

# TaxNewsFlash

## United States

No. 2018-222  
June 11, 2018

### **Proposed regulations: Tax-exempt bonds, clarifying definition of “investment-type property”**

The U.S. Treasury Department and IRS today released for publication in the Federal Register a notice of proposed rulemaking (REG-106977-18) concerning the arbitrage investment restrictions under section 148 that apply to tax-exempt bonds and other tax-advantaged bonds issued by state and local governments.

According to the preamble, the [proposed regulations](#) [PDF 197 KB] aim to clarify existing regulations regarding the definition of “investment-type property” covered by arbitrage restrictions by expressly providing an exception for investments in capital projects that are used in furtherance of the public purposes of the bonds.

The proposed regulations would affect state and local governmental issuers of these bonds and potential investors in capital projects financed with these bonds.

Comments and requests for a public hearing must be received by a date that is 90 days after the date of publication in the Federal Register (scheduled for June 12, 2018).

#### **Summary**

Existing regulations define a catch-all category of “investment-type property” to include any property (other than securities, obligations, annuity contracts, and covered residential real property for family units) held “principally as a passive vehicle for the production of income” including any benefit based on the time value of money.

To clarify the scope of the definition of investment-type property to be consistent with congressional intent, the proposed regulations would provide an express exception to the definition of investment-type property for capital projects that further the public purposes for which the tax-exempt bonds were issued. The preamble offers as an example, investment-type property does not include a courthouse financed with

governmental bonds or an eligible exempt facility under section 142 such as a public road financed with private activity bonds.

The regulations are proposed to apply to bonds sold on or after the date that is 90 days after the date that final regulations adopting these rules are published in the Federal Register. The proposed regulations, nevertheless, may be applied by bond issuers for bonds sold before the effective date of such final regulations.

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to be applied to any specific reader's particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at +1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)