§ 505.13 Federal Government's share of project cost.

(a) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the project's eligible costs.

(b) A FFGA for the project shall not exceed 80 percent of the eligible project cost. A refund or reduction of the remainder may only be made if a refund of a proportional amount of the grant of the Federal Government is made at the same time.

§ 505.15 Full funding grant agreement.

(a) A proposed project may not be funded under this program unless the Secretary finds that the project meets the requirements of this part and there is a reasonable likelihood that the project will continue to meet such requirements.

(b) A project financed under this section shall be carried out through a FFGA. The Secretary shall enter into a FFGA based on the evaluations and ratings required herein, and in accordance with the terms specified in section 1301(g)(2) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (Pub. L. 109–59; 119 Stat. 1144).

(c) A FFGA will be entered into only after the project has commitments for non-Federal funding in place and all other requirements are met.

(d) A State may request the use of Advanced Construction for the project and subsequently convert those funds to an eligible Federal-aid funding category or to PNRS funding as part of the FFGA.

§ 505.17 Applicability of Title 23, U.S. Code.

Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable to other agencies and shall remain available until expended and the Federal share of the cost of a Project of National and Regional Significance shall be as provided in section 505.13.

[FR Doc. E8–25382 Filed 10–23–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9429]

RIN 1545–BF87

Treatment of Payments in Lieu of Taxes Under Section 141

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations which modify the standards for treating certain payments in lieu of taxes or other tax equivalency payments (PILOTs) as generally applicable taxes for purposes of the private security or payment test under section 141 of the Internal Revenue Code (Code). This action is being taken in order to provide issuers of tax-exempt bonds with guidance on whether PILOTs are eligible to be treated as generally applicable taxes for this purpose. The regulations affect State and local governmental issuers of tax-exempt bonds.

DATES: *Effective Date:* These regulations are effective on October 24, 2008.

Applicability Dates: For dates of applicability, see § 1.141–15(k).

FOR FURTHER INFORMATION CONTACT: Carla Young at (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) under section 141 to modify and clarify the standards for treating PILOTs as generally applicable taxes for purposes of the private security or payment test under section 141.

Final regulations under section 141 were published in the **Federal Register** on January 16, 1997 (62 FR 2275) (1997 Regulations), to provide comprehensive guidance on most aspects of the private activity bond restrictions. On October 19, 2006, the IRS published a notice of proposed rulemaking in the **Federal Register** (71 FR 61693) (Proposed Regulations) regarding the standards for treating PILOTs as generally applicable taxes for purposes of the private security or payment test under section 141. In the Proposed Regulations, the Treasury Department and the IRS solicited public comments and invited interested parties to a public hearing scheduled for February 13, 2007. On January 30, 2007, the Treasury Department and the IRS cancelled the public hearing because no requests to speak at the hearing were received, and published a notice of such cancellation in the **Federal Register** (72 FR 4220).

The Treasury Department and the IRS received a number of written comments on the Proposed Regulations. After consideration of the written comments, the Proposed Regulations are adopted, with revisions, as final regulations by this Treasury decision (Final Regulations). The revisions are discussed in the preamble.

Explanation of Provisions

I. Introduction

In general, interest on State and local governmental bonds is excludable from gross income under section 103 of the Code. Interest on a private activity bond, other than a qualified bond under section 141(e), is not excludable from gross income. Section 141(a) classifies a bond as a private activity bond if it is part of an issue that meets both the private business use test under section 141(b)(1) (private business use test) and the private security or payment test under section 141(b)(2) (private payment test). In addition, section 141(a) independently treats a bond as a private activity bond if it is part of an issue that meets the private loan test under section 141(c).

Section 141(b)(2) provides generally that an issue meets the private payment test if the payment of the debt service on more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly (1) secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or (2) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

II. Private Payment Test in General

Sections 1.141–4(c) and 1.141–4(d) of the 1997 Regulations provide general rules for purposes of application of the private payment test. Private payments generally include any payments made, directly or indirectly, by any nongovernmental person that is a private business user of proceeds during a period of private business use and any payments made with respect to property financed with proceeds of an issue during a period of private business use, whether or not made by a private business user. In addition, private payments include property and payments in respect of property that are used or to be used for private business use to the extent that any interest in that

property or payments serves as security for the payment of debt service on an issue.

III. Generally Applicable Taxes Exception

Section 1.141–4(e) of the 1997 Regulations provides an exception to the otherwise broad scope of payments taken into account under the private payment test in the case of generally applicable taxes. Thus, § 1.141–4(e)(1) provides that for purposes of the private security or payment test, generally applicable taxes are not taken into account (that is, are not payments from a nongovernmental person and are not payments in respect of property used for a private business use). In general, the purpose of the generally applicable taxes exception is to allow eligible tax payments made with respect to property or services to be used to pay debt service on an issue without causing private payments. For this purpose, § 1.141–4(e)(2) of the 1997 Regulations defines a generally applicable tax to mean an enforced contribution exacted pursuant to legislative authority in the exercise of the taxing power that is imposed and collected for the purpose of raising revenue to be used for governmental purposes. To qualify as a generally applicable tax, a tax must have a uniform rate that is applied to all persons of the same classification in the appropriate jurisdiction, and the tax must have a generally applicable manner of determination and collection.

Section 1.141–4(e)(4)(i) provides that a tax does not have a generally applicable manner of determination and collection to the extent that one or more taxpayers make any impermissible agreements relating to the payment of those taxes. Section 1.141–4(e)(4)(ii) and (iii) of the 1997 Regulations set forth permissible and impermissible agreements for this purpose. An example of a permissible agreement that does not cause a tax to fail to have a generally applicable manner of determination and collection includes an agreement to reduce or limit the amount of taxes collected to further a bona fide governmental purpose. For example, an agreement to abate taxes to encourage a property owner to rehabilitate property in a distressed area is a permissible agreement.

Section 1.141–4(e)(3) of the 1997 Regulations provides that a payment does not qualify as a generally applicable tax if it is a special charge for a special privilege granted or service rendered. This provision further provides that special assessments paid by property owners benefiting from financed improvements are not generally applicable taxes. This provision includes an example that a tax or PILOT that is limited to the property or persons benefited by an improvement is not a generally applicable tax.

The Proposed Regulations generally did not address the special charge limitation on generally applicable taxes. Commentators suggested clarifying the scope of this special charge limitation and its application in the context of PILOTs.

The Final Regulations clarify and illustrate the scope of the special charge limitation on generally applicable taxes. The Final Regulations provide that a special charge includes a payment for a special privilege granted or regulatory function (for example, a license fee), a service rendered (for example, a sanitation services fee), a use of property (for example, rent), or a payment in the nature of a special assessment to finance capital improvements that is imposed on a limited class of persons based on benefits received from the capital improvements financed with the assessment. The Final Regulations illustrate that a special assessment to finance infrastructure improvements in a new industrial park (such as sidewalks, streets, streetlights, and utility infrastructure improvements) that is imposed on a limited class of persons composed of property owners within the industrial park who benefit from those improvements is a special charge. The Final Regulations also illustrate that, by contrast, an otherwise-qualified generally applicable tax (for example, a generally applicable ad valorem tax on all real property within a governmental taxing jurisdiction) or an eligible PILOT that is based on such a generally applicable tax is not treated as a special charge merely because the taxes or PILOTs received are used for governmental or public purposes in a manner that benefits particular property owners.

IV. Certain Payments in Lieu of Taxes Treated as Generally Applicable Taxes

Section 1.141–4(e)(5) of the 1997 Regulations treats PILOTs as generally applicable taxes if: (1) The payments are commensurate with and not greater than the amounts imposed by the statute for a tax of general application; and (2) The payments are designated for a public purpose and are not special charges (as described in § 1.141–4(e)(3)). Section 1.141–4(e)(5) of the 1997 Regulations further provides an example which states that a PILOT made in consideration for the use of property financed with tax-exempt bonds is treated as a special charge.

The Proposed Regulations proposed to clarify and to tighten the commensurate standard for PILOTs to better ensure a reasonably close relationship between eligible PILOTs and generally applicable taxes. In particular, the Proposed Regulations proposed to define the commensurate standard to provide generally that an eligible PILOT payment must represent a fixed percentage of, or reflect a fixed adjustment to, the amount of generally applicable taxes in each year, based on comparable current valuation assessments. Commentators suggested that the proposed commensurate standard was unduly restrictive and suggested allowing fixed-payment PILOTs. The Treasury Department and the IRS decline to adopt this suggestion to allow fixed-payment PILOTs. The Final Regulations generally continue the approach to the commensurate standard in the Proposed Regulations because the Treasury Department and the IRS continue to believe that this approach will better ensure a reasonably close relationship between eligible PILOTs and generally applicable taxes.

The Final Regulations refine the commensurate standard in certain technical respects in response to public comments. The Proposed Regulations proposed to permit only a single change in the measure of a PILOT in relation to an underlying generally applicable tax following completion of the development of the subject property. Commentators suggested allowing broader flexibility for phased adjustments to PILOTs during the development, construction, or initial start-up period of the property. The Final Regulations adopt this comment.

The Proposed Regulations also proposed to treat any payment based in any way on debt service on an issue as impermissible under the commensurate standard. Commentators suggested that this limitation is overly broad and could prohibit any use of PILOTs to pay debt service on an issue. The Final Regulations do not prohibit any use of PILOTs to pay debt service on an issue, but provide that a PILOT is not commensurate with a generally applicable tax if the PILOT is set at a fixed dollar amount (for example, fixed debt service on a bond issue) that cannot vary with changes in the level of the generally applicable tax on which it is based.

Section 1.141–4(e)(5) of the 1997 Regulations and the Proposed Regulations require designation of PILOTs for a ''public purpose.'' Section 1.141–4(e)(2) of the 1997 Regulations requires use of generally applicable taxes for ''governmental purposes.''

These references to the designation of PILOTs for a public purpose and to the use of generally applicable taxes for governmental purposes were intended to refer to the same standard. In this regard, longstanding Revenue Rulings on the definition of generally applicable taxes under section 164 on which the section 141 definition was based have consistently required the use of generally applicable taxes for ''public or governmental purposes.'' See, for example, Rev. Rul. 71–49 (1971–1 CB 103); Rev. Rul. 61–152 (1961–2 CB 42) (see § 601.601(d)(2)(ii)(*b*). To clarify the intended uniform standard for the use of generally applicable taxes and eligible PILOTs, the Final Regulations adopt consistent terminology to state this uniform standard.

The 1997 Regulations and the Proposed Regulations require ''designation'' of eligible PILOTs for public purposes. Commentators suggested clarifying this designation principle to require ''application'' of PILOTs for public purposes or to deem PILOTs as duly designated upon commingling with other governmental taxes or revenues. In response to this comment, the Final Regulations require use of an eligible PILOT for governmental or public purposes for which the underlying generally applicable tax on which it is based may be used.

The Proposed Regulations proposed to eliminate the example in the last sentence of § 1.141–4(e)(5)(ii) of the 1997 Regulations, which illustrated that a PILOT made in consideration of the use of property financed with tax-exempt bonds is treated as a special charge. Most commentators supported this proposed change and one commentator objected to this proposed change. The Final Regulations remove this example, but address the issue raised in this example separately in clarifying guidance on the ''special charge'' limitation on generally applicable taxes under § 1.141–4(e)(3). A payment made ''in consideration for the use of property'' is more properly characterized as rent or an installment sale payment for the use of property. The Final Regulations clarify that, among other special charges, a payment for the use of property (for example, rent) is treated as a special charge under § 1.141–4(e)(3). Further, the reference to tax-exempt bond financing in the referenced example caused confusion because the presence or absence of tax-exempt bond financing properly is irrelevant to the determination of whether a payment, in substance, is in the nature of a special charge for the use of property or a generally applicable tax. The above-described revision with respect to the referenced example represents a technical clarification rather than a substantive change.

Effective/Applicability Dates

The Proposed Regulations were published on October 19, 2006, and were proposed to apply to bonds sold on or after February 16, 2007. This proposed effective date was intended to accommodate completion of bond issues for projects in progress under the 1997 Regulations. Commentators indicated that the proposed effective date of the Proposed Regulations was insufficient to accommodate completion of bond issues for projects substantially in progress. Commentators also requested transitional relief for refundings of bonds issued before the effective date of the Proposed Regulations.

The Final Regulations generally apply to bonds sold on or after October 24, 2008.

In response to public comments, the Final Regulations provide a transitional rule for refundings. Under this transitional rule, the 1997 Regulations may continue to be applied to certain refundings of bonds that were sold before the dates of applicability of the Final Regulations if they meet a prescribed weighted average maturity test set forth in the Final Regulations.

In addition, in response to public comments, the Final Regulations also provide a transitional rule for certain bonds for projects substantially in progress at the time of the promulgation of the Proposed Regulations. Under this transitional rule, the 1997 Regulations may continue to be applied to certain bonds issued within a prescribed time to finance certain projects that meet prescribed conditions set forth in the Final Regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Carla Young and James Polfer, Office of Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.141–0 is amended by adding a new entry for § 1.141–15(k) to read as follows:

§ 1.141–0 Table of contents.

* * * * *

§ 1.141–15 Effective dates.

* * * * *

(k) Effective/applicability dates for certain regulations relating to generally applicable taxes and payments in lieu of tax.

* * * * *

■ **Par. 3.** Section 1.141–4 is amended by:

■ 1. Paragraph (e)(2) the first sentence is revised.

■ 2. Paragraphs (e)(3), (e)(5), (e)(5)(i), (e)(5)(ii) are revised and adding new paragraphs (e)(5)(iii) and (e)(5)(iv).

The revisions and additions read as follows:

§ 1.141–4 Private Security or Payment Test.

* * * * *

(e) * * *

(2) * * * A generally applicable tax is an enforced contribution exacted pursuant to legislative authority in the exercise of the taxing power that is imposed and collected for the purpose of raising revenue to be used for governmental or public purposes. * * *

(3) *Special charges.* A special charge (as defined in this paragraph (e)(3)) is not a generally applicable tax. For this purpose, a special charge means a payment for a special privilege granted or regulatory function (for example, a license fee), a service rendered (for example, a sanitation services fee), a use of property (for example, rent), or a

payment in the nature of a special assessment to finance capital improvements that is imposed on a limited class of persons based on benefits received from the capital improvements financed with the assessment. Thus, a special assessment to finance infrastructure improvements in a new industrial park (such as sidewalks, streets, streetlights, and utility infrastructure improvements) that is imposed on a limited class of persons composed of property owners within the industrial park who benefit from those improvements is a special charge. By contrast, an otherwise qualified generally applicable tax (such as a generally applicable ad valorem tax on all real property within a governmental taxing jurisdiction) or an eligible PILOT under paragraph (e)(5) of this section that is based on such a generally applicable tax is not treated as a special charge merely because the taxes or PILOTs received are used for governmental or public purposes in a manner which benefits particular property owners.

* * * * *

(5) *Payments in lieu of taxes.* A tax equivalency payment or other payment in lieu of a tax (''PILOT'') is treated as a generally applicable tax if it meets the requirements of paragraphs (e)(5)(i) through (iv) of this section—

(i) *Maximum amount limited by underlying generally applicable tax.* The PILOT is not greater than the amount imposed by a statute for a generally applicable tax in each year.

(ii) *Commensurate with a generally applicable tax.* The PILOT is commensurate with the amount imposed by a statute for a generally applicable tax in each year under the commensurate standard set forth in this paragraph (e)(5)(ii). For this purpose, except as otherwise provided in this paragraph (e)(5)(ii), a PILOT is commensurate with a generally applicable tax only if it is equal to a fixed percentage of the generally applicable tax that would otherwise apply in each year or it reflects a fixed adjustment to the generally applicable tax that would otherwise apply in each year. A PILOT based on a property tax does not fail to be commensurate with the property tax as a result of changes in the level of the percentage of or adjustment to that property tax for a reasonable phase-in period ending when the subject property is placed in service (as defined in § 1.150–2(c)). A PILOT based on a property tax must take into account the current assessed value of the property for property tax purposes for each year in which the PILOT is paid and that assessed value must be determined in the same manner and with the same frequency as property subject to the property tax. A PILOT is not commensurate with a generally applicable tax, however, if the PILOT is set at a fixed dollar amount (for example, fixed debt service on a bond issue) that cannot vary with changes in the level of the generally applicable tax on which it is based.

(iii) *Use of PILOTs for governmental or public purposes.* The PILOT is to be used for governmental or public purposes for which the generally applicable tax on which it is based may be used.

(iv) *No special charges.* The PILOT is not a special charge under paragraph (e)(3) of this section.

* * * * *

■ **Par. 4.** Section 1.141–15 is amended by adding paragraph (k) to read as follows:

§ 1.141–15 Effective Dates.

* * * * *

(k) *Effective/applicability dates for certain regulations relating to generally applicable taxes and payments in lieu of tax*—(1) *In general.* Except as otherwise provided in paragraphs (k)(2) and (k)(3) of this section, revised §§ 1.141–4(e)(2), 1.141–4(e)(3) and 1.141–4(e)(5) apply to bonds sold on or after October 24, 2008 that are otherwise subject to the 1997 Regulations (defined in paragraph (b)(1) of this section).

(2) *Transitional rule for certain refundings.* Paragraph (k)(1) does not apply to bonds that are issued to refund bonds if—

(i) Either—

(A) The refunded bonds (or the original bonds in a series of refundings) were sold before October 24, 2008, or

(B) The refunded bonds (or the original bonds in a series of refundings) satisfied the transitional rule for projects substantially in progress under paragraph (k)(3) of this section; and

(ii) The weighted average maturity of the refunding bonds does not exceed the remaining weighted average maturity of the refunded bonds.

(3) *Transitional rule for certain projects substantially in progress.* Paragraph (k)(1) of this section does not apply to bonds issued for projects for which all of the following requirements are met:

(i) A governmental person (as defined in § 1.141–1) took official action evidencing its preliminary approval of the project before October 19, 2006, and the plan of finance for the project in place at that time contemplated financing the project with tax-exempt bonds to be paid or secured by PILOTs.

(ii) Before October 19, 2006, significant expenditures were paid or incurred with respect to the project or a contract was entered into to pay or incur significant expenditures with respect to the project.

(iii) The bonds for the project (excluding refunding bonds) are issued on or before December 31, 2009.

Steven Miller,

Deputy Commissioner for Services and Enforcement.

Approved by: October 16, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–25333 Filed 10–20–08; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final Rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy has determined that USS GEORGE H. W. BUSH (CVN 77) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective October 24, 2008 and is applicable beginning 14 October 2008.

FOR FURTHER INFORMATION CONTACT: Commander M. Robb Hyde, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate