§ 1.133–1T Questions and answers relating to interest on certain loans used to acquire employer securities (temporary).

Q–1: What does section 133 provide?
A–1: In general, section 133 provides that certain commercial lenders may exclude from gross income fifty percent of the interest received with respect to securities acquisition loans. A securities acquisition loan is any loan to an employee stock ownership plan (ESOP) (as defined in section 4975(e)(7)) that qualifies as an exempt loan under §§54.4975–7 and –11 to the extent that the proceeds are used to acquire employer securities (within the meaning of section 409(l)) for the ESOP. A loan made to a corporation sponsoring an ESOP (or to a person related to such corporation under section 133(b)(2)) may also qualify as a securities acquisition loan to the extent and for the period that the proceeds are (a) loaned to the corporation’s ESOP under a loan that qualifies as an exempt loan under §§54.4975–7 and –11 and that has substantially similar terms as the loan from the commercial lender to the sponsoring corporation, and (b) used to acquire employer securities for the ESOP. The terms of the loan between the commercial lender and the sponsoring corporation (or a related corporation) and the loan between such corporation and the ESOP shall be treated as substantially similar only if the timing and rate at which employer securities would be released from encumbrance if the loan from the commercial lender were the exempt loan under the applicable rule of §54.4975–7(b)(6) are substantially similar to the timing and rate at which employer securities will actually be released from encumbrance in accordance with such rule. For this purpose, if the loan from the commercial lender to the sponsoring corporation states a variable rate of interest, whether the terms of the loans are substantially similar shall be determined at the time the obligations are initially issued by taking into account the adjustment interval on the variable rate loan and the maturity of the fixed rate loan. For example, if the rate on the loan from the commercial lender to the sponsoring corporation adjusts each six months and the loan from the corporation to the ESOP has a ten year term, the initial interest rate on the variable rate loan could be compared to the rate on the fixed rate loan by comparing the yields on 6 month and ten year Treasury obligations. Similarly, if the rates on the two loans are based on different compounding assumptions, whether the terms of the loans are substantially similar shall be determined by taking into account the different compounding assumptions. A securities acquisition loan may be evidenced by any note, bond, debenture, or certificate. Also, section 133(b)(2) provides that certain loans between related persons are not securities acquisition loans. In addition, a loan from a commercial lender to an ESOP or sponsoring corporation to purchase employer securities will not be treated as a securities acquisition loan to the extent that such loan is used, either directly or indirectly, to purchase employer securities from any other qualified plan, including any other ESOP, maintained by the employer or any other corporation which is a member of the same controlled group (as defined in section 409(1)(4)).

Q–2: What lenders are eligible to receive the fifty percent interest exclusion?
A–2: Under section 133(a), a bank (within the meaning of section 581), an insurance company to which subchapter L applies, or a corporation (other than a subchapter S corporation) actively engaged in the business of lending money may exclude from gross income fifty percent of the interest received with respect to a securities acquisition loan (as defined in Q&A–1 of §1.133–1T). For purposes of section 133(a)(3), a corporation is actively engaged in the business of lending money if it lends money to the public on a regular and continuing basis (other than in connection with the purchase by the public of goods and services from the lender or a related party). A corporation is not actively engaged in the business of lending money if a predominant share of the original value of the loans it makes to unrelated parties.
§ 1.141–0 Definitions and rules of general application.

(a) In general.
(b) Certain general definitions.
(c) Elections.
(d) Related parties.

§ 1.141–2 Private activity bond tests.

(a) Overview.
(b) Scope.
(c) General definition of private activity bond.
(d) Reasonable expectations and deliberate actions.
(1) In general.
(2) Reasonable expectations test.
(3) Deliberate action defined.
(4) Special rule for dispositions of personal property in the ordinary course of an established governmental program.
(5) Special rule for general obligation bond programs that finance a large number of separate purposes.
(e) When a deliberate action occurs.
(f) Certain remedial actions.
(g) Examples.

§ 1.141–3 Definition of private business use.

(a) General rule.
(1) In general.
(2) Indirect use.
(3) Aggregation of private business use.
(b) Types of private business use arrangements.
(1) In general.
(2) Ownership.
(3) Leases.
(4) Management contracts.
(5) Output contracts.
(6) Research agreements.
(7) Other actual or beneficial use.
(c) Exception for general public use.
(1) In general.
(2) Use on the same basis.
(3) Long-term arrangements not treated as general public use.
(4) Relation to other use.
(d) Other exceptions.
(1) Agents.
(2) Use incidental to financing arrangements.
(3) Exceptions for arrangements other than arrangements resulting in ownership of financed property by a nongovernmental person.
(4) Temporary use by developers.
(5) Incidental use.
(6) Qualified improvements.
(e) Special rule for tax assessment bonds.
(f) Examples.
(g) Measurement of private business use.
(1) In general.
(2) Measurement period.
(3) Determining average percentage of private business use.

§ 1.141–0 Table of contents.

This section lists the captioned paragraphs contained in §§1.141–1 through 1.141–16.