

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-140492-02]

RIN 1545-BD04

Definition of Solid Waste Disposal Facilities for Tax-exempt Bond Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the definition of solid waste disposal facilities for purposes of the rules applicable to tax-exempt bonds issued by State and local governments. These regulations provide guidance to State and local governments that issue tax-exempt bonds to finance solid waste disposal facilities and to taxpayers that use those facilities. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by

[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE

FEDERAL REGISTER]. Outlines of topics to be discussed at the public hearing scheduled for August 11, 2004, at 10 a.m., must be received by August 4, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-140492-02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-140492-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternatively, taxpayers may submit comments electronically to the IRS Internet site at www.irs.gov/regs, or via the Federal eRulemaking Portal at www.regulations.gov (IRS - REG-140492-02).

The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael P. Brewer, (202) 622-3980; concerning submissions and the hearing, Sonya Cruse, (202) 622-4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Generally, interest on a State or local bond is excluded from gross income under section 103 of the Internal Revenue Code (Code). However, section 103(b) provides that the exclusion does not apply to a private activity bond unless the bond is a qualified bond. Section 141(e) defines qualified bond to include an exempt facility bond that meets certain requirements. Section 142(a) lists the categories of exempt facility bonds, which include bonds for solid waste disposal facilities under section

142(a)(6).

Section 1.103-8(f)(2)(ii)(a) of the Income Tax Regulations generally defines solid waste disposal facilities as any property or portion thereof used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste.

Section 1.103-8(f)(2)(ii)(b) provides that the term solid waste has the same meaning as in former section 203(4) of the Solid Waste Disposal Act (42 U.S.C. 3252(4)), as quoted in §1.103-8(f)(2)(ii)(b), except that material will not qualify as solid waste unless, on the date of issue of the obligations issued to provide the facility to dispose of the waste material, it is property that is useless, unused, unwanted, or discarded solid material that has no market or other value at the place where the property is located (the no-value test). Thus, under the existing regulations, when any person is willing to purchase the property, at any price, the material is not waste. However, if any person is willing to remove the property at his own expense but is not willing to purchase it at any price, the material is waste under the existing regulations.

Former section 203(4) of the Solid Waste Disposal Act, as quoted in §1.103-8(f)(2)(ii)(b), provides that the term solid waste means,

garbage, refuse, and other discarded solid materials,
including solid-waste materials resulting from
industrial, commercial, and agricultural operations,

and from community activities, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

Section 1.103-8(f)(2)(ii)(c) states that a facility that disposes of solid waste by reconstituting, converting, or otherwise recycling it into material that is not waste also qualifies as a solid waste disposal facility if solid waste constitutes at least 65 percent, by weight or volume, of the total materials introduced into the recycling process. Such a recycling facility does not fail to qualify as a solid waste disposal facility under the existing regulations solely because it operates at a profit.

Section 17.1(a) of the temporary Income Tax Regulations generally provides that, in the case of property that has both a solid waste disposal function and a function other than the disposal of solid waste, only the portion of the cost of the property allocable to the function of solid waste disposal is taken into account as an expenditure to provide solid waste disposal facilities. However, under §17.1(a), a facility that otherwise qualifies as a solid waste disposal facility will not be treated as having a function other than solid waste disposal merely because material or heat that has utility or value is recovered or results from the disposal process. Section 17.1(a)

provides that, when materials or heat are recovered, the waste disposal function includes the processing of those materials or heat that occurs in order to put them into the form in which the materials or heat are in fact sold or used, but does not include further processing that converts the materials or heat into other products.

Section 17.1(b) provides that the portion of the cost of property allocable to solid waste disposal is determined by allocating the cost of the property between the property's solid waste disposal function and any other functions by any method which, with reference to all the facts and circumstances with respect to the property, reasonably reflects a separation of costs for each function of the property.

In Notice 2002-51 (2002-2 C.B. 131) the IRS and Treasury Department requested public comments on the application of section 142(a)(6) to recycling facilities. Notice 2002-51 also invited comments on any other issues concerning the application of that Code provision.

In response to the Notice, commentators suggested that the rules governing exempt facility bonds for solid waste disposal facilities should be consistent with national policies to encourage, facilitate, and increase recycling. For example, commentators stated that the rules should not deny tax-exempt financing to recycling while providing such financing to

landfills and municipal waste incinerators.

Commentators suggested revisions to the no-value test used for determining whether material is solid waste. For example, commentators suggested that material that has a market or other value at the place it is located only by reason of its value for recycling should not be considered to have a market or other value. Commentators also suggested that material acquired by a recycler should qualify as solid waste if the amounts paid to the packer, collector or similar party are not in excess of the cost of transporting and handling the material. Some commentators suggested that the determination of whether material is waste should be made at the point of generation prior to the time costs are incurred to divert the material from the waste stream.

Commentators also suggested that the determination of when the waste recycling process stops should not depend on whether the activity is being carried out by a single party or multiple parties, or whether there has been a change of ownership of the material.

The IRS and Treasury Department have considered these comments, and the proposed regulations contained in this document (the proposed regulations) implement a number of these recommendations.

Explanation of Provisions

I. Solid Waste

The proposed regulations contain proposed amendments to 26 CFR part 1 regarding exempt facility bonds for solid waste disposal facilities. In light of the changes that have occurred in the waste recycling industry since the existing regulations were issued in 1972, the proposed regulations eliminate the no-value test for determining whether material is solid waste. The proposed regulations retain the definition of solid waste under former section 203(4) of the Solid Waste Disposal Act, quoted above, and provide guidance for determining whether material constitutes "garbage, refuse and other discarded solid materials" under that definition.

Thus, the proposed regulations provide that the term solid waste means garbage, refuse, and other discarded solid materials, including solid-waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

For these purposes, the proposed regulations provide that garbage, refuse and other discarded solid materials means material that is solid and that is introduced into a final disposal process, conversion process, recovery process, or

transformation process (as those terms are defined in the proposed regulations and described in part II below) unless the material falls within one of several categories of excluded items.

The first category of material that does not constitute solid waste is material that is introduced into a conversion process if the material is either: (1) a fossil fuel; or (2) any material that is grown, harvested, produced, mined, or otherwise created for the principal purpose of converting the material to heat, hot water, steam, or another useful form of energy. For this purpose, material is not treated as grown, harvested, produced, mined, or otherwise created for the principal purpose of converting the material to heat, hot water, steam, or another useful form of energy just because an operation is performed on the material to make the material more conducive to being converted to heat, hot water, or steam. For example, if material that is not otherwise grown, harvested, produced, mined, or created for the principal purpose of converting the material to a useful form of energy is formed into pellets to make the material more conducive to being incinerated to produce steam, the creation of pellets does not cause the material to be produced or created for the principal purpose of converting the material to steam.

The second category of material that does not constitute

solid waste is any precious metal that is introduced into a recovery process.

The regulations are reserved with respect to any additional category of excluded material that may be specified with respect to a transformation process.

Under the proposed regulations, hazardous material is not solid waste if the material is disposed of at a facility that is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on October 22, 1986, the date of the enactment of the Tax Reform Act of 1986). Thus, under the proposed regulations, a hazardous waste disposal facility described in section 142(h)(1) would not qualify as a solid waste disposal facility.

Finally, the proposed regulations provide that radioactive material is not solid waste.

II. Solid Waste Disposal Facility

A. In General

The proposed regulations provide that a facility is a solid waste disposal facility to the extent that the facility is: (1) used to perform a solid waste disposal function (as defined in the proposed regulations and discussed in part II, B below); (2) used to perform a preliminary function (as defined in the proposed regulations and discussed in part II, C below); or (3) functionally related and subordinate (within the meaning of

§1.103-8(a)(3)) to a facility that is used to perform a solid waste disposal function or a preliminary function.

B. Solid Waste Disposal Function

The proposed regulations define solid waste disposal function as the processing of solid waste in (1) a final disposal process, (2) a conversion process, (3) a recovery process, or (4) a transformation process.

1. Final Disposal Process

Under the proposed regulations, a final disposal process is (1) the placement of material in a landfill or (2) the incineration of material without any useful energy being captured. Comments are requested on whether other types of processes should be included in the definition of final disposal process.

2. Conversion Process

The proposed regulations define conversion process as a process in which material is incinerated and heat, hot water, or steam is created and captured as useful energy. For this purpose, the conversion process begins with the incineration of material and ends at the point at which the latest of heat, hot water, or steam is created. Thus, the conversion process ends before any transfer or distribution of heat, hot water or steam. Comments are requested on the definition of conversion process in the proposed regulations, including whether the definition should

include processes in which useful energy in a form other than heat, hot water, or steam is created.

3. Recovery Process

The proposed regulations define recovery process as a process that starts with the melting or re-pulping of material to return the material to a form in which the material previously existed for use in the fabrication of an end product and ends immediately before the material is processed in the same or substantially the same way that virgin material is processed to fabricate the end product.

The proposed regulations further provide that, if an end product is fabricated entirely from non-virgin material, the recovery process ends immediately before the non-virgin material is processed in the same or substantially the same way that virgin material is processed in a comparable fabrication process that uses only virgin material or a combination of virgin and non-virgin material.

The proposed regulations also specify that refurbishing, repair, or similar activities are not recovery processes.

Comments are requested on the definition of recovery process in the proposed regulations, including whether the definition should include processes, other than melting or re-pulping, that return material to a form in which the material previously existed.

4. Transformation Process

The IRS and Treasury Department recognize that certain processes in which material is transformed for use in the creation of a useful product (transformation processes) should be treated as solid waste disposal functions. A transformation process could include, for example, shredding used tires for use as roadbed material. However, defining a transformation process requires clear criteria that distinguish a transformation process from a manufacturing or production process that uses material other than solid waste. The proposed regulations reserve on the definition of transformation process so that the public may comment on how the definition should be crafted to meet this objective within the context of the proposed regulations. Comments are requested in particular on whether the definition of a transformation process should be limited to the processing of particular types of materials to produce certain categories of products, and, if so, what types of materials and which categories of products should be included.

C. Preliminary Function

A facility is a solid waste disposal facility under the proposed regulations to the extent that the facility is used to perform a preliminary function. For this purpose, a preliminary function is the collection, separation, sorting, storage, treatment, processing, disassembly, or handling of solid material

that is preliminary and directly related to a solid waste disposal function. However, no portion of a collection, separation, sorting, storage, treatment, processing, disassembly, or handling activity is a preliminary function unless, for each year while the issue is outstanding, more than 50 percent, by weight or volume, of the total materials that result from the entire activity (both the part that is preliminary and directly related to a solid waste disposal function and the part that is not preliminary and directly related to a solid waste disposal function) is solid waste. For example, if a facility sorts material and some of the sorted material is processed in a solid waste disposal function and some of the sorted material is processed in another manner, a portion of the sorting facility is a solid waste disposal facility if, for each year while the issue is outstanding, more than 50 percent, by weight or volume, of all the sorted material is solid waste.

D. Mixed-Function Facilities

The proposed regulations provide that, in general, if a facility is used to perform both (1) a solid waste disposal function or a preliminary function, and (2) another function, then the costs of the facility allocable to the solid waste disposal function or the preliminary function are determined using any reasonable method, based on all the facts and circumstances. This rule applies, for example, if a facility is

used (1) to process solid waste in a recovery process and (2) to perform another function that is neither a solid waste disposal function (because it does not process solid waste in a final disposal process, conversion process, recovery process, or transformation process) nor a preliminary function (because it is not preliminary and directly related to a solid waste disposal function).

The proposed regulations also contain a special rule to determine the portion of the costs of property that are allocable to a solid waste disposal function if the property is used to perform a final disposal process, conversion process, recovery process, or transformation process and the inputs to the process consist of solid waste and material that is not solid waste. Under this special rule, the portion of the costs of property used to perform such a process that are allocable to a solid waste disposal function equals the lowest percentage of solid waste processed in the process in any year while the issue is outstanding. The percentage of solid waste processed in such a process for any year is the percentage, by weight or volume, of the total materials processed in the process that constitute solid waste for that year. If, however, for each year while the issue is outstanding, solid waste constitutes at least 80 percent, by weight or volume, of the total materials processed in the process, all of the costs of the property used to perform the

process are allocable to a solid waste disposal function.

Proposed Effective Date

The proposed regulations will apply to bonds that are: (1) sold on or after the date that is 60 days after the date of publication of final regulations under section 142(a)(6) in the **Federal Register**; and (2) subject to section 142. However, the proposed regulations provide that an issuer is not required to apply the regulations to bonds described in the preceding sentence that are issued to refund a bond to which the regulations do not apply if the weighted average maturity of the refunding bonds is not longer than the weighted average maturity of the refunded bonds. Section 1.103-8(f)(2) of the Income Tax Regulations and §17.1 of the temporary Income Tax Regulations will not apply to bonds that are subject to the final regulations under section 142(a)(6).

Special Analyses

It has been determined that this notice of proposed rulemaking 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 Procedure 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 11, 2004, at 10 a.m. in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the lobby more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by [INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER] and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by August 4, 2004.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Comments are requested on all aspects of the proposed regulations, including those aspects for which specific requests for comments are set forth above.

Drafting Information

The principal authors of these regulations are Michael P. Brewer, Timothy L. Jones and Rebecca L. Harrigal, Office of Chief Counsel, IRS (TE/GE). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as

follows:

PART 1--INCOME TAXES

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

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

Par. 2. Section 1.142(a)(6)-1 is added to read as follows:

§1.142(a)(6)-1 Exempt facility bonds: solid waste disposal facilities.

(a) In general. Section 103(a) provides that, generally, interest on a state or local bond is not included in gross income. However, this exclusion does not apply to any private activity bond that is not a qualified bond. Section 141(e) defines qualified bond to include an exempt facility bond that meets certain requirements. Section 142(a) defines exempt facility bond as any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a facility specified in section 142(a). One type of facility specified in section 142(a) is a solid waste disposal facility. This section defines the term solid waste disposal facility for purposes of section 142(a).

(b) Solid waste disposal facility--(1) In general. The term solid waste disposal facility means a facility to the extent that the facility is--

(i) Used to perform a solid waste disposal function (within

the meaning of paragraph (b)(2) of this section);

(ii) Used to perform a preliminary function (within the meaning of paragraph (b)(3) of this section); or

(iii) Functionally related and subordinate (within the meaning of §1.103-8(a)(3)) to a facility that is used to perform a solid waste disposal function or a preliminary function.

(2) Solid waste disposal function. A solid waste disposal function is the processing of solid waste (as defined in paragraph (c) of this section) in--

(i) A final disposal process (as defined in paragraph (d) of this section);

(ii) A conversion process (as defined in paragraph (e) of this section);

(iii) A recovery process (as defined in paragraph (f) of this section); or

(iv) A transformation process (as defined in paragraph (g) of this section).

(3) Preliminary function. A preliminary function is the collection, separation, sorting, storage, treatment, processing, disassembly, or handling of solid material that is preliminary and directly related to a solid waste disposal function.

However, no portion of a collection, separation, sorting, storage, treatment, processing, disassembly, or handling activity is a preliminary function unless, for each year while the issue

is outstanding, more than 50 percent, by weight or volume, of the total materials that result from the entire activity is solid waste.

(4) Mixed-function facilities. Paragraph (h) of this section provides rules for determining the portion of a facility that is a solid waste disposal facility for a facility that is used to perform--

(i) A solid waste disposal function or a preliminary function; and

(ii) Another function.

(c) Solid Waste--(1) In general. For purposes of this section, the term solid waste means garbage, refuse, and other discarded solid materials (as defined in paragraph (c)(2) of this section), including solid-waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants. Liquid or gaseous waste is not solid waste.

(2) Garbage, refuse and other discarded solid materials--(i) In general. For purposes of paragraph (c)(1) of this section, garbage, refuse and other discarded solid materials means

material that is solid and that is introduced into a final disposal process, conversion process, recovery process, or transformation process unless the material is described in paragraph (c)(2)(ii), (iii), (iv), (v) or (vi) of this section.

(ii) Certain material introduced into a conversion process.

Material is described in this paragraph (c)(2)(ii) if the material is introduced into a conversion process and the material is--

(A) A fossil fuel; or

(B) Any material that is grown, harvested, produced, mined, or otherwise created for the principal purpose of converting the material to heat, hot water, steam, or another useful form of energy. For example, organic material that is closed-loop biomass under section 45(c) is described in this paragraph (c)(2)(ii) if the material is introduced into a conversion process. Material is not treated as described in this paragraph (c)(2)(ii) just because an operation is performed on the material to make the material more conducive to being converted to heat, hot water, or steam. For example, if material that is not otherwise grown, harvested, produced, mined, or created for the principal purpose of converting the material to a useful form of energy is formed into pellets to make the material more conducive to being incinerated to produce steam, the creation of pellets does not cause the material to be produced or created for the

principal purpose of converting the material to steam.

(iii) Certain material introduced into a recovery process. Material is described in this paragraph (c)(2)(iii) if the material is introduced into a recovery process, and the material is a precious metal.

(iv) Certain material introduced into a transformation process. [Reserved].

(v) Certain hazardous material. Material is described in this paragraph (c)(2)(v) if the material is hazardous material and it is disposed of at a facility that is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on October 22, 1986, the date of the enactment of the Tax Reform Act of 1986). See section 142(h)(1).

(vi) Radioactive material. Material is described in this paragraph (c)(2)(vi) if the material is radioactive.

(d) Final disposal process. The term final disposal process means--

- (1) The placement of material in a landfill; or
- (2) The incineration of material without any useful energy being captured.

(e) Conversion process. The term conversion process means a process in which material is incinerated and heat, hot water, or steam is created and captured as useful energy. The conversion

process begins with the incineration of material and ends at the point at which the latest of heat, hot water, or steam is created. Thus, the conversion process ends before any transfer or distribution of heat, hot water or steam.

(f) Recovery process--(1) In general. The term recovery process means a process that starts with the melting or re-pulping of material to return the material to a form in which the material previously existed for use in the fabrication of an end product and ends immediately before the material is processed in the same or substantially the same way that virgin material is processed to fabricate the end product. For example, melting non-virgin metal to fabricate a metal product is not a recovery process if virgin metal is melted in the same or substantially the same process to fabricate the product.

(2) End products fabricated entirely from non-virgin material. If an end product is fabricated entirely from non-virgin material, the recovery process ends immediately before the non-virgin material is processed in the same or substantially the same way that virgin material is processed in a comparable fabrication process that uses only virgin material or a combination of virgin and non-virgin material. For example, if new paper is fabricated entirely from re-pulped, non-virgin material, the recovery process ends immediately before the non-virgin material is processed in the same or substantially the

same manner that virgin material is processed in the fabrication of paper made only with virgin material, or with a mixture of virgin and non-virgin material.

(3) Refurbishing, repair, or similar activities.

Refurbishing, repair, or similar activities are not recovery processes.

(g) Transformation process. [Reserved].

(h) Mixed-function facilities--(1) In general. Except to the extent provided in paragraph (h)(2) of this section, if a facility is used to perform both a solid waste disposal function or a preliminary function and another function, then the costs of the facility allocable to the solid waste disposal function or the preliminary function are determined using any reasonable method, based on all the facts and circumstances. See §1.103-8(a)(1) for rules relating to which amounts are used to provide an exempt facility.

(2) Mixed inputs--(i) In general. Except as provided in paragraph (h)(2)(ii) of this section, for each final disposal process, conversion process, recovery process, or transformation process, the percentage of costs of the property used to perform such process that are allocable to a solid waste disposal function equals the lowest percentage of solid waste processed in that process in any year while the issue is outstanding. The percentage of solid waste processed in such process for any year

is the percentage, by weight or volume, of the total materials processed in that process that constitute solid waste for that year.

(ii) Special rule for mixed-input processes if at least 80 percent of the materials processed are solid waste. For each final disposal process, conversion process, recovery process, or transformation process, all of the costs of the property used to perform such process are allocable to a solid waste disposal function if, for each year while the issue is outstanding, solid waste constitutes at least 80 percent, by weight or volume, of the total materials processed in the process.

(i) Examples. The following examples illustrate the application of this section:

Example 1. Final disposal process. Garbage trucks collect solid material at curbside from businesses and residences and dump the material in a landfill owned by Company A. The landfill is not subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Tax Reform Act of 1986). The placement of material in the landfill is a final disposal process. The solid material placed in the landfill is solid waste under paragraph (c) of this section. Therefore, the landfill is a solid waste disposal facility.

Example 2. Recovery process. Company B re-pulps magazines and cleans the pulp. After cleaning, B mixes the pulp with virgin material and uses the mixed material to produce rolls of paper towels. Before the mixing, the re-pulped material is not processed in the same or substantially the same way that virgin material is processed to produce the paper towels. The process starting with the re-pulping of the magazines and ending immediately before the re-pulped material is mixed with the virgin material is a recovery process. The magazines introduced into the recovery process are solid waste. Therefore, the

property that re-pulps the magazines and the property that cleans the re-pulped material are used to perform a solid waste disposal function.

Example 3. Preliminary function. Company C owns a paper mill. At the mill, logs from nearby timber operations are processed through a machine that removes bark. The stripped logs are used to manufacture paper. The stripped bark falls onto a conveyor belt that transports the bark to a storage bin used to briefly store the bark until C feeds the bark into a boiler. The conveyor belt and storage bin are used only for these purposes. The boiler is used only to create steam by burning the bark, and the steam is used to generate electricity. The creation of steam from the stripped bark is a conversion process that starts with the incineration of the stripped bark. The conversion process is a solid waste disposal function. The conveyor belt performs a collection activity that is preliminary and that is directly related to the solid waste disposal function. The storage bin performs a storage function that is preliminary and that is directly related to the solid waste disposal function. Thus, the conveyor belt and storage bin are solid waste disposal facilities. The removal of the bark does not have a sufficient nexus to the conversion process to be directly related to the conversion process; the process of removing the bark does not become directly related to the conversion process merely because it results in material that will be waste used in the conversion process.

Example 4. Mixed-input facility. Company D owns an incinerator financed by an issue and uses the incinerator exclusively to burn coal (a fossil fuel) and other solid material to create steam that is used to generate electricity. Each year while the issue is outstanding, 30 percent by volume and 40 percent by weight of the solid material that D processes in the conversion process is a fossil fuel. The remainder of the solid material processed is neither a fossil fuel nor material that was grown, harvested, produced, mined, or otherwise created for the principal purpose of converting the material to heat, hot water, steam, or another useful form of energy. Seventy percent of the costs of the property used to perform the conversion process are allocable to a solid waste disposal function.

Example 5. Mixed-function facility. Company E owns and operates a facility financed by an issue and uses the facility exclusively to sort damaged bottles from bottles that may be re-filled. The damaged bottles are directly introduced into a process that melts them for use in the fabrication of an end

product. The melting process is a recovery process. Each year while the issue is outstanding, more than 50 percent, by weight or volume, of all of the bottles that pass out of the sorting process are damaged bottles that are processed in a recovery process. The sorting facility performs a preliminary function, but it also performs another function. The costs of the sorting facility allocable to the preliminary function are determined using any reasonable method, based on all the facts and circumstances.

(j) Effective date--(1) In general. Except as provided in paragraph (j)(2) of this section, this section applies to bonds that are--

(i) Sold on or after the date that is 60 days after the date of publication of final regulations in the **Federal Register**; and

(ii) Subject to section 142.

(2) Certain refunding bonds. An issuer is not required to apply this section to bonds described in paragraph (j)(1) of this section that are issued to refund a bond to which this section does not apply if the weighted average maturity of the refunding

bonds is not longer than the weighted average maturity of the refunded bonds.

Mark E. Matthews
Deputy Commissioner for Services and Enforcement.