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RULES and REGULATIONS

DEPARTMENT OF THE TREASURY

26 CFR Parts 1 and 602

[T.D. 8086]

Income Taxes; Election of \$10 Million Limitation on Exempt Small Issues of Industrial Development Bonds;
Supplemental Capital Expenditure Statements

Friday, May 2, 1986

***16298** AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This document contains regulatory amendments that change the existing regulatory requirement for electing the \$10 million limitation for exempt small issues of industrial development bonds and eliminate the existing regulatory requirement to file certain supplemental capital expenditure statements with respect to certain small issues of tax-exempt industrial development bonds. The amendments also conform the regulations on exempt small issues to the increase in the limit on the size of such small issues, enacted by the Revenue Act of 1978, and clarify rules regarding capital expenditures. The amendments affect issuers and holders of the exempt small issues, and principal users of facilities financed with the proceeds of these issues.

DATES: The elimination of the requirement to file capital expenditure statements implemented by the amendments to [§ 1.103-10\(b\)\(2\)\(vi\)](#) is effective on and after September 3, 1971. The amendments relating to the time for and manner of making the \$10 million small issue election under [§ 1.103-10\(b\)\(2\)\(vi\)](#) are effective after May 2, 1986 except that issuers who, before October 29, 1986, make the election in the manner prescribed by [§ 1.103-10\(b\)\(2\)\(vi\)](#) as in effect prior to amendment by this Treasury decision will be treated as having made the election at the time and in the manner prescribed by [§ 1.103-10\(b\)\(2\)\(vi\)](#) as amended by this Treasury decision. The amendments to [§ 1.103-10](#) relating to the increase in the limit on the size of small issues of industrial development bonds are effective for obligations issued after December 31, 1978, in taxable years ending after such date, and for capital expenditures made after December 31, 1978, with respect to obligations issued before January 1, 1979.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, ***16299** DC. 20224 (Attention: CC:LR:T) (202-566-3590).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under [section 103\(b\)\(6\)\(D\)](#)

of the [Internal Revenue Code](#) of 1954. These amendments revise the present requirements of [§ 1.103-10\(b\)\(2\)\(vi\)](#) relating to elections and supplemental capital expenditure statements with respect to certain small issues of tax-exempt industrial development bonds.

The Treasury decision was not preceded by a notice of proposed rulemaking soliciting public comments because the Treasury Department has determined that the rules promulgated herein will not adversely affect any taxpayer. Accordingly, it is found unnecessary to issue this Treasury decision with notice and public procedure under [subsection \(b\) of section 553 of title 5 of the United States Code](#) or subject to the effective date limitation of subsection (d) of that section.

Explanation of Provisions

This Treasury decision eliminates the requirement that issuers of exempt small issues of industrial development bonds file a statement with the Service in order to elect the \$10 million small issue limitation; however, bond issuers would be required to make the election under [section 103\(b\)\(6\)](#) by timely making a notation thereof on their books or records with respect to the issue.

This Treasury decision also eliminates the requirement that principal users of facilities financed by certain small issues of tax-exempt industrial development bonds (with respect to which the \$10 million limitation has been elected under [section 103\(b\)\(6\)\(D\)](#)) file annual supplemental capital expenditure statements concerning such facilities and copies of the election statement with certain income tax returns.

This Treasury decision also contains a provision to conform the Income Tax Regulations to the increase in the limitation, from \$5 million to \$10 million, in the size of certain exempt small issues, enacted by section 331(a) of the Revenue Act of 1978 (92 Stat. 2839). This document also contains amendments to clarify rules regarding capital expenditures.

Nonapplicability of [Executive Order 12291](#)

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in [Executive Order 12291](#) and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by [5 U.S.C. 553](#) for final regulations subject to [5 U.S.C. 553\(b\)\(B\)](#). Therefore, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed amendments is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Paperwork Reduction Act

The elimination of the collection of information contained in this regulation has been submitted to the Office of

Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. This reduction in the requirements had been approved by OMB under control number 1545-0940.

List of Subjects

[26 CFR 1.61-1-1.281-4](#)

Income taxes, Taxable income, Deductions, Exemptions.

[26 CFR Part 602](#)

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART I—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953—[AMENDED]Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: [26 U.S.C. 7805](#). * * * [Section 1.103-10](#) also issued under [26 U.S.C. 103\(b\)\(6\)](#). * * *

[26 CFR § 1.103-10](#)

Par 2. [Section 1.103-10](#) (relating to exemption for certain small issues of industrial development bonds) is amended as follows:

(1) The phrase “[section 103\(c\)](#)” is removed each place it appears as a reference or part of a reference and the phrase “[section 103\(b\)](#)” is inserted in lieu thereof as a reference or part of a reference.

(2) Paragraph (a) is amended by adding the following new sentence at the end thereof: “For bonds issued before January 1, 1979, in taxable years ending before such date, and for capital expenditures made before January 1, 1979, with respect to such bonds, paragraphs (b), (c), and (d) of this section shall be applied by substituting \$5 million for \$10 million.”

(3) Paragraph (c)(2) is amended by revising the caption to read “10 million or less refinancing issue.” and by removing “\$5” each place it appears and inserting in lieu thereof “\$10”.

(4) Paragraph (d)(1) is amended by removing “\$5” and inserting in lieu thereof “\$10”.

(5) Paragraph (d)(3)(ii) is amended by removing “\$5” each place it appears and inserting in lieu thereof “\$10”.

(6) Paragraph (b)(2) is amended by revising the heading and subdivisions (i), (ii)(a), and (vi) thereof, to read as follows:

[26 CFR § 1.103-10](#)

[§ 1.103-10](#) Exemption for certain small issues of industrial development bonds.

* * * * (b) Small issue exemption. * * *

(2) \$10 million or less. (i) Under [section 103\(b\)\(6\)\(D\)](#), the issuing State or local governmental unit may elect to have an aggregate authorized face amount of \$10 million or less, in lieu of the \$1 million exemption otherwise provided for in [section 103\(b\)\(6\)\(A\)](#), with respect to issues of obligations that are industrial development bonds (within the meaning of [section 103\(b\)\(2\)](#)) issued after October 24, 1968. If the election is made in a timely manner, the bonds will be treated as obligations of a State or local governmental unit described in [section 103\(a\)\(1\)](#) and § 1.103-1 if the sum of—

(a) The aggregate face amount of the issue including the aggregate outstanding face amount of any prior \$1 million or \$10 million exempt small issues taken into account under [section 103\(b\)\(6\)\(B\)](#) and paragraph (d) of this section, and

(b) The aggregate amount of “[section 103\(b\)\(6\)\(D\)](#) capital expenditures” (within the meaning of paragraph (b)(2)(ii) of this section), is \$10 million or less. In the case of an issue of obligations that qualified for exemption under [section 103\(b\)\(6\)\(A\)](#) and this paragraph, if a [section 103\(b\)\(6\)\(D\)](#) capital expenditure made after the date of issue has the effect of making taxable interest on the issue, under [section 103\(b\)\(6\)\(G\)](#) the loss of tax exemption for the interest shall begin only with the *16300 date on which the expenditure that caused the issue to cease to qualify under the \$10 million limit was paid or incurred. See paragraph (b)(2)(vi) of this section for the time and manner in which the issuer may elect the \$10 million exemption. See [section 103\(b\)\(6\)\(H\)](#) and paragraph (c)(2) of this section for the treatment of certain refinancing issues of \$10 million or less.

(ii) * * *

(a) The capital expenditure was financed other than out of the proceeds of issues to the extent such issues are taken into account under paragraph (b)(2)(i)(a) of this section.

* * * * (vi) The issuer may make the election provided by [section 103\(b\)\(6\)\(D\)](#) and this paragraph (b)(2) (assuming that the bonds otherwise qualify under [section 103\(b\)\(6\)](#)) by noting the election affirmatively at or before the time of issuance of the issue in question on its books or records with respect to the issue. The term “books or records” includes the bond resolution or other similar legislation for the issue in question as well as the bond transcript or other compilation of bond and bond-related documents. If the issuer fails to make an election at the time and in the manner prescribed in this paragraph (b)(2), the issue will not be treated as described in [section 103\(b\)\(6\)\(D\)](#), and interest thereon will be includible in gross income.

* * * * *PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT—[AMENDED]Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: [26 U.S.C. 7805](#).

[26 CFR § 602.101](#)

Par. 4. [Section 602.101\(c\)](#) is amended by inserting in the appropriate place in the table “[§ 1.103-10\(b\)\(2\)\(vi\)](#) . . . 1545-0940”.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: March 28, 1986.

J. Roger Mentz,

Acting Assistant Secretary of the Treasury.

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