocated under paragraph (b)(1) or (b)(2) of this section, investments held by that commingled fund must be allocated ratably among the issues served by the commingled fund in accordance with one of the following methods—

(A) The relative values of the bonds of those issues under § [1.148-4\(e\)](#);

(B) The relative amounts of the remaining maximum annual debt service requirements on the outstanding principal amounts of those issues; or

(C) The relative original stated principal amounts of the outstanding issues.

(ii) Frequency of allocations.— An issuer must make any allocations required by this paragraph (e) (6) as of a date at least every 3 years and as of each date that an issue first becomes secured by the commingled reserve. If relative original principal amounts are used to allocate, allocations must also be made on the retirement of any issue secured by the commingled reserve. [Reg. §1.148-6.]

.01 Historical Comment: Adopted 5/12/92 by [T.D. 8418](#) (corrected 9/29/92). Amended 6/14/93 by [T.D. 8476](#) (corrected 8/18/93), 5/5/94 by [T.D. 8538](#), 1/10/97 by [T.D. 8712](#), 5/8/97 by [T.D. 8718](#) and 7/16/2016 by [T.D. 9777](#).

Standard Federal Tax Reporter (2018), Regulation, §1.148-1., Internal Revenue Service, Definitions and elections



Reg. § 1.148-1 is applicable to certain bonds sold on or after July 8, 1997, and does not reflect recent law changes. For details, see [¶7872.01](#).



(a) **In general.**— The definitions in this section and the definitions under section [150](#) apply for purposes of section 148 and §§ [1.148-1](#) through [1.148-11](#).

(b) **Certain definitions.**— The following definitions apply:

Accounting method means both the overall method used to account for gross proceeds of an issue (e.g., the cash method or a modified accrual method) and the method used to account for or allocate any particular item within that overall accounting method (e.g., accounting for investments, expenditures, allocations to and from different sources, and particular items of the foregoing).

Annuity contract means annuity contract as defined in section [72](#).

Available amount means available amount as defined in § [1.148-6\(d\)\(3\)\(iii\)](#).

Bona fide debt service fund means a fund, which may include proceeds of an issue, that—

(1) Is used primarily to achieve a proper matching of revenues with principal and interest payments within each bond year; and

(2) Is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of:

(i) the earnings on the fund for the immediately preceding bond year; or

(ii) one-twelfth of the principal and interest payments on the issue for the immediately preceding bond year.

Bond year means, in reference to an issue, each 1-year period that ends on the day selected by the issuer. The first and last bond years may be short periods. If no day is selected by the issuer before the earlier of the final maturity date of the issue or the date that is 5 years after the issue date, bond years end on each anniversary of the issue date and on the final maturity date.

Capital project or capital projects means all capital expenditures, plus related working capital expenditures to which the de minimis rule under § [1.148-6\(d\)\(3\)\(ii\)\(A\)](#) applies, that carry out the governmental purposes of an issue. For example, a capital project may include capital expenditures for one or more buildings, plus related start-up operating costs.

Commingled fund means any fund or account containing both gross proceeds of an issue and amounts in excess of \$25,000 that are not gross proceeds of that issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account. An open-end regulated investment company under section [851](#), however, is not a commingled fund.

Computation date means each date on which the rebate amount for an issue is computed under § [1.148-3\(e\)](#).

Computation period means the period between computation dates. The first computation period begins on the issue date and ends on the first computation date. Each succeeding computation period begins on the date immediately following the computation date and ends on the next computation date.

Consistently applied means applied uniformly within a fiscal period and between fiscal periods to account for gross proceeds of an issue and any amounts that are in a commingled fund.

De minimis amount means—

(1) In reference to original issue discount (as defined in section 1273(a)(1)) or premium on an obligation—

(i) An amount that does not exceed 2 percent multiplied by the stated redemption price at maturity; plus

(ii) Any original issue premium that is attributable exclusively to reasonable underwriters' compensation; and

(2) In reference to market discount (as defined in section 1278(a)(2)(A)) or premium on an obligation, an amount that does not exceed 2 percent multiplied by the stated redemption price at maturity.

Economic accrual method (also known as the *constant interest method* or *actuarial method*) means the method of computing yield that is based on the compounding of interest at the end of each compounding period.

Fair market value means fair market value as defined in § [1.148-5\(d\)\(6\)](#).

Fixed rate investment means any investment whose yield is fixed and determinable on the issue date.

Fixed yield bond means any bond whose yield is fixed and determinable on the issue date using the assumptions and rules provided in § [1.148-4\(b\)](#).

Fixed yield issue means any issue if each bond that is part of the issue is a fixed yield bond.

Gross proceeds means any proceeds and replacement proceeds of an issue.

Guaranteed investment contract includes any nonpurpose investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply investments on two or more future dates (e.g., a forward supply contract).

Higher yielding investments means higher yielding investments as defined in section [148\(b\)\(1\)](#).

Investment means any investment property as defined in sections 148(b)(2) and 148(b)(3), and any other tax-exempt bond.

Investment proceeds means any amounts actually or constructively received from investing proceeds of an issue.

Investment-type property is defined in paragraph (e) of this section.

Caution: The definition of “Issue price”, below, prior to amendment by [T.D. 9801](#), applies to bonds that are sold before June 7, 2017.

Issue price means, except as otherwise provided, issue price as defined in sections 1273 and 1274.

Generally, the issue price of bonds that are publicly offered is the first price at which a substantial amount of the bonds is sold to the public. Ten percent is a substantial amount. The public does not include bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. The issue price does not change if part of the issue is later sold at a different price. The issue price of bonds that are not substantially identical is determined separately. The issue price of bonds for which a bona fide public offering is made is determined as of the sale date based on reasonable expectations regarding the initial public offering price. If a bond is issued for property, the applicable Federal tax-exempt rate is used in lieu of the Federal rate in determining the issue price under section 1274. The issue price of bonds may not exceed their fair market value as of the sale date.

Caution: The definition of “Issue price”, below, as amended by [T.D. 9801](#), applies to bonds that are sold on or after June 7, 2017.

Issue price means issue price as defined in paragraph (f) of this section.

Issuer generally means the entity that actually issues the issue, and, unless the context or a provision clearly requires otherwise, each conduit borrower of the issue. For example, rules imposed on issuers to account for gross proceeds of an issue apply to a conduit borrower to account for any gross proceeds received under a purpose investment. Provisions regarding elections, filings, liability for the rebate amount, and certifications of reasonable expectations apply only to the actual issuer.

Multipurpose issue means an issue the proceeds of which are used for two or more separate purposes determined in accordance with § [1.148-9\(h\)](#).

Net sale proceeds means sale proceeds, less the portion of those sale proceeds invested in a reasonably required reserve or replacement fund under section 148(d) and as part of a minor portion under section [148\(e\)](#).

Nonpurpose investment means any investment property, as defined in section 148(b), that is not a purpose investment.

Payment means a payment as defined in § [1.148-3\(d\)](#) for purposes of computing the rebate amount, and a payment as defined in § [1.148-5\(b\)](#) for purposes of computing the yield on an investment.

Plain par bond means a qualified tender bond or a bond—

- (1) Issued with not more than a de minimis amount of original issue discount or premium;
- (2) Issued for a price that does not include accrued interest other than pre-issuance accrued interest;
- (3) That bears interest from the issue date at a single, stated, fixed rate or that is a variable rate debt instrument under section [1275](#), in each case with interest unconditionally payable at least annually; and
- (4) That has a lowest stated redemption price that is not less than its outstanding stated principal amount.

Plain par investment means an investment that is an obligation—

- (1) Issued with not more than a de minimis amount of original issue discount or premium, or, if acquired on a date other than the issue date, acquired with not more than a de minimis amount of market discount or premium;
- (2) Issued for a price that does not include accrued interest other than pre-issuance accrued interest;
- (3) That bears interest from the issue date at a single, stated, fixed rate or that is a variable rate debt instrument under section [1275](#), in each case with interest unconditionally payable at least annually; and
- (4) That has a lowest stated redemption price that is not less than its outstanding stated principal amount.

Pre-issuance accrued interest means amounts representing interest that accrued on an obligation for a period not greater than one year before its issue date but only if those amounts are paid within one year after the issue date.

Proceeds means any sale proceeds, investment proceeds, and transferred proceeds of an issue. Proceeds do not include, however, amounts actually or constructively received with respect to a purpose investment that are properly allocable to the immaterially higher yield under § [1.148-2\(d\)](#) or section 143(g) or to qualified administrative costs recoverable under § [1.148-5\(e\)](#).

Program investment means a purpose investment that is part of a governmental program in which—

- (1) The program involves the origination or acquisition of purpose investments;
- (2) At least 95 percent (90 percent for qualified student loans under section 144(b)(1)(A)) of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, States or political subdivisions, 501(c)(3) organizations, persons who provide housing and related facilities, or any combination of the foregoing;
- (3) At least 95 percent of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption;
- (4) The program documents prohibit any obligor on a purpose investment financed by the program or any related party to that obligor from purchasing bonds of an issue that finance the program in an amount related to the amount of the purpose investment acquired from that obligor; and
- (5) The issuer has not waived the right to treat the investment as a program investment.

Purpose investment means an investment that is acquired to carry out the governmental purpose of an issue.

Qualified administrative costs means qualified administrative costs as defined in § [1.148-5\(e\)](#).

Qualified guarantee means a qualified guarantee as defined in § [1.148-4\(f\)](#).

Qualified hedge means a qualified hedge as defined in § [1.148-4\(h\)\(2\)](#).

Reasonable expectations or reasonableness. An issuer's expectations or actions are reasonable only if a prudent person in the same circumstances as the issuer would have those same expectations or take those same actions, based on all the objective facts and circumstances. Factors relevant to a determination of reasonableness include the issuer's history of conduct concerning stated expectations made in connection with the issuance of obligations, the level of inquiry by the issuer into factual matters, and the existence of covenants, enforceable by bondholders, that require implementation of specific expectations. For a conduit financing issue, factors relevant to a determination of reasonableness include the reasonable expectations of the conduit borrower, but only if, under the circumstances, it is reasonable and prudent for the issuer to rely on those expectations.

Rebate amount means 100 percent of the amount owed to the United States under section 148(f)(2), as further described in § [1.148-3](#).

Receipt means a receipt as defined in § [1.148-3\(d\)](#) for purposes of computing the rebate amount, and a receipt as defined in § [1.148-5\(b\)](#) for purposes of computing yield on an investment.

Refunding escrow means one or more funds established as part of a single transaction or a series of related transactions, containing proceeds of a refunding issue and any other amounts to provide for payment of principal or interest on one or more prior issues. For this purpose, funds are generally not so established solely because of—

- (1) The deposit of proceeds of an issue and replacement proceeds of the prior issue in an escrow more than 6 months apart, or
- (2) The deposit of proceeds of completely separate issues in an escrow.

Replacement proceeds is defined in paragraph (c) of this section.

Restricted working capital expenditures means working capital expenditures that are subject to the proceeds-spent-last rule in § [1.148-6\(d\)\(3\)\(i\)](#) and are ineligible for any exception to that rule.

Sale proceeds means any amounts actually or constructively received from the sale of the issue, including amounts used to pay underwriters' discount or compensation and accrued interest other than pre-issuance accrued interest. Sale proceeds also include, but are not limited to, amounts derived from the sale of a right that is associated with a bond, and that is described in §1.148(b)(4). See also § [1.148-4\(h\)\(5\)](#) treating amounts received upon the termination of certain hedges as sale proceeds.

Stated redemption price means the redemption price of an obligation under the terms of that obligation, including any call premium.

Transferred proceeds means transferred proceeds as defined in § [1.148-9](#) (or the applicable corresponding provision of prior law).

Unconditionally payable means payable under terms in which—

- (1) Late payment or nonpayment results in a significant penalty to the borrower or reasonable remedies to the lender, and
- (2) It is reasonably certain on the issue date that the payment will actually be made.

Value means value determined under § [1.148-4\(e\)](#) for a bond, and value determined under § [1.148-5\(d\)](#) for an investment.

Variable yield bond means any bond that is not a fixed yield bond.

Variable yield issue means any issue that is not a fixed yield issue.

Yield means yield computed under § 1.148-4 for an issue, and yield computed under § 1.148-5 for an investment.

Yield restricted means required to be invested at a yield that is not materially higher than the yield on the issue under section 148(a) and § 1.148-2.

(c) Definition of replacement proceeds

(1) In general.— Amounts are replacement proceeds of an issue if the amounts have a sufficiently direct nexus to the issue or to the governmental purpose of the issue to conclude that the amounts would have been used for that governmental purpose if the proceeds of the issue were not used or to be used for that governmental purpose. For this purpose, governmental purposes include the expected use of amounts for the payment of debt service on a particular date. The mere availability or preliminary earmarking of amounts for a governmental purpose, however, does not in itself establish a sufficient nexus to cause those amounts to be replacement proceeds. Replacement proceeds include, but are not limited to, sinking funds, pledged funds, and other replacement proceeds described in paragraph (c)(4) of this section, to the extent that those funds or amounts are held by or derived from a substantial beneficiary of the issue. A substantial beneficiary of an issue includes the issuer and any related party to the issuer, and, if the issuer is not a state, the state in which the issuer is located. A person is not a substantial beneficiary of an issue solely because it is a guarantor under a qualified guarantee.

(2) Sinking fund.— *Sinking fund* includes a debt service fund, redemption fund, reserve fund, replacement fund, or any similar fund, to the extent reasonably expected to be used directly or indirectly to pay principal or interest on the issue.

(3) Pledged fund

(i) In general.— A *pledged fund* is any amount that is directly or indirectly pledged to pay principal or interest on the issue. A pledge need not be cast in any particular form but, in substance, must provide reasonable assurance that the amount will be available to pay principal or interest on the issue, even if the issuer encounters financial difficulties. A pledge to a guarantor of an issue is an indirect pledge to secure payment of principal or interest on the issue. A pledge of more than 50 percent of the outstanding stock of a corporation that is a conduit borrower of the issue is not treated as a pledge for this purpose, unless the corporation is formed or availed of to avoid the creation of replacement proceeds.

(ii) Negative pledges.— An amount is treated as pledged to pay principal or interest on an issue if it is held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the bondholders or a guarantor of the bonds. An amount is not treated as pledged under this paragraph (c)(3)(ii), however, if—

(A) The issuer or a substantial beneficiary may grant rights in the amount that are superior to the rights of the bondholders or the guarantor; or

(B) The amount does not exceed reasonable needs for which it is maintained, the required level is tested no more frequently than every 6 months, and the amount may be spent without any substantial restriction other than a requirement to replenish the amount by the next testing date.

(4) Other replacement proceeds

(i) Bonds outstanding longer than necessary

(A) In general.— Replacement proceeds arise to the extent that the issuer reasonably expects as of the issue date that—

(1) The term of an issue will be longer than is reasonably necessary for the governmental purposes of the issue, and

(2) There will be available amounts during the period that the issue remains outstanding longer than necessary. Whether an issue is outstanding longer than necessary is determined under § [1.148-10](#). Replacement proceeds are created under this paragraph (c)(4)(i)(A) at the beginning of each fiscal year during which an issue remains outstanding longer than necessary in an amount equal to available amounts of the issuer as of that date.

(B) Safe harbor against creation of replacement proceeds.— As a safe harbor, replacement proceeds do not arise under paragraph (c)(4)(i)(A) of this section —

(1) For the portion of an issue that is to be used to finance working capital expenditures, if that portion is not outstanding longer than the temporary period under [§1.148-2\(e\)\(3\)](#) for which the proceeds qualify;

(2) For the portion of an issue (including a refunding issue) that is to be used to finance or refinance capital projects, if that portion has a weighted average maturity that does not exceed 120 percent of the average reasonably expected economic life of the financed capital projects, determined in the same manner as under section [147\(b\)](#);

(4) For the portion of an issue (including a refunding issue) that is to be used to finance working capital expenditures, if that portion satisfies paragraph (c)(4)(ii) of this section.

(ii) Safe harbor for longer-term working capital financings.— A portion of an issue used to finance working capital expenditures satisfies this paragraph (c)(4)(ii) if the issuer meets the requirements of paragraphs (c)(4)(ii)(A) through (E) of this section.

(A) Determine first testing year.— On the issue date, the issuer must determine the first fiscal year following the applicable temporary period under [§1.148-2\(e\)](#) in which it reasonably expects to have available amounts (first testing year), but in no event can the first day of the first testing year be later than five years after the issue date.

(B) Application of available amount to reduce burden on tax-exempt bond market.

— Beginning with the first testing year and for each subsequent fiscal year for which the portion of the issue that is the subject of this safe harbor remains outstanding, the issuer must determine the available amount as of the first day of each fiscal year. Then, except as provided in paragraph (c)(4)(ii)(D) of this section, within the first 90 days of that fiscal year, the issuer must apply that amount (or if less, the available amount on the date of the required redemption or investment) to redeem or to invest in eligible tax-exempt bonds (as defined in paragraph (c)(4)(ii)(E) of this section). For this purpose, available amounts in a bona fide debt service fund are not treated as available amounts.

(C) Continuous investment requirement.— Except as provided in this paragraph (c)(4)(ii)(C), any amounts invested in eligible tax-exempt bonds under paragraph (c)(4)(ii)(B) of this section must be invested continuously in such tax-exempt bonds to the extent provided in paragraph (c)(4)(ii)(D) of this section.

(1) Exception for reinvestment period.— Amounts previously invested in eligible tax-exempt bonds under paragraph (c)(4)(ii)(B) of this section that are held for not more than 30 days in a fiscal year pending reinvestment in eligible tax-exempt bonds are treated as invested in eligible tax-exempt bonds.

(2) Limited use of invested amounts.— An issuer may spend amounts previously invested in eligible tax-exempt bonds under paragraph (c)(4)(ii)(B) of this section within 30 days of the date on which they cease to be so invested to make expenditures for a governmental purpose on any date on which the issuer has no other available amounts for such purpose, or to redeem eligible tax-exempt bonds.

(D) Cap on applied or invested amounts.— The maximum amount that an issuer is required to apply under paragraph (c)(4)(ii)(B) of this section or to invest continuously under paragraph (c)(4)(ii)(C) of this section with respect to the portion of an issue that is the subject of this safe harbor is the outstanding principal amount of such portion. For purposes of this cap, an issuer receives credit towards its requirement to invest available amounts in eligible tax-exempt bonds for amounts previously invested under paragraph (c)(4)(ii)(B) of this section that remain continuously invested under paragraph (c)(4)(ii)(C) of this section.

(E) Definition of eligible tax-exempt bonds.— For purposes of paragraph (c)(4)(ii) of this section, *eligible tax-exempt bonds* means any of the following:

- (1) A bond the interest on which is excludable from gross income under [section 103](#) and that is not a specified private activity bond (as defined in [section 57\(a\)\(5\)\(C\)](#)) subject to the alternative minimum tax;
- (2) An interest in a regulated investment company to the extent that at least 95 percent of the income to the holder of the interest is interest on a bond that is excludable from gross income under [section 103](#) and that is not interest on a specified private activity bond (as defined in [section 57\(a\)\(5\)\(C\)](#)) subject to the alternative minimum tax; or
- (3) A certificate of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 CFR part 344.

(d) Elections.— Except as otherwise provided, any required elections must be made in writing, and, once made, may not be revoked without the permission of the Commissioner.

(e) Investment-type property

(1) In general.— Investment-type property includes any property, other than property described in [section 148\(b\)\(2\)\(A\)](#), (B), (C) or (E), that is held principally as a passive vehicle for the production of income. For this purpose, production of income includes any benefit based on the time value of money.

(2) Prepayments

(i) In general

(A) Generally.— Except as otherwise provided in this paragraph (e)(2), a prepayment for property or services, including a prepayment for property or services that is made after the date that the contract to buy the property or services is entered into, also gives rise to investment-type property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. A prepayment does not give rise to investment-type property if—

- (1) Prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing;

(2) The prepayment is made within 90 days of the reasonably expected date of delivery to the issuer of all of the property or services for which the prepayment is made; or

(3) The prepayment meets the requirements of paragraph (e)(2)(iii)(A) or (B) of this section.

(B) Example.— The following example illustrates an application of this paragraph (e)(2)(i):

Example. Prepayment after contract is executed. In 1998, City A enters into a ten-year contract with Company Y. Under the contract, Company Y is to provide services to City A over the term of the contract and in return City A will pay Company Y for its services as they are provided. In 2004, City A issues bonds to finance a lump sum payment to Company Y in satisfaction of City A's obligation to pay for Company Y's services to be provided over the remaining term of the contract. The use of bond proceeds to make the lump sum payment constitutes a prepayment for services under paragraph (e)(2)(i) of this section, even though the payment is made after the date that the contract is executed.

(ii) Customary prepayments.— The determination of whether a prepayment satisfies paragraph (e)(2)(i)(A)(1) of this section is generally made based on all the facts and circumstances. In addition, a prepayment is deemed to satisfy paragraph (e)(2)(i)(A)(1) of this section if—

(A) The prepayment is made for—

(1) Maintenance, repair, or an extended warranty with respect to personal property (for example, automobiles or electronic equipment); or

(2) Updates or maintenance or support services with respect to computer software; and

(B) The same maintenance, repair, extended warranty, updates or maintenance or support services, as applicable, are regularly provided to nongovernmental persons on the same terms.

(iii) Certain prepayments to acquire a supply of natural gas or electricity

(A) Natural gas prepayments.— A prepayment meets the requirements of this paragraph (e)(2)(iii)(A) if—

(1) It is made by or for one or more utilities that are owned by a governmental person, as defined in § 1.141-1(b) (each of which is referred to in this paragraph (e)(2)(iii)(A) as the issuing municipal utility), to purchase a supply of natural gas; and

(2) At least 90 percent of the prepaid natural gas financed by the issue is used for a qualifying use. Natural gas is used for a qualifying use if it is to be—

(i) Furnished to retail gas customers of the issuing municipal utility who are located in the natural gas service area of the issuing municipal utility, provided, however, that gas used to produce electricity for sale shall not be included under this paragraph (e)(2)(iii)(A)(2)(i);

(ii) Used by the issuing municipal utility to produce electricity that will be furnished to retail electric customers of the issuing municipal utility who are located in the electricity service area of the issuing municipal utility;

(iii) Used by the issuing municipal utility to produce electricity that will be sold to a utility that is owned by a governmental person and furnished to retail electric customers of the purchaser who are located in the electricity service area of the purchaser;

(iv) Sold to a utility that is owned by a governmental person if the requirements of paragraph (e)(2)(iii)(A)(2)(i), (ii) or (iii) of this section are satisfied by the purchaser (treating the purchaser as the issuing municipal utility); or

(v) Used to fuel the pipeline transportation of the prepaid gas supply acquired in accordance with this paragraph (e)(2)(iii)(A).

(B) Electricity prepayments.— A prepayment meets the requirements of this paragraph (e)(2)(iii)(B) if—

(1) It is made by or for one or more utilities that are owned by a governmental person (each of which is referred to in this paragraph (e)(2)(iii)(B) as the issuing municipal utility) to purchase a supply of electricity; and

(2) At least 90 percent of the prepaid electricity financed by the issue is used for a qualifying use. Electricity is used for a qualifying use if it is to be—

(i) Furnished to retail electric customers of the issuing municipal utility who are located in the electricity service area of the issuing municipal utility; or

(ii) Sold to a utility that is owned by a governmental person and furnished to retail electric customers of the purchaser who are located in the electricity service area of the purchaser.

(C) Service area.— For purposes of this paragraph (e)(2)(iii), the service area of a utility owned by a governmental person consists of—

(1) Any area throughout which the utility provided, at all times during the 5-year period ending on the issue date—

(i) In the case of a natural gas utility, natural gas transmission or distribution service; and

(ii) In the case of an electric utility, electricity distribution service; and

(2) Any area recognized as the service area of the utility under state or Federal law.

(D) Retail customer.— For purposes of this paragraph (e)(2)(iii), a retail customer is a customer that purchases natural gas or electricity, as applicable, other than for resale.

(E) Commodity swaps.— A prepayment does not fail to meet the requirements of this paragraph (e)(2)(iii) by reason of any commodity swap contract that may be entered into between the issuer and an unrelated party (other than the gas or electricity supplier), or between the gas or electricity supplier and an unrelated party (other than the issuer), so long as each swap contract is an independent contract. A swap contract is an independent contract if the obligation of each party to perform under the swap contract is not dependent on performance by any person (other than the other party to the swap contract) under another contract (for example, a gas or electricity supply contract or another swap contract); provided, however, that a commodity swap contract will not fail to be an independent contract solely because the swap contract may terminate in the event of a failure of a gas or electricity supplier to deliver gas or electricity for which the swap contract is a hedge.

(F) Remedial action.— Issuers may apply principles similar to the rules of § 1.141-12, including § 1.141-12(d) (relating to redemption or defeasance of nonqualified bonds) and § 1.141-12(e) (relating to alternative use of disposition proceeds), to cure a violation of paragraph (e)(2)(iii)(A)(2) or (e)(2)(iii)(B)(2) of this section. For this purpose, the amount of nonqualified bonds is determined

in the same manner as for output contracts taken into account under the private business tests, including the principles of § [1.141-7\(d\)](#), treating nonqualified sales of gas or electricity under this paragraph (e)(2)(iii) as satisfying the benefits and burdens test under § [1.141-7\(c\)\(1\)](#).

(iv) Additional prepayments as permitted by the Commissioner.— The Commissioner may, by published guidance, set forth additional circumstances in which a prepayment does not give rise to investment-type property.

(3) Certain hedges.— Investment-type property also includes the investment element of a contract that is a hedge (within the meaning of § [1.148-4\(h\)\(2\)\(i\)\(A\)](#)) and that contains a significant investment element because a payment by the issuer relates to a conditional or unconditional obligation by the hedge provider to make a payment on a later date. See § [1.148-4\(h\)\(2\)\(ii\)](#) relating to hedges with a significant investment element.



Reg. §1.148-1(f), below, as added by [T.D. 9801](#), applies to bonds that are sold on or after June 7, 2017.



(f) Definition of issue price

(1) In general.— Except as otherwise provided in this paragraph (f), "issue price" is defined in sections 1273 and 1274 and the regulations under those sections.

(2) Bonds issued for money

(i) General rule.— Except as otherwise provided in this paragraph (f)(2), the issue price of bonds issued for money is the first price at which a substantial amount of the bonds is sold to the public. If a bond is issued for money in a private placement to a single buyer that is not an underwriter or a related party (as defined in §1.150-1(b)) to an underwriter, the issue price of the bond is the price paid by that buyer. Issue price is not reduced by any issuance costs (as defined in §1.150-1(b)).

(ii) Special rule for use of initial offering price to the public.— The issuer may treat the initial offering price to the public as of the sale date as the issue price of the bonds if the requirements of paragraphs (f)(2)(ii)(A) and (B) of this section are met.

(A) The underwriters offered the bonds to the public for purchase at a specified initial offering price on or before the sale date, and the lead underwriter in the underwriting syndicate or selling group (or, if applicable, the sole underwriter) provides, on or before the issue date, a certification to that effect to the issuer, together with reasonable supporting documentation for that certification, such as a copy of the pricing wire or equivalent communication.

(B) Each underwriter agrees in writing that it will neither offer nor sell the bonds to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

(1) The close of the fifth (5th) business day after the sale date; or

(2) The date on which the underwriters have sold a substantial amount of the bonds to the public at a price that is no higher than the initial offering price to the public.

(iii) Special rule for competitive sales.— For bonds issued for money in a competitive sale, an issuer may treat the reasonably expected initial offering price to the public as of the sale date as the issue price of the bonds if the issuer obtains from the winning bidder a certification of the bonds' reasonably expected initial offering price to the public as of the sale date upon which the price in the winning bid is based.

(iv) Choice of rule for determining issue price.— If more than one rule for determining the issue price of the bonds is available under this paragraph (f)(2), at any time on or before the issue date, the issuer may select the rule it will use to determine the issue price of the bonds. On or before the issue date of the bonds, the issuer must identify the rule selected in its books and records maintained for the bonds.

(3) Definitions.— For purposes of this paragraph (f), the following definitions apply:

(i) Competitive sale means a sale of bonds by an issuer to an underwriter that is the winning bidder in a bidding process in which the issuer offers the bonds for sale to underwriters at specified written terms, if that process meets the following requirements:

(A) The issuer disseminates the notice of sale to potential underwriters in a manner that is reasonably designed to reach potential underwriters (for example, through electronic communication that is widely circulated to potential underwriters by a recognized publisher of municipal bond offering documents or by posting on an Internet-based website or other electronic medium that is regularly used for such purpose and is widely available to potential underwriters);

(B) All bidders have an equal opportunity to bid (within the meaning of §1.148-5(d)(6)(iii)(A)(6));

(C) The issuer receives bids from at least three underwriters of municipal bonds who have established industry reputations for underwriting new issuances of municipal bonds; and

(D) The issuer awards the sale to the bidder who submits a firm offer to purchase the bonds at the highest price (or lowest interest cost).

(ii) Public means any person (as defined in section 7701(a)(1)) other than an underwriter or a related party (as defined in §1.150-1(b)) to an underwriter.

(iii) Underwriter means:

(A) Any person (as defined in section 7701(a)(1)) that agrees pursuant to a written contract with the issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the bonds to the public; and

(B) Any person that agrees pursuant to a written contract directly or indirectly with a person described in paragraph (f)(3)(iii)(A) of this section to participate in the initial sale of the bonds to the public (for example, a retail distribution agreement between a national lead underwriter and a regional firm under which the regional firm participates in the initial sale of the bonds to the public).

(4) Other special rules.— For purposes of this paragraph (f), the following special rules apply:

(i) Separate determinations.— The issue price of bonds in an issue that do not have the same credit and payment terms is determined separately. The issuer need not apply the same rule to determine issue price for all of the bonds in the issue.

(ii) Substantial amount.— Ten percent is a substantial amount.

(iii) Bonds issued for property.— If a bond is issued for property, the adjusted applicable Federal rate, as determined under section 1288 and §1.1288-1, is used in lieu of the applicable Federal rate to determine the bond's issue price under section 1274. [Reg. §1.148-1.]

.01 **Historical Comment:** Adopted 5/12/92 by [T.D. 8418](#) (corrected 9/29/92). Amended 6/14/93 by [T.D. 8476](#) (corrected 8/18/93), 5/5/94 by [T.D. 8538](#), 5/8/97 by [T.D. 8718](#), 8/1/2003 by [T.D. 9085](#) 7/16/2016 by [T.D. 9777](#), and 12/8/2016 by [T.D. 9801](#). [Reg. § [1.148-1](#) does not reflect [P.L. 109-58](#) (2005). See [§7870.043](#) and [§7889.0235](#).]