

Section 147.—No Portion of Bonds May Be Issued for Skyboxes, Airplanes, Gambling Establishments, etc.

Helicopters. This ruling concludes that a helicopter is not an airplane for purposes of section 147(e) of the Code which provides that a private activity bond is not a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is to be used to provide any airplane, skybox, or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

Rev. Rul. 2003-116

ISSUE

Whether a helicopter is an “airplane” within the meaning of § 147(e) of the Internal Revenue Code of 1986.

FACTS

Entity is an organization exempt from Federal income tax under § 501(a) as an organization described in § 501(c)(3). Entity owns and operates certain hospital facilities that include a trauma center. Entity provides emergency medical care and treatment in its trauma center. Entity proposes to expand the trauma center to add additional emergency rooms. As part of the expansion, Entity intends to purchase a helicopter to provide helicopter ambulance service to the trauma center for accident victims and other medical emergencies.

Issuer will issue bonds (Bonds) as qualified 501(c)(3) bonds under § 145 and loan the proceeds to Entity to finance the expansion of the trauma center and the purchase of the helicopter.

LAW AND ANALYSIS

Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b) provides, in part, that § 103 (a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of § 141).

Section 141 provides, in part, that a bond is a private activity bond if the bond is issued as part of an issue that meets the private business use test of § 141(b)(1) and the private security or payment test of § 141(b)(2). The private business use test is met if more than 10 percent of the proceeds of an issue are to be used for any private business use. The private security or payment test is met if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of an issue is directly or indirectly (1) secured by an interest in property used or to be used for a private business use, (2) secured by an interest in payments in respect of such property, or (3) 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.

Section 141(e) provides, in part, that the term “qualified bond” includes any private activity bond that (1) is a qualified 501(c)(3) bond; (2) meets the applicable requirements of § 146; and (3) meets the applicable requirements of each subsection of § 147.

Section 145(a) provides, in general, that the term “qualified 501(c)(3) bond” means any private activity bond issued as part of an issue if (1) all property which is to be provided by the net proceeds of the issue is to be owned by a 501(c)(3) organization or a governmental unit, and (2) such bond would not be a private activity bond if (A) 501(c)(3) organizations were treated as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying § 513(a), and (B) §§ 141(b)(1) and (2) were applied by substituting “5 percent” for “10 percent” each place it appears and by substituting “net proceeds” for “proceeds” each place it appears.

Section 147(e) provides that a private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is to be used to provide any airplane, skybox, or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

Section 147(e) does not define the term “airplane.” When a word is not defined by

statute, it is construed in accord with its ordinary and common meaning. *See Carlson v. Commissioner*, 116 T.C. 87, 93 (2001). In this regard, Webster’s Collegiate Dictionary (11th Ed. 2003), defines the term “airplane” as a “powered heavier-than-air aircraft that has fixed wings from which it derives most of its lift.”

Here, Entity will use a portion of the proceeds of the Bonds to finance the purchase of a helicopter. Webster’s Collegiate Dictionary defines the term “helicopter” as “an aircraft whose lift is derived from the aerodynamic forces acting on one or more powered rotors turning about substantially vertical axes.” It defines the term “aircraft” as “a vehicle (as an airplane or balloon) for traveling through the air.” Thus, airplanes and helicopters are types of aircraft, but a helicopter is not an airplane. Accordingly, the helicopter to be purchased by Entity with proceeds of the Bonds is not an “airplane” for purposes of § 147(e).

HOLDING

A helicopter is not an “airplane” within the meaning of § 147(e).

DRAFTING INFORMATION

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