Internal Revenue Service

Tax Exempt and Government Entities

Tax-Exempt Bonds for 501(c)(3) Charitable Organizations

Compliance Guide

from the office of
Tax Exempt Bonds

Know the federal tax rules and filing requirements applicable to qualified 501(c)(3) bonds

Contents

The office of Tax Exempt Bonds (TEB), of the Internal Revenue Service (IRS), Tax Exempt and Government Entities division, offers specialized information and services to the municipal finance community. Municipal bonds provide tax-exempt financing for the furtherance of governmental and qualified purposes including the construction of airports, hospitals, recreational and cultural facilities, schools, water infrastructure, road improvements, as well as facilities and equipment used in providing police, fire and rescue services.

This IRS Publication 4077, *Tax-Exempt Bonds for 501(c)(3) Charitable Organizations*, provides an overview for state and local government issuers and 501(c)(3) tax-exempt charitable organizations of the general post-issuance rules under the federal tax law that apply to municipal financing arrangements commonly known as qualified 501(c)(3) bonds. Certain exceptions or additional requirements to these rules, which are beyond the scope of this publication, may apply to different financing arrangements. All applicable federal tax law requirements must be met to ensure that interest earned by bondholders is not taxable under section 103 of the Internal Revenue Code (the "Code").

For information regarding the general rules applicable to governmental bonds or other qualified private activity bonds, see IRS Publications 4079, *Tax-Exempt Governmental Bonds,* and 4078, *Tax-Exempt Private Activity Bonds*, respectively. TEB also provides detailed information on specific provisions of the tax law through IRS publications (available online) and through outreach efforts as noted on the TEB Web site at *www.irs.gov/bonds*.

Background

Tax-exempt bonds are valid debt obligations of state and local governments, commonly referred to as "issuers" — the interest on which is tax-exempt. This means that the interest paid to bondholders is not includable in their gross income for federal income tax purposes. This tax-exempt status remains throughout the life of the bonds provided that all applicable federal tax laws are satisfied. Various requirements apply under the Code and Income Tax Regulations (the "Treasury regulations") including, but not limited to, information filing and other requirements related to issuance, the proper and timely use of bond-financed property, and arbitrage yield restriction and rebate requirements. The benefits of tax-exempt bond financing can apply to the many different types of municipal debt financing arrangements through which government issuers obligate themselves, including notes, loans, lease purchase contracts, lines of credit, and commercial paper.

Tax-Exempt Bonds for 501(c)(3) Charitable Organizations

Qualified 501(c)(3) bonds are tax-exempt qualified private activity bonds issued by a state or local government, the proceeds of which are used by a 501(c)(3) charitable organization in furtherance of its exempt purpose. Generally, in order to qualify for recognition of exemption under section 501(c)(3) of the Code, an organization must be organized and operated exclusively for educational, religious, or charitable purposes, and no part of the organization's net earnings may inure to or for the benefit of any private shareholders or individuals. Typical 501(c)(3) organizations that benefit from tax-exempt bond financing include hospitals, universities and organizations that provide low-income housing or assisted living facilities. For information about filing an application for exemption under section 501(c)(3) of the Code, see IRS Publication 4220, *Applying for 501(c)(3) Tax-Exempt Status,* and IRS Publication 557, *Tax-Exempt Status for Your Organization.*

The post-issuance federal tax rules covered in this publication which are applicable to qualified 501(c)(3) bonds generally fall into two basic categories: qualified use of proceeds and financed property requirements; and arbitrage yield restriction and rebate requirements.

In order to comply with these and any other applicable requirements, issuers and the 501(c)(3) organizations borrowing the bond proceeds must ensure that the rules are met both at the time that the bonds are issued and throughout the term of the bonds. The IRS encourages issuers and beneficiaries of tax-exempt bonds to implement procedures that will enable them to adequately safeguard against post-issuance violations that result in loss of the tax-exempt status of their bonds.

Requirements Related to Issuance

The following is an overview of several general rules related to the issuance of qualified 501(c)(3) bonds. For further information about issuance-related requirements for qualified private activity bonds, see IRS Publication 4078, *Tax-Exempt Private Activity Bonds.*

Requirement	Description
Information Filing	Under section 149(e), upon issuance, issuers are required to timely file IRS Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues.*
Public Approval	Under section 147(f), prior to issuance, qualified 501(c)(3) bonds must be approved by the governmental entity issuing the bonds and, in some cases, each governmental entity having jurisdiction over the area in which the bond-financed facility is located.
Registration	Under section 149(a), qualified 501(c)(3) bonds must be issued in registered form if the bonds are of a type offered publicly or issued, at the date of issue, with a maturity exceeding one year.
Volume Limitations	Section 145(b) imposes certain limitations on the aggregate outstanding face amount, or issue price, of "non-hospital" 501(c)(3) bonds.

Qualified Use of Proceeds and Financed Property Requirements

Under section 145(a) of the Code, proceeds of a tax-exempt "qualified 501(c)(3) bond" must be used to finance property owned by either an exempt organization described in section 501(c)(3) of the Code or a governmental unit. If the qualified 501(c)(3) bond proceeds are loaned to a nongovernmental borrower, the entity must have received a determination letter from the IRS stating that it is an exempt organization described in section 501(c)(3). Moreover, the borrower must maintain its 501(c)(3) tax-exempt status throughout the term that the bonds are outstanding. For information about filing an application for exemption under section 501(c)(3), see IRS Publication 4220, *Applying for 501(c)(3) Tax-Exempt Status,* and IRS Publication 557, *Tax-Exempt Status for Your Organization.*

Ownership, Use and Payment Tests

Qualified 501(c)(3) bonds lose their tax-exempt qualified status if at any time either: 1) the ownership test is not satisfied; or 2) *both* the private business use and payment tests are satisfied. In applying these tests, "net proceeds" means the proceeds of a bond issue reduced by amounts allocated to a reasonably required reserve or replacement fund.

Ownership Test — Section 145(a)(1) of the Code provides that all property financed by the net proceeds of a qualified 501(c)(3) bond issue must be owned by either a 501(c)(3) organization or a governmental entity.

Private Business Tests — Section 145(a)(2) of the Code provides that a qualified 501(c)(3) bond issue must comply with the private business tests described in section 141(b), as modified, for the bond issue to be tax-exempt. Thus, a 501(c)(3) bond issue is NOT tax-exempt if it meets *both* the modified **private business use test** *and* the modified **private payment or security test.** For purposes of applying these tests, the 501(c)(3) organization borrowing the net proceeds of the bond issue is treated as a state or local governmental entity to the extent that its use is not considered an "unrelated trade or business use."

- Private Business Use Test: More than 5% of the net proceeds of the 501(c)(3) bond issue is used for any private business use. In applying this test, bond proceeds can be used to finance the working capital expenditures of a 501(c)(3) organization so long as such use furthers its exempt purpose.
- Private Payment or Security Test: More than 5% of the payment of principal or interest on the bond issue is either made or secured (directly or indirectly) by payments or property used or to be used for a private business use.

Private Business Use

Certain uses of proceeds of a qualified 501(c)(3) bond issue can result in private business use.

Unrelated Trade or Business Use — Use of bond proceeds or bond-financed property by a 501(c)(3) organization, in an unrelated trade or business activity, is considered nonqualified private business use for tax-exempt bond purposes. Whether an activity is an unrelated trade or business activity is determined in accordance with the general rules provided under section 513(a) of the Code.

Private Use by Parties other than the 501(c)(3) Borrower — Use of bond proceeds or bond-financed property by a nongovernmental person other than the 501(c)(3) organization borrowing the proceeds can result in private business use. In this instance, a nongovernmental person includes private, for-profit entities, the federal government, and other tax-exempt organizations (i.e., 501(c)(4) organizations).

Example: A bond-financed office building is owned by a 501(c)(3) organization. The building is occupied by that organization in furtherance of its exempt purpose as well as by a related 501(c)(4) organization and a related political action committee. Here, the use of the bond-financed property by the related entities is considered private business use.

Costs Related to the Issuance of Bonds

Under section 147(g) of the Code, any amount of bond proceeds that may be applied to finance the costs associated with the issuance of qualified 501(c)(3) bonds (both before and after the issue date) is limited to 2% of the proceeds of the bond issue. Issuance costs include: underwriters' discount, counsel fees, financial advisory fees, rating agency fees, trustee fees, paying agent fees (bond registrar, certification, and authentication fees), accounting fees, printing costs for bonds and offering documents, public approval process costs, engineering and feasibility study costs, and guarantee fees other than for qualified guarantees.

Issuance costs financed with bond proceeds are treated as private business use when applying the private business use test. Issuers can always finance issuance costs with funds other than the proceeds of the bond issue.

Housing for Family Units

Generally, at least 95% of the proceeds of a qualified 501(c)(3) bond issue used to finance residential rental housing must be used to provide one of the following, as defined in section 145(d) of the Code:

- residential rental property for family housing where the first use of such property is pursuant to the bond issue;
- qualified residential rental projects satisfying the requirements under section 142(d) of the Code, including the minimum occupancy thresholds for low-income tenants, or;
- residential rental property which is to be substantially rehabilitated in a rehabilitation beginning within a 2-year period ending 1 year after the date of the acquisition of such property.

Management and Service Contracts

Management contracts between 501(c)(3) organizations and certain private parties under which private parties receive compensation for services provided with respect to a bond-financed facility may result in a loss of the tax-exempt status of the bonds as a result of satisfying the private business tests. However, the IRS has provided safe harbors regarding management service contracts between a for-profit entity and a tax-exempt organization when such service is provided in connection with a bond-financed facility. For more information, see Revenue Procedure 97-13, 1997-1 C.B. 632, available at *www.irs.gov.*

Research Agreements

Generally, certain agreements, where private entities (including the federal government) sponsor research through 501(c)(3) organizations that benefit from tax-exempt bond financing, may result in a violation of the private business tests. However, the IRS has provided safe harbors applicable to such research agreements. For more information, see Revenue Procedure 97-14, 1997-1 C.B. 634, available at *www.irs.gov.*

Deliberate Actions

Section 1.145-2(a) of the Treasury regulations provides that a qualified 501(c)(3) bond issue can lose its tax-exempt status if a deliberate action is taken, subsequent to the issue date, which causes the issue to either fail the ownership test or meet both of the private business tests. A deliberate action is any action taken by the issuer or 501(c)(3) organization that is within its control. Intent to violate the ownership, use or payment tests is not necessary for an action to be deliberate.

Remedial Actions for Nonqualified Use

Section 1.145-2(a) of the Treasury regulations provides that certain prescribed remedial actions described under section 1.141-12 of the Treasury regulations are available to cure uses of proceeds that would otherwise cause the 501(c)(3) bonds to lose their tax-exempt status. Such remedial actions can include redemption or defeasance of bonds, alternative use of disposition proceeds, and alternative use of bond-financed facilities.

Example: A mental health organization sells a building financed with tax-exempt bond proceeds to a corporation. This change in the ownership and use of the property from a qualified use to a private business use is a deliberate action. However, this may be remediated if the allocable bonds are redeemed within 90 days of the action.

Issuers and 501(c)(3) organizations borrowing the bond proceeds may also be able to enter into a closing agreement under the TEB Voluntary Closing Agreement Program (VCAP) described in Notice 2001-60, 2001-40

I.R.B. 304. See VCAP under **TEB Information and Services**, page 9, in this publication.

Allocation of Proceeds

The 501(c)(3) organization borrowing the proceeds of the qualified 501(c)(3) bond issue must allocate those proceeds among the various project expenditures in a manner demonstrating compliance with the qualified use requirements. These allocations must generally be consistent with the allocations made for determining compliance with the arbitrage yield restriction and rebate requirements (noted below) as well as other federal tax filings. See **Arbitrage Yield Restriction and Rebate Requirements** (below) for an overview of these rules.

Arbitrage Yield Restriction and Rebate Requirements

Tax-exempt bonds, including qualified 501(c)(3) bonds, lose their tax-exempt status if they are arbitrage bonds under section 148 of the Code. In general, arbitrage is earned when the gross proceeds of an issue are used to acquire investments that earn a yield materially higher than the yield on the bonds of the issue. The earning of arbitrage does not, however, necessarily mean that the bonds are arbitrage bonds. Two general sets of requirements under the Code must be applied in order to determine whether qualified 501(c)(3) bonds are arbitrage bonds: yield restriction requirements of section 148(a); and rebate requirements of section 148(f).

An issue may meet the rules of one of the above regimes yet fail the other. Even though interconnected, both sets of rules have their own distinct requirements and may result in the need for a payment to the U.S. Department of the Treasury in order to remain compliant. The following is an overview of the basic requirements of these two general rules. Additional requirements or exceptions, beyond the scope of this publication, may apply in certain instances.

Yield Restriction Requirements

The yield restriction rules of section 148(a) of the Code generally provide that the direct or indirect investment of the gross proceeds of an issue in investments earning a yield materially higher than the yield of the bond issue causes the bonds of that issue to be arbitrage bonds. While certain exceptions to these rules may be available, the term “materially higher” is generally applied to certain types of investments as follows:

Type of Investments	Materially Higher
general rule for purpose and nonpurpose investments	1/8 of one percentage point
investments in a refunding escrow	1/1000 of one percentage point
investments allocable to replacement proceeds	1/1000 of one percentage point
program investments	one and one-half percentage points
student loans	two percentage points
general rule for investments in tax-exempt bonds	no yield limitation

However, the investment of proceeds in materially higher yielding investments does not cause the bonds of an issue to be arbitrage bonds in the following three instances: 1) during a temporary period (i.e., generally, 3-year temporary period for capital projects and 13 months for restricted working capital expenditures); 2) as part of a reasonably required reserve or replacement fund; and 3) as part of a minor portion (an amount not exceeding the lesser of 5% of the sale proceeds of the issue or $100,000).

In many instances, issuers are allowed to make “yield reduction payments” to the U.S. Department of the Treasury to reduce the yield on yield-restricted investments when the yield on those earnings is materially higher than the yield of the bond issue. See subsequent section on **Arbitrage Rebate/Yield Reduction Filing Requirements–Form 8038-T,** page 7 for information on how to file IRS Form 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate,* to make yield reduction payments.

Reasonable Expectations — Typically, the determination of whether an issue consists of arbitrage bonds under section 148(a) of the Code is based on the issuer's reasonable expectations as of the issue date regarding the amount and use of the gross proceeds of the issue.

Intentional Acts — A deliberate, intentional action to earn arbitrage taken by the issuer, the 501(c)(3) organization borrowing the bond proceeds, or any person acting on either the issuer or 501(c)(3) organization's behalf, after the issue date, will cause the bonds of an issue to be arbitrage bonds *if* that action, had it been reasonably expected on the issue date, would have caused the bonds to be arbitrage bonds. Intent to violate the requirements of section 148 of the Code is not necessary for an action to be intentional.

Rebate Requirements

The rebate requirements of section 148(f) of the Code generally provide that, unless certain earnings on nonpurpose investments allocable to the gross proceeds of an issue are paid to the U.S. Department of the Treasury, the bonds in the issue will be arbitrage bonds. The arbitrage that must be rebated is based on the excess (if any) of the amount actually earned on non-purpose investments over the amount that would have been earned if those investments had a yield equal to the yield on the issue, plus any income attributable to such excess. Under section 1.148-3(b) of the Treasury regulations, the future values (as of the computation date) of all earnings received and payments made with respect to nonpurpose investments are included in determining the amount of rebate due. There are, however, certain spending exceptions to the rebate requirements available for qualified 501(c)(3) bonds.

Spending Exceptions — There are three spending exceptions to the rebate requirements as follows:

Spending Exceptions

Spending Period	Spending Exception
6-month spending exception	Section 1.148-7(c) of the Treasury regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes that are incurred within 6 months after the date of issuance.
18-month spending exception	Section 1.148-7(d) of the Treasury regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes which are incurred within the following schedule: 1) 15% within 6 months after the date of issuance; 2) 60% within 12 months after the date of issuance; and 3) 100% within 18 months after the date of issuance.
2-year spending exception	Section 1.148-7(e) of the Treasury regulations provides that an exception to rebate is available with respect to construction issues financing property to be owned by a governmental entity or 501(c)(3) organization when certain available construction proceeds are allocated to construction expenditures within the following schedule: 1) 10% within 6 months after the date of issuance; 2) 45% within 12 months after the date of issuance; 3) 75% within 18 months after the date of issuance; and 4) 100% within 24 months after the date of issuance.

Note: Issuers may still owe rebate on amounts earned on nonpurpose investments allocable to proceeds not covered by one of the spending exceptions, which may include earnings in a reasonably required reserve or replacement fund.

Arbitrage Rebate/Yield Reduction Filing Requirements—Form 8038-T

Issuers of tax-exempt bonds file IRS Form 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate*, to make the following types of arbitrage payments: 1) yield reduction payments; 2) arbitrage rebate payments; 3) penalty in lieu of rebate payments; 4) the termination of the election to pay a penalty in lieu of arbitrage rebate; and 5) penalty for failure to pay arbitrage rebate on time. This form is included in this publication on page 17, and can also be downloaded from the Internet at *www.irs.gov/bonds*.

A yield reduction payment and/or arbitrage rebate installment payment is required to be paid no later than 60 days after the end of every 5th bond year throughout the term of a bond issue. The payment must be equal to at least 90% of the amount due as of the end of that 5th bond year. Upon redemption of a bond issue, a payment of 100% of the amount due must be paid no later than 60 days after the discharge date.

A failure to timely pay arbitrage rebate will be treated as not having occurred *if* the failure is not due to willful neglect and the issuer submits a Form 8038-T with a payment of the rebate amount owed, plus penalty and interest. The penalty may be waived under certain circumstances. For more information, see section 1.148-3(h)(3) of the Treasury regulations.

Request for Recovery of Overpayment of Arbitrage Rebate—Form 8038-R

In general, a request for recovery of overpayment of arbitrage rebate can be made when the issuer can establish that an overpayment occurred. An overpayment is the excess of the amount paid to the U.S. Department of the Treasury for an issue under section 148 of the Code over the sum of the rebate amount for the issue as of the most recent computation date and all amounts that are otherwise required to be paid under section 148 as of the date the recovery is requested. The request can be made by completing and filing IRS Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*, with the IRS. This form is included in this publication on page 23, and can also be downloaded from the Internet at *www.irs.gov/bonds*.

Maturity Limitation

The average maturity of qualified 501(c)(3) bonds may not exceed 120% of the average reasonably expected economic life of the financed facilities as determined under section 147(b) of the Code. Section 147(b)(4) provides that the issuer may elect a special exception to the general maturity limitation rule with respect to pooled financings of 501(c)(3) organizations.

Prohibition Against Federal Guarantees

Section 149(b) of the Code provides that any tax-exempt bond, including a qualified 501(c)(3) bond, will not be treated as tax-exempt if the payment of principal or interest is directly or indirectly guaranteed by the federal government or any instrumentality of the federal government. Exceptions to this general rule include guarantees by certain quasi-governmental entities administering federal insurance programs for home mortgages and student loans. Additional exceptions apply for the investment of bond proceeds in U.S. Treasury securities or investments in a bona fide debt service fund, a reasonably required reserve or replacement fund, or during a permitted initial temporary period.

Treatment of Hedge Bonds

Section 149(g) of the Code provides that bonds meeting the definition of hedge bonds will not be tax-exempt unless certain requirements are satisfied. A "hedge bond" is any part of a bond issue that meets the following two elements:

- The issuer reasonably expects that less than 85% of the net proceeds of the issue will be used to finance its qualified purpose within 3 years of the date the bonds are issued; and
- Over 50% of the proceeds of the issue are invested in nonpurpose investments having a substantially guaranteed yield for 4 or more years.

Section 149(g)(3)(B) provides an exception to the general definition of a hedge bond if at least 95% of the net proceeds of the issue are invested in tax-exempt bonds that are not subject to the alternative minimum tax. For this purpose, amounts held in either a bona fide debt service fund or for 30 days or less pending either reinvestment of the proceeds or bond redemption are treated as invested in tax-exempt bonds not subject to the alternative minimum tax. Additionally, a refunding bond issue does not generally consist of hedge bonds if the prior issue met the requirements for tax-exempt status and issuance of the refunding bonds furthers a significant governmental purpose (e.g. realize debt service savings, but not to otherwise hedge against future increases in interest rates).

Even if an issue consists of hedge bonds, it will generally still be tax-exempt if two requirements are satisfied. First, at least 95% of the reasonably expected legal and underwriting costs associated with issuing the bonds must be paid within 180 days after the issue date, *and* the payment of such costs must not be contingent upon the disbursement of the bond proceeds. Second, the issuer must reasonably expect that the net proceeds of the issue will be allocated to expenditures for governmental or qualified purposes within the following schedule:

- 10% within 1 year after the date of issuance;
- 30% within 2 years after the date of issuance;
- 60% within 3 years after the date of issuance; and
- 85% within 5 years after the date of issuance.

Refunding of Qualified 501(c)(3) Bonds

Under section 1.150-1(d)(1) of the Treasury regulations, a refunding bond issue is an issue the proceeds of which are used to pay principal, interest, or redemption price on the refunded issue (a prior issue), as well as the issuance cost, accrued interest, capitalized interest on the refunding issue, a reserve or replacement fund, or similar cost, if any, properly allocable to that refunding issue.

Current and advance refunding issues are distinguishable as follows:

Current Refunding Issue	**A refunding issue that is issued *not more* than 90 days before the final payment of principal or interest (redemption) on the prior issue.**
Advance Refunding Issue	**A refunding issue that is issued *more* than 90 days before the final payment of principal or interest (redemption) on the prior issue.**

Qualified 501(c)(3) bonds can be current or advance refunded. However, qualified 501(c)(3) bonds issued after 1985 can only be advance refunded one time.

Refunding bond issues derive their tax-exempt status from the original new money issues that they refund. As such, a refunding issue will generally not be tax-exempt if the refunded issue was not in full compliance with all applicable federal tax law requirements.

Record Retention Requirements

Section 6001 of the Code and section 1.6001-1(a) of the Treasury regulations generally provide that any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return. Answers to *Frequently Asked Questions* regarding record retention requirements applicable to tax-exempt bonds are available on our Web site at *www.irs.gov/bonds*.

Abusive Tax Transactions

The IRS, including TEB, is engaged in extensive efforts to curb abusive tax shelter schemes and transactions. Information about abusive tax-exempt bond transactions, including a listing of emerging issues identified by TEB, is available on our Web site at *www.irs.gov/bonds*.

Access FREE
online information and services
at the
Tax Exempt Bonds
Web site at
www.irs.gov/bonds

TEB Information and Services

The office of Tax Exempt Bonds (TEB) offers information and services through its voluntary compliance programs (including the Voluntary Closing Agreement Program) and its education and outreach programs. You can learn about these programs through our Web site at *www.irs.gov/bonds*.

Voluntary Closing Agreement Program (VCAP)

In Notice 2001-60, 2001-40 I.R.B. 304, published October 1, 2001, the IRS announced the TEB Voluntary Closing Agreement Program (TEB VCAP). This program provides remedies for issuers who voluntarily come forward to resolve a violation. Closing agreement terms and amounts may vary according to the degree of violation as well as the facts and circumstances surrounding the violation.

Requests for TEB VCAP closing agreements are administered by the TEB Outreach, Planning and Review staff. To encourage issuers and other parties to voluntarily come to the IRS to resolve problems, TEB VCAP permits an issuer or its representative to initiate preliminary discussions of a closing agreement anonymously. For more information about this program or to submit a voluntary closing agreement request, contact Clifford Gannett, Manager of Tax Exempt Bonds, Outreach, Planning and Review, in Washington, DC, at (202) 283-9798. Notice 2001-60 is available through our Web site at *www.irs.gov/bonds*.

Customer Education and Outreach

TEB has reading materials about the tax laws applicable to municipal financing arrangements, tax forms and instructions, revenue procedures and notices, and TEB publications available on our Web site at *www.irs.gov/bonds*. For personal assistance, you can contact TEB directly at (202) 283-2999, or call our Customer Account Services toll-free at (877) 829-5500, Monday through Friday, 8:00 a.m. – 6:30 p.m. EST.

Form **8038** (Rev. January 2002)
Department of the Treasury Internal Revenue Service

Information Return for Tax-Exempt Private Activity Bond Issues

(Under Internal Revenue Code section 149(e))
► See separate instructions.

OMB No. 1545-0720

Part I Reporting Authority

Check if **Amended Return** ► ☐

1 Issuer's name	2 **Issuer's employer identification number**
3 Number and street (or P.O. box if mail is not delivered to street address) — Room/suite	4 Report number 1
5 City, town, or post office, state, and ZIP code	6 Date of issue
7 Name of issue	8 CUSIP number
9 Name and title of officer or legal representative whom the IRS may call for more information	10 Telephone number of officer or legal representative ( )

Part II Type of Issue (check the applicable box(es) and enter the issue price for each)

			Issue Price
11	Exempt facility bond:		
a	☐ Airport (sections 142(a)(1) and 142(c))	11a	
b	☐ Docks and wharves (sections 142(a)(2) and 142(c))	11b	
c	☐ Water furnishing facilities (sections 142(a)(4) and 142(e))	11c	
d	☐ Sewage facilities (section 142(a)(5))	11d	
e	☐ Solid waste disposal facilities (section 142(a)(6))	11e	
f	☐ Qualified residential rental projects (sections 142(a)(7) and 142(d)), as follows:	11f	
	Meeting 20–50 test (section 142(d)(1)(A)) ☐		
	Meeting 40–60 test (section 142(d)(1)(B)) ☐		
	Meeting 25–60 test (NYC only) (section 142(d)(6)) ☐		
	Has an election been made for deep rent skewing (section 142(d)(4)(B))? ☐ Yes ☐ No		
g	☐ Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))	11g	
h	☐ Facilities allowed under a transitional rule of the Tax Reform Act of 1986 (see instructions)	11h	
	Facility type		
	1986 Act section		
i	☐ Qualified enterprise zone facility bonds (section 1394) (see instructions)	11i	
j	☐ Qualified empowerment zone facility bonds (section 1394(f)) (see instructions)	11j	
k	☐ District of Columbia Enterprise Zone facility bonds (section 1400A) (see instructions)	11k	
l	☐ Qualified public educational facility bonds (sections 142(a)(13) and 142(k))	11l	
m	☐ Other. Describe (see instructions) ►	11m	
12	☐ Qualified mortgage bond (section 143(a))	12	
13	☐ Qualified veterans' mortgage bond (section 143(b)) ►	13	
	Check the box if you elect to rebate arbitrage profits to the United States ☐		
14	☐ Qualified small issue bond (section 144(a)) (see instructions) ►	14	
	Check the box for $10 million small issue exemption ☐		
15	☐ Qualified student loan bond (section 144(b))	15	
16	☐ Qualified redevelopment bond (section 144(c))	16	
17	☐ Qualified hospital bond (section 145(c)) (attach schedule—see instructions)	17	
18	☐ Qualified 501(c)(3) nonhospital bond (section 145(b)) (attach schedule—see instructions)	18	
	Check box if 95% or more of net proceeds will be used **only** for capital expenditures ► ☐		
19	☐ Nongovernmental output property bond (treated as private activity bond) (section 141(d))	19	
20	☐ Other. Describe (see instructions) ►	20	

Part III Description of Bonds (Complete for the entire issue for which this form is being filed.)

	(a) Final maturity date	**(b)** Issue price	**(c)** Stated redemption price at maturity	**(d)** Weighted average maturity	**(e)** Yield
21		$	$	years	%

Part IV Uses of Proceeds of Issue (including underwriters' discount)

				Amount
22	Proceeds used for accrued interest		22	
23	Issue price of entire issue (enter amount from line 21, column (b))		23	
24	Proceeds used for bond issuance costs (including underwriters' discount)	24		
25	Proceeds used for credit enhancement	25		
26	Proceeds allocated to reasonably required reserve or replacement fund	26		
27	Proceeds used to currently refund prior issue (complete Part VI)	27		
28	Proceeds used to advance refund prior issue (complete Part VI)	28		
29	Add lines 24 through 28		29	
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)		30	

Part V Description of Property Financed by Nonrefunding Proceeds

Caution: *The total of lines 31a through e below must equal line 30 above. Do not complete for qualified student loan bonds, qualified mortgage bonds, or qualified veterans' mortgage bonds.*

			Amount
31	**Type of Property Financed by Nonrefunding Proceeds:**		
a	Land	31a	
b	Buildings and structures	31b	
c	Equipment with recovery period of more than 5 years	31c	
d	Equipment with recovery period of 5 years or less	31d	
e	Other (describe)	31e	

32 North American Industry Classification System (NAICS) of the projects financed by nonrefunding proceeds.

	NAICS Code	Amount of nonrefunding proceeds		NAICS Code	Amount of nonrefunding proceeds
a		$	c		$
b		$	d		$

Part VI Description of Refunded Bonds (Complete this part only for refunding bonds.)

33 Enter the remaining weighted average maturity of the bonds to be currently refunded ▶ ______ years

34 Enter the remaining weighted average maturity of the bonds to be advance refunded ▶ ______ years

35 Enter the last date on which the refunded bonds will be called ▶ ______

36 Enter the date(s) the refunded bonds were issued ▶

Part VII Miscellaneous

37 Name of governmental unit(s) approving issue (see the instructions) ▶ ______

38 Check the box if you have designated any issue under section 265(b)(3)(B)(i)(III) ▶ ☐

39 Check the box if you have elected to pay a penalty in lieu of arbitrage rebate ▶ ☐

40 Check the box if you have identified a hedge (see instructions) ▶ ☐

41 Check the box if the issue is comprised of qualified redevelopment, qualified small issue, or exempt facilities bonds and provide name and EIN of the primary private user ▶ ☐

Name ▶ EIN

Part VIII Volume Caps

			Amount
42	Amount of state volume cap allocated to the issuer. **Attach copy of state certification**	42	
43	Amount of issue subject to the unified state volume cap	43	
44	Amount of issue not subject to the unified state volume cap or other volume limitations:	44	
a	Of bonds for governmentally owned solid waste facilities, airports, docks, wharves, environmental enhancements of hydroelectric generating facilities, or high-speed intercity rail facilities	44a	
b	Under a carryforward election. Attach a copy of Form 8328 to this return	44b	
c	Under transitional rules of the Tax Reform Act of 1986. Enter Act section ▶ ______	44c	
d	Under the exception for current refunding (section 146(i) and section 1313(a) of the Tax Reform Act of 1986)	44d	
45a	Amount of issue of qualified veterans' mortgage bonds	45a	
b	Enter the state limit on qualified veterans' mortgage bonds	45b	
46a	Amount of section 1394(f) volume cap allocated to issuer. **Attach copy of local government certification**	46a	
b	Name of empowerment zone ▶ ______		
47	Amount of section 142(k)(5) volume cap allocated to issuer. **Attach copy of state certification.**	47	

Sign Here

Under penalties of perjury, I declare that I have examined this return, and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

▶ Signature of officer ▶ Date

Name of above officer (type or print) Title of officer (type or print)

Instructions for Form 8038

Department of the Treasury
Internal Revenue Service

(Rev. January 2002)

Information Return for Tax-Exempt Private Activity Bond Issues

Section references are to the Internal Revenue Code, unless otherwise noted.

A Change To Note

Recent legislation added new section 142(a)(13), qualified public educational facilities, to the list of exempt facility bonds, effective for obligations issued after December 31, 2001. See **Qualified public educational facilities** on this page.

General Instructions

Purpose of Form

Form 8038 is used by the issuers of tax-exempt private activity bonds to provide the IRS with the information required by section 149 and to monitor the requirements of sections 141 through 150.

Who Must File

Issuers must file a **separate** Form 8038 for **each** issue of the following tax-exempt private activity bonds issued after 1986:

Exempt facility bonds
Qualified mortgage bonds
Qualified veterans' mortgage bonds
Qualified small issue bonds
Qualified student loan bonds
Qualified redevelopment bonds
Qualified hospital bonds
Qualified 501(c)(3) bonds
Nongovernmental output property bonds
Texas Veterans' Land Bonds, Oregon Small-Scale Energy Conservation and Renewable Resource Loan Bonds, and Iowa Industrial New Jobs Training Bonds
All other tax-exempt private activity bonds

When To File

File Form 8038 by the 15th day of the 2nd calendar month after the close of the calendar quarter in which the bond was issued. Form 8038 may not be filed before the issue date and must be completed based on the facts as of the issue date.

Late filing. An issuer may be granted an extension of time to file Form 8038 under Section 3 of Rev. Proc. 88-10, 1988-1 C.B. 635, if it is determined that the failure to file timely is not due to willful neglect. Type or print at the top of the form, "This Statement Is Submitted in Accordance with Rev. Proc. 88-10." Attach to the Form 8038 a letter explaining why Form 8038 was not filed on time. Also indicate whether the bond issue in question is under examination by the IRS. Do not submit copies of the trust indenture or other bond documents. See **Where To File** next.

Where To File

File Form 8038, and any attachments, with the Internal Revenue Service Center, Ogden, UT 84201.

Signature

An authorized representative of the issuer must sign Form 8038 and any applicable certification. Also print the name and title of the person signing Form 8038.

Other Forms That May Be Required

For bonds other than private activity bonds, use **Form 8038-G,** Information Return for Tax-Exempt Governmental Obligations, or **Form 8038-GC,** Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales, to comply with these requirements.

Bonds described in section 1312(c)(2) of the Tax Reform Act of 1986 to which the transitional rules in section 1312 or 1313 apply are not private activity bonds for purposes of information reporting. Report them on Form 8038-G or Form 8038-GC.

For rebating arbitrage or paying a penalty in lieu of arbitrage rebate to the Federal government, use **Form 8038-T,** Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

Rounding Off to Whole Dollars

You may show the money items on this return as whole-dollar amounts. To do so, drop any amount less than 50 cents and increase any amount from 50 to 99 cents to the next higher dollar.

Definitions

Tax-exempt bond. This is any obligation on which the interest is excluded from gross income under section 103 of the Internal Revenue Code.

Private activity bond. This includes an obligation issued as part of an issue in which:

More than 10% of the proceeds are to be used for any private business use, **and**

More than 10% of the payment of principal or interest of the issue is **either (a)** secured by an interest in property to be used for a private business use (or payments for such property), or **(b)** to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which **(a)** are to be used (directly or indirectly) to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and **(b)** exceeds the lesser of 5% of the proceeds **or** $5 million.

Exempt facility bond. This is part of an issue of which 95% or more of the net proceeds are to be used to finance an exempt facility listed in section 142(a)(1) through (13). Exempt facility bonds include qualified enterprise zone facility bonds for use in empowerment zones and enterprise communities.

Qualified public educational facilities. The private activities for which tax-exempt bonds may be issued include elementary and secondary public school facilities that:

Are owned by a private, for-profit corporation,

Have a public-private partnership agreement with a state or local educational agency, and

Are operated by a public educational agency as part of a public school system.

The term **school facility** includes school buildings and other facilities that are related such as stadiums, athletic facilities used for school events, and depreciable personal property used in connection with the school facility.

A **public-private partnership** is defined as an arrangement in which the for-profit corporation constructs, rehabilitates, refurbishes, or equips a school for the public school agency. The agreement must provide that, at the end of the contract term, ownership of the bond-financed property is transferred to the public school agency at no additional consideration.

The requirements for section 147(c) on land acquisitions do not apply to qualified public educational facilities bonds. Also, separate state volume cap limits and carryforward rules apply; see section 142(k) for details.

Qualified mortgage bond. This is part of an issue:

1. Of which all proceeds (except issuance costs and reasonably required reserves) are to be used to finance owner-occupied residences,

2. That meets the requirements of subsections (c) through (i) and (m)(7) of section 143,

3. That does not meet the private business tests of sections 141(b)(1) and (2), and

4. For which repayments of principal on financing provided by the issue (that are received more than 10 years after the date of issuance) are used to redeem bonds that are part of the issue. Amounts of less than $250,000 need not be used to redeem bonds under this requirement.

Qualified veterans' mortgage bond. This is part of an issue:

1. Of which 95% or more of the net proceeds are to be used to provide residences for veterans,

2. For which the payment of the principal and interest is secured by the general obligation of a state,

3. That meets the requirements of subsections (c), (g), (i)(1), and (l) of section 143, and

4. That does not meet the private business tests of sections 141(b)(1) and (2).

Qualified small issue bond. This is part of an issue not exceeding $1 million of which 95% or more of the net proceeds are to be used to finance **(a)** land, **(b)** depreciable property, or **(c)** a redemption of a prior issue of **(a)** or **(b).** See section 144(a). The $1 million limit can be increased to $10 million if an election is made to take certain capital expenditures into account. See Regulations section 1.103-10(b)(2)(vi).

Qualified student loan bond. This is part of an issue of which:

1. 90% or more of the net proceeds are to be used to make or finance student loans under a program of general application to which the Higher Education Act of 1965 applies (see section 144(b)(1)(A) for additional requirements), **or**

2. 95% or more of the net proceeds are to be used to make or finance student loans under a program of general application approved by the state (see section 144(b)(1)(B) for additional requirements).

Qualified redevelopment bond. This is generally part of an issue of which 95% or more of the net proceeds are to be used to finance certain specified real property acquisition and redevelopment in blighted areas. See section 144(c) for other requirements.

Qualified 501(c)(3) bond. This is any private activity bond that meets the following conditions:

1. All property financed by the net proceeds of the bond issue is to be owned by a 501(c)(3) organization or a governmental unit, **and**

2. The bond would not be a private activity bond if **(a)** section 501(c)(3) organizations were treated as governmental units with respect to their activities that do not constitute unrelated trades or businesses (determined by applying section 513), and **(b)** the private activity bond definition was applied using a 5% threshold (instead of 10%) for the private use, security, and/or payment tests, and the activities that constitute unrelated trades or businesses are aggregated with any other private use, security, or payment.

A qualified 501(c)(3) bond includes a:

Qualified hospital bond, i.e., part of an issue of which 95% or more of the net proceeds are to be used for a hospital.

Qualified nonhospital bond, i.e., other than a qualified hospital bond. In general, an organization cannot have more than $150 million of qualified 501(c)(3) nonhospital bonds; see section 145(b). However, the limit does not apply to bonds issued after August 5, 1997, if 95% or more of the net proceeds of the issue are to be used solely for capital expenditures incurred after that date.

Restrictions apply to the use of qualified 501(c)(3) bonds (both hospital and nonhospital) to provide residential rental housing. See section 145(d).

Issue price. The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

Note: *The issue price does not include interest from the date the bonds are dated to the date of issue.*

Issue. Generally, bonds are treated as part of the same issue if they are issued by the same issuer, on the same date, and in a single transaction, or series of related transactions.

Arbitrage rebate. Generally, interest on a state or local bond is not tax exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

Construction issue. This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, **and**

2. All the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1½% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

Specific Instructions

Part I—Reporting Authority

Amended return. If you are filing an amended Form 8038, check the amended return box. Complete Part I and only those parts of Form 8038 you are amending. Use the same report number (line 4) that was used on the original report. **Do not** amend estimated amounts previously reported once the actual amounts are determined.

Line 1. The issuer's name is the name of the entity issuing the bonds, not the name of the entity receiving the benefit of the financing.

Line 2. An issuer that does not have an employer identification number (EIN) should apply for one on **Form SS-4,** Application for Employer Identification Number. You can get this form on the IRS Web Site at **www.irs.gov** or by calling 1-800-TAX-FORM (1-800-829-3676). You may receive an EIN by telephone by following the instructions for Form SS-4.

Line 4. After the preprinted **1**, enter two self-designated numbers. Number reports consecutively during any calendar year (e.g., 134, 135, etc.).

Line 6. The date of issue is generally the date on which the issuer physically exchanges the bonds for the underwriter's (or other purchaser's) funds.

Line 7. If there is no name of the issue, please provide other identification of the issue.

Line 8. Enter the CUSIP (Committee on Uniform Securities Identification Procedures) number of the bond with the latest maturity. If the issue does not have a CUSIP number, write "None."

Part II—Type of Issue

Caution: *Elections referred to in Part II are made on the original bond documents, not on this form.*

You must identify the type of bonds issued by checking the appropriate box(es) and entering the corresponding issue price (see **Issue price** under **Definitions**).

Line 11f. After entering the issue price, check the appropriate box for the percentage test elected by the issuer at the time of issuance of the bonds. Then, check the appropriate box to show whether an election was made for deep rent skewing. See Rev. Rul. 94-57, 1994-2 C.B. 5, for guidance on computing the income limits applicable to these bonds.

Line 11h. Bonds issued to finance certain facilities may also qualify as exempt facility bonds if they were **(a)** permitted as exempt facility bonds under prior law and **(b)** issued under one of the transitional rules of the Tax Reform Act of 1986 (the 1986 Act).

These facilities include...	As described in former section...
A sports facility	103(b)(4)(B)
A convention or trade show facility	103(b)(4)(C)
A parking facility	103(b)(4)(D)
A pollution control facility	103(b)(4)(F)
A hydroelectric facility	103(b)(4)(H)
An industrial park	103(b)(5)

If one of the above applies, **indicate the facility type** and then give the **specific provision of the 1986 Act** pertaining to the facility on line 11h.

Line 11i. Check the box if the bonds are part of any issue 95% or more of the net proceeds of which are to be used to provide any enterprise zone facility in an empowerment zone or enterprise community. See section 1394.

Note: *Check the box on line 11j for empowerment zone facility bonds or line 11k for District of Columbia Enterprise Zone facility bonds.*

Line 11j. Check the box if the bonds are: **(a)** issued after August 5, 1997, and **(b)** part of any issue 95% or more of the net proceeds of which are to be used to provide any empowerment zone facility. See section 1394(f).

The updated information on the designated urban empowerment zones is available at **www.hud.gov**; for the designated rural empowerment zones, go to **www.ezec.gov**.

Line 11k. Check the box if the bonds are: **(a)** issued after December 31, 1997, and **(b)** part of any issue 95% or more of the net proceeds of which are to be used to provide a District of Columbia Enterprise Zone facility. See section 1400A for other requirements.

Line 11l. Check the box for bonds that are: **(a)** issued after December 31, 2001, and **(b)** part of any issue 95% or more of the net proceeds of which are used to provide a qualified public educational facility. See section 142(k) for other requirements.

Line 11m. Check this box only if none of the other boxes apply. On the space provided, enter the facility type.

Facility types include...	As described in section...
Mass commuting facilities	142(a)(3) and 142(c)
Local district heating or cooling facilities	142(a)(9) and 142(g)
Environmental enhancements of hydroelectric generating facilities	142(a)(12) and 142(j)
High-speed intercity rail facilities*	142(a)(11), 142(c), and 142(i)

Note:** *Proceeds of an exempt bond may not be used for this type of facility if there is a nongovernmental owner of the facility unless that owner makes an irrevocable election* ***not *to claim (1) depreciation under section 167 or 168, or (2) any credit against its income tax with respect to the property financed with the net proceeds of the issue.*

Line 13. Check the box on line 13 if the issuer has elected, in the bond indenture or related document, to pay to the United States the amount described in section 143(g)(3)(D).

Line 14. Check the box on line 14 if the bond issue is an exempt issue of $10 million or less for which an election under section 144(a)(4) has been made by the issuer at or before the time of issuance on the bonds or in its records. See Regulations section 1.103-10(b)(2)(vi).

Line 17. Attach a schedule listing the name and EIN for each 501(c)(3) organization benefiting from these qualified hospital bonds.

Line 18. Enter the total amount of qualified nonhospital bonds described in section 145(b)(2) that are a part of this issue. For each 501(c)(3) organization benefiting from these qualified nonhospital bonds, attach a schedule listing:

1. The name of the organization,
2. Its EIN,
3. The amount of this issue of bonds benefiting the organization, and, if the box for line 18 is **not** checked,
4. The amount of all other nonhospital bonds outstanding as of the date of this issue that benefit the organization.

Note: *The amount in item* ***4*** *above plus line 18 cannot exceed $150 million with respect to bonds issued:* ***(a)*** *prior to August 6, 1997, and* ***(b)*** *after August 5, 1997, if used for* ***noncapital*** *expenditures. The $150 million limit does not apply to bonds issued after August 5, 1997, if 95% or more of the net proceeds are used solely for* ***capital*** *expenditures incurred after that date.*

Line 19. Check the box if the bonds are used to acquire nongovernmental output property, which is property used by a nongovernmental person in connection with an output facility (such as an electric or gas power project).

Line 20. Check the box only if none of the other boxes apply. In the space provided, enter a description of the bonds, for example, “Texas Veterans’ Land Bonds,” “Oregon Small-Scale Energy Conservation and Renewable Resource Loan Bonds,” or “Iowa Industrial New Jobs Training Bonds.”

Part III—Description of Bonds

Line 21

For column (a), the final maturity date is the last date the issuer must redeem the entire issue.

For column (b), see **Issue price** under **Definitions** on page 2.

For column (c), the stated redemption price at maturity of the entire issue is the sum of the stated redemption prices at maturity of each bond issued as part of the issue.

For column (d), the weighted average maturity is the sum of the products of the issue price of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory redemptions), divided by the issue price of the entire issue (from line 21, column(b)).

For column (e), the yield, as defined in section 148(h), is the discount rate that, when used to compute the present value of all payments of principal and interest to be paid on the obligation, produces an amount equal to the purchase price, including accrued interest. See Regulations section 1.148-4 for specific rules to compute the yield on an issue. If the issue is a variable rate issue, write “VR” as the yield of the issue. For other than variable rate issues, carry the yield out to four decimal places (e.g., 5.3125%).

Part IV—Uses of Proceeds of Issue

Line 22. Enter the amount of proceeds that will be used to pay interest from the date the bonds are dated to the date of issue.

Line 24. Enter the amount of the proceeds that will be used to pay bond issuance costs, including fees for trustees and bond counsel.

Line 25. Enter the amount of the proceeds that will be used to pay fees for credit enhancement that are taken into account in determining the yield on the issue for purposes of section 148(h) (e.g., bond insurance premiums and certain fees for letters of credit).

Line 26. Enter the amount of the proceeds that will be allocated to such a fund.

Lines 27 and 28. Enter the amount of the proceeds that will be used to pay principal or interest on any other issue of bonds.

Part V—Description of Property Financed by Nonrefunding Proceeds

Line 31. Enter the amount of the nonrefunding bond proceeds received by the issuer and used to finance real or depreciable personal property. If the amounts are not available at the time of issuance, make a reasonable proration between the land, buildings, and equipment.

Note: *Under section 147(c), a private activity bond is not a qualified bond if 25% or more of the proceeds are used for the acquisition of land or if any of the proceeds are used to acquire farm land (other than an amount of proceeds not in excess of $250,000 to be used by a first-time farmer). An exception to this general rule is for land acquired for certain environmental purposes. See section 147(c)(3). Also, a bond is not a qualified bond if the proceeds are used for the acquisition of used property (other than land), except in the case of certain rehabilitations. See section 147(d).*

For items that do not readily fit within categories 31a, b, c, or d, enter the amount of those proceeds in category 31e, *Other,* and briefly describe them on the line.

Line 32. For each project to be financed by the issue, enter the corresponding:

Six-digit North American Industry Classification System (NAICS) code that best describes the project, and

Face amount of the project.

If there are more than four projects to be financed by the issue, attach a separate sheet of paper stating the NAICS codes and face amount of each project.

For the purpose of determining NAICS codes where the project fits into more than one category, the ultimate use of the facility determines the NAICS code number. For example, an investment partnership financing a manufacturing facility should use the relevant manufacturing NAICS code, not the partnership’s financial activities code.

The NAICS codes are available on the U.S. Census Bureau Web Site at **www.census.gov/naics**.

Part VI—Description of Refunded Bonds

Complete this part only if the bonds are to be used to refund a prior issue of tax-exempt private activity bonds.

Lines 33 and 34. The remaining weighted average maturity is determined without regard to the refunding. The weighted average maturity is determined in the same manner as for line 21, column (d).

Line 35. Enter the last date on which any of the bonds being refunded will be called.

Line 36. If more than a single issue of bonds will be refunded, enter the date of issue of each of the issues.

Part VII—Miscellaneous

Line 37. Under the rules of section 147(f), private activity bonds are not tax exempt unless they receive public approval by certain officials or voter referendums. Enter the name of the governmental unit(s) approving the issue. Enter also the date of approval by the applicable elected representatives and the date of the public hearing. In the alternative, enter the date of the voter referendum.

If, under the rules of section 147(f), no approval is needed because the issue meets an exception to the public approval requirement, write "No approval needed" on line 37. Also enter on line 37 the provision of section 147(f) under which the issue is excepted (e.g., "section 147(f)(2)(D)"), or if under any transitional rule write "Transitional rule" and the applicable Act (e.g., "Tax Reform Act of 1986") and section.

Line 39. Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of arbitrage rebate with this form. See Rev. Proc. 92-22, 1992-1 C.B. 736 for rules regarding the "election document."

Line 40. Check this box if the issuer has identified a hedge on its books and records in accordance with Regulation sections 1.148-4(h)(2)(viii) and 1.148-4(h)(5) that permit an issuer of tax-exempt bonds to identify a hedge for it to be included in yield calculations for computing arbitrage.

Line 41. Check this box if:

The issue is comprised of...	As described in section...
Qualified redevelopment bonds	144(c)
Qualified small issue bonds	144(a)
Exempt facilities bonds	142(a)(4) through 142(a)(11) and 142(a)(13)

If one of the above applies, then enter the name and EIN of the primary private user. A "primary private user" is the nongovernmental entity that meets the private business tests of section 141(b) or private loan financing test of section 141(c).

Part VIII—Volume Cap

Line 42. Enter the amount of volume cap allocated to the issuer. Attach a copy of the state certification, if applicable. The appropriate state official must certify that the issue meets the requirements of section 146 (relating to volume cap on private activity bonds). See the regulations under section 149(e). The certification must also include the information requested by lines 1 through 3 and 5 through 8 on page 1 of Form 8038, as well as the title of the certifying official.

Line 43. Enter the amount of the issue subject to the unified state volume cap for private activity bonds under section 146. If, under section 141, the nonqualified amount of an issue exceeds $15 million, but does not exceed the amount that would cause a bond which is part of an issue to be treated as a private activity bond, the issuer must allocate a part of its volume cap to the nonqualified amount over $15 million.

Line 44a. Enter the amount of any bond issued as part of an issue to finance exempt facilities that are **not** subject to the volume cap. These facilities include:

Airports.

Docks.

Wharves.

Environmental enhancements of hydroelectric generating facilities.

Solid waste facilities. **Note:** *These facilities may have to be governmentally owned. See section 146(h).*

High-speed intercity rail facilities. **Note:** *Only 75% of any exempt facility bond for these facilities is not subject to the volume cap; however, no volume cap applies if all the bond-financed property is governmentally owned. See sections 146(g) and 142(b)(1)(B).*

Line 44b. If any part of the issue is issued under a carryforward election, enter the amount of the bonds being issued under that election. Attach a copy of the applicable **Form 8328,** Carryforward Election of Unused Private Activity Bond Volume Cap.

Line 44c. If any part of the issue is not subject to the volume cap under a transitional rule of the Tax Reform Act of 1986, enter the appropriate section of the Act and then the amount of the bonds excepted from the volume cap by that rule.

Line 44d. Any bond that is issued to currently refund another bond is not subject to the volume cap to the extent that the amount of such bond does not exceed the outstanding amount of the refunded bond. See section 146(i) and section 1313(a) of the Tax Reform Act of 1986. Enter the amount not subject to the volume cap.

Line 45b. Enter the state limit on qualified veterans' mortgage bonds for the calendar year under section 143(l)(3).

Line 46a. Enter the amount of volume cap allocated to the issuer. Attach a copy of the local government's certification, if applicable. The official must certify that the issue meets the requirements and the applicable volume cap under section 1394(f). The certification must also include the information requested by lines 1 through 3 and 5 through 8 on page 1 of Form 8038, as well as the title of the certifying official.

Line 46b. Enter the name of the empowerment zone. See the instructions for line 11j for where to get the names of the empowerment zones.

Line 47. Enter the amount of volume cap allocated to the issuer. Attach a copy of the state certification, if applicable. The appropriate state official must certify that the issue meets the volume cap requirements of section 142(k)(5). The certification must also include the information requested by lines 1 through 3 and 5 through 8 on page 1 of Form 8038, as well as the title of the certifying official.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Learning about the law or the form	10 hr., 35 min.
Preparing the form	12 hr., 27 min.
Copying, assembling, and sending the form to the IRS	16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the form to this address. Instead, see **Where To File** on page 1.

Form **8038-T**
(Rev. January 2005)
Department of the Treasury
Internal Revenue Service

Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate

▶ **Under Sections 143(g)(3) and 148(f)**
and Sections 103(c)(6)(D) and 103A(i)(4) of the Internal Revenue Code of 1954

OMB No. 1545-1219

Part I Reporting Authority

Check box if **Amended Return** ▶ ☐

1 Issuer's name		2 **Issuer's employer identification number**
3 Number and street (or P.O. box no. if mail is not delivered to street address)	Room/suite	4 Report number 7
5 City, town, or post office, state, and ZIP code		6 Date of issue
7 Name of issue		8 CUSIP number
9 Name and title of officer or legal representative whom the IRS may call for more information		10 Telephone number of officer or legal representative ( )

11 Type of issue ▶ Issue price ▶ 11 $

Part II Arbitrage Rebate and Yield Reduction Payments

12	Computation date to which this payment relates (MMDDYYYY) . . . . . . ______		
13	Arbitrage rebate payment (see instructions) ☐ check box if less than 100% of rebate amount	13	$
14	Yield reduction payment (see instructions) ☐ check box if less than 100% of yield reduction amount .	14	$
15	Rebate payment from Qualified Zone Academy Bond (QZAB) defeasance escrow (see instructions) . .	15	$

Part III Penalty in Lieu of Arbitrage Rebate

16	Number of months since date of issue: ☐ 6 mos ☐ 12 mos ☐ 18 mos ☐ 24 mos ☐ Other. No. of mos ▶ ______		
17	Penalty in lieu of rebate	17	$
18	Date of termination election (MMDDYYYY) . . . . ______		
19	Penalty upon termination	19	$

Part IV Late Payments

20	Does failure to pay timely qualify for waiver of penalty (see instructions) . . . **Yes** ☐ **No** ☐		
21	Penalty for failure to pay on time (see instructions)	21	$
22	Interest on underpayment (see instructions).	22	$

Part V Total Payment

23	**Total payment.** Add lines 13, 14, 15, 17, 19, 21, and 22. Enter total here	23	$

Part VI Miscellaneous

24	Unspent proceeds as of this computation date	24	$
25	Proceeds used to redeem bonds	25	$
26	Gross proceeds used for qualified administrative costs for GICs and defeasance escrows	26	$
27	Fees paid for a qualified guarantee	27	$

			Yes	No
28	Is the issue a variable rate issue?	28		
29	Did the issuer enter into a hedge? Name of provider ______ Term of hedge ______	29		
30	Were gross proceeds invested in a GIC? Name of provider ______ Term of GIC ______	30		
31	Were any gross proceeds invested beyond an available temporary period?	31		
32	Calculations for filing of this form prepared by: ☐ Issuer ☐ Preparer:			

Sign Here

Under penalties of perjury, I declare that I have examined this return, and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

▶ ______ Signature of issuer's authorized representative | Date | ▶ ______ Type or print name and title

Instructions for Form 8038-T

Department of the Treasury
Internal Revenue Service

(Rev. January 2005)

Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate

Section references are to the Internal Revenue Code of 1986 unless otherwise noted.

General Instructions

Purpose of Form

Under section 148(f), interest on a state or local bond is not tax exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. Use this form to make arbitrage rebate and related payments.

Mortgage Revenue Bonds

Section 143(g)(3) and section 103A(i)(4) of the Internal Revenue Code of 1954 (1954 Code) provide special arbitrage rebate rules for qualified mortgage bonds and qualified veterans' mortgage bonds. Under these special rules, issuers may pay the rebate either to mortgagors, or if an election is made before issuance of the bond, to the United States. Use this form only if you have elected to pay the rebate to the United States.

Qualified Zone Academy Bonds

A qualified zone academy bond (QZAB) is a bond issued by a state or local government to finance certain eligible public school purposes. An issuer may establish a defeasance escrow to cure a failure to properly use QZAB proceeds. An issuer must pay 100 percent of the investment earnings on amounts in the defeasance escrow. Use this form to make payments of investment earnings on amounts in defeasance escrows. See Proposed Regulations section 1.1397E-1(h)(7)(ii)(C), 2004-16 I.R.B. 793.

Note. Use a separate Form 8038-T for each issue.

Who Must File

Issuers of tax-exempt bonds must file Form 8038-T to pay:

1. Arbitrage rebate.
2. Yield reduction payments.
3. The penalty:
   - In lieu of arbitrage rebate or
   - To terminate the election to pay a penalty in lieu of arbitrage rebate.
4. Penalties and interest on the failure to pay on time any amounts in 1-3 above.

Qualified Zone Academy Bonds

Issuers of QZABs that establish a defeasance escrow under the Proposed Regulations must file Form 8038-T to pay 100 percent of the investment earnings on amounts in the defeasance escrow.

Applicable Regulations

General

Unless otherwise stated, regulation sections referenced in these instructions are to the 1993 regulations, as amended. Generally, an issuer may apply these regulations to bonds that are outstanding on July 8, 1997. For the 1993 regulations, see T.D. 8476, 1993-2 C.B. 13, and T.D. 8538, 1994-1 C.B. 26. For the 1997 amendments to the 1993 regulations, see T.D. 8718, 1997-1 C.B. 47. The 1992 regulations generally apply to bonds issued before July 1, 1993. For the 1992 regulations, see T.D. 8418, 1992-1 C.B. 29.

Special Rules

For rules on computing the arbitrage rebate for mortgage revenue bonds, see Temporary Regulations section 6a.103A-2(i)(4).

For rules on computing the arbitrage rebate for bonds subject to section 103(c)(6)(D) of the 1954 Code, see Temporary Regulations section 1.103-15AT, T.D. 8005, 1985-1 C.B. 39, if the issuer has not applied the later regulations.

For qualified zone academy bonds, see Proposed Regulations section 1.1397E-1. For rules on the effective dates of regulations for QZABs, see Proposed Regulations 1.1397E-1(k).

Arbitrage Rebate

Computation of Arbitrage Rebate

The rebate amount for an issue is based on the difference between the amount actually earned on nonpurpose investments and the amount that would have been earned if those investments had a yield equal to the yield on the issue.

Exceptions

General. A number of exceptions may relieve an issuer of the rebate requirement for all or a part of an issue of bonds.

Note. The following exceptions may apply only to a portion of an issue. In such cases, the rebate requirement continues to apply to the portion of the issue not covered by the exception.

Small Issuer Exception. The rebate requirement does not apply to certain bonds issued by governmental units issuing no more than $5 million of bonds in a calendar year.

The exception is modified as follows: a governmental unit may issue up to $10 million in bonds after 1997 ($15 million after 2001) per calendar year, provided no more than $5 million of proceeds are used to finance expenditures other than public school capital expenditures. See section 148(f)(4)(D) and Regulations section 1.148-8.

6-Month Exception. The rebate requirement is considered to be met for gross proceeds of an issue (as defined in Regulations section 1.148-7(c)(3)) if those gross proceeds are spent within 6 months of the issue date. The 6-month exception is the only exception available for refunding issues.

See section 148(f)(4)(B) and Regulations section 1.148-7(a) – (c).

18-Month Exception. The rebate requirement is considered to be met for gross proceeds of an issue if those gross proceeds are spent according to an 18 month expenditure schedule measured from the issue date.

See Regulations section 1.148-7(a), (b) and (d).

2-Year Exception. The "available construction proceeds" of a construction issue are treated as meeting the rebate requirement if those proceeds are spent in accordance with a 2 year expenditure schedule measured from the issue date.

See section 148(f)(4)(C) and Regulations section 1.148-7(a), (b) and (e) – (j).

Exception for Certain Investments. The rebate requirement generally does not apply to gross proceeds that are invested in certain tax-exempt bonds, certain tax-exempt mutual funds or certain demand deposit securities purchased directly from the United States Treasury.

Penalty in Lieu of Arbitrage Rebate

Penalty

An issuer may elect to pay a penalty in lieu of rebating arbitrage for the available construction proceeds of an issue if the spending requirements of the 2-year exception are not satisfied. The penalty is equal to 1½ percent of the amount of the available construction proceeds that do not meet the spending requirements.

See section 148(f)(4)(C) and Regulations section 1.148-7(a), (b) and (e) – (k).

Election to Terminate 1½ Percent Penalty

An issuer may terminate the election to pay penalty in lieu of rebate by paying an amount equal to 3 percent of the unspent available construction proceeds multiplied by the number of years in the initial temporary period. The termination election also requires other actions, such as yield restricting the unspent proceeds and using such proceeds to redeem bonds.

See Code section 148(f)(4)(C)(viii) and (ix) and Regulations section 1.148-7(l).

Yield Reduction Payments

Bond proceeds may be invested in higher yielding investments only during a temporary period described in Regulations section 1.148-2(e). After expiration of an applicable temporary period, proceeds must be yield restricted.

One method of complying with the yield restriction requirement is to make "yield reduction payments." For certain investments, a yield reduction payment is taken into account in computing the yield on that investment. See Regulations section 1.148-5(c).

For investments with excess yield that are not eligible for yield reduction payments (such as an incorrectly invested advance refunding escrow fund), see Notice 2001-60, Voluntary Closing Agreement Program for Tax-Exempt Bonds.

Where to File

File Form 8038-T with the Internal Revenue Service Center, Ogden, UT 84201–0027.

When to File

Arbitrage Rebate

An issuer must pay rebate in installments for computation dates that occur at least once every 5 years. Rebate payments are due within 60 days after each computation date. The final rebate payment for an issue is due within 60 days after the issue is discharged.

See Regulations section 1.148-3(e) through (g).

Special rules. For an issue retired within 3 years of issuance, the final rebate payment need not occur before the end of 8 months after the issue date or during the period the issuer expects to meet any of the spending exceptions under Regulations section 1.148-7.

For rules concerning qualified mortgage bonds and qualified veterans' mortgage bonds see section 143(g)(3) and section 103A(i)(4) of the 1954 Code.

Penalty in Lieu of Arbitrage Rebate and Termination Penalty

Penalty in lieu of arbitrage rebate payments must be paid within 90 days of the end of the applicable spending period.

Payment of the 3 percent penalty to terminate the penalty in lieu of arbitrage rebate election must be made within 90 days of (a) the end of the initial temporary period if the termination election was made under section 148(f)(4)(C)(viii), or (b) the date of the termination election if it was made under section 148(f)(4)(C)(ix).

Yield Reduction Payments

Yield reduction payments are payable at the same time as arbitrage rebate payments.

See Regulations section 1.148-5(c)(2).

Qualified Zone Academy Bonds

The issuer must pay 100 percent of the investment earnings on amounts in a defeasance escrow established for an issue of QZABs at the same time and in the same manner as arbitrage rebate payments.

Failure to Pay Timely

General

A failure to pay the required amounts of arbitrage rebate, yield reduction, or penalty payments on time may cause bonds to be treated as not being, and as never having been, tax exempt.

If the failure is not due to willful neglect, the failure will be disregarded if the issuer pays a penalty to the United States.

For governmental and qualified 501(c)(3) bonds, the penalty equals 50 percent of the rebate amount not paid when required to be paid, plus interest on that amount. Otherwise the penalty equals 100 percent of the rebate amount not paid when required to be paid, plus interest on that amount.

The penalty is automatically waived if the rebate amount plus interest is paid within 180 days of discovery of the failure.

See Regulations section 1.148-3(h).

For issues to which the 1992 Regulations apply, see 1992 Regulations section 1.148-1(c) for rules relating to innocent failure, willful neglect, computation of the correction amount and penalty and interest. In general, these rules also apply to the Penalty in Lieu of Arbitrage Rebate and the Termination Penalty. See 1992 Regulations section 1.148-6(n)(4).

Recovery of Overpayment

In general, an issuer may recover an overpayment for an issue of tax-exempt bonds by establishing to the Internal Revenue Service that an overpayment occurred. Payments that may be recovered include:

- Arbitrage rebate,
- Yield reduction,
- Penalty in lieu of arbitrage rebate, and
- Penalty to terminate penalty in lieu of arbitrage rebate.

See Regulations section 1.148-3(i) and Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions.

Specific Instructions

Part I—Reporting Authority and Filing Information

Amended Return

An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the "*Amended Return*" box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new or corrected information. Attach an explanation of the reason for the amended return.

Lines 1-10

General. Enter the same information that was entered on Form 8038, 8038-G or 8038-GC (the "initial filing"), making any necessary changes, for example, a change of address.

Line 1. Enter the name of the governmental entity that issued the bonds, not the name of the entity receiving the benefit of the financing or the eligible taxpayer claiming the QZAB credit.

Line 4. After the preprinted "7", enter the last two digits of the year corresponding with the computation date to which this filing relates. For example, for a payment made for a computation date in 2001, enter a report number of 701. Alternatively, an issuer may consistently use any system of assigning report numbers so long as a number is not duplicated for an issue over its life.

Line 11. Enter the same type of issue that was entered on Form 8038 or 8038-G. For bonds previously reported on Form 8038-GC, enter "Small Governmental Bond." Also enter the total issue price that was listed on the initial filing for this issue. For QZABs enter "qualified zone academy bond" and the total issue price.

Part II—Arbitrage Rebate and Yield Reduction Payments

Line 12. Enter the computation date to which this payment relates. The first rebate installment payment must be made for a computation date that is not later than 5 years after the issue date. Subsequent rebate installment payments must be made for a computation date that is not later than 5 years after the previous computation date for which an installment payment was made.

Line 13. Enter the amount of the rebate payment. A rebate installment payment must be in an amount that, when added to the future value, as of the computation date, of previous rebate payments made for the issue, equals at least 90 percent of the rebate amount as of that date. A final rebate payment must be paid in an amount that, when added to the future value of previous rebate payments made for the issue, equals 100 percent of the rebate amount as of that date.

See Regulations section 1.148-3(f).

For issues to which the 1992 Regulations apply, see 1992 Regulations section 1.148-1(b)(3).

Line 14. For investments covered by the special yield reduction rule, rebate and yield reduction payments are included in the computation of yield for that investment.

See Regulations section 1.148-5(c).

Line 15. Enter the amount equal to 100 percent of the investment earnings in a QZAB defeasance escrow.

Part III—Penalty in Lieu of Arbitrage Rebate

Complete this section only if, on or before the issue date of the bonds, an election was made under section 148(f)(4)(C)(vii).

Line 16. Check the appropriate box for the number of months between the issue date of the bonds and the end of the spending period for which this Form 8038-T is being filed. For periods greater than 24 months, check the box marked "Other" and fill in the number of months since the date of issue.

Note. File a separate Form 8038-T for each 6-month spending period.

Lines 17–19. See *Penalty in Lieu of Arbitrage Rebate* on page 1.

Part IV— Late Payments

Line 20. Under the current regulations, in order to qualify for a waiver of penalty, a failure to pay must not be due to willful neglect. Attach an explanation of the failure and the basis for concluding that the failure is not due to willful neglect.

Line 21. For a failure that does not qualify for a waiver of penalty, the failure will be disregarded if the issuer pays a penalty to the United States. For governmental and qualified 501(c)(3) bonds, the penalty equals 50 percent of the rebate amount not paid timely plus interest on that amount. For other bonds, the penalty is 100 percent of the rebate amount not paid timely plus interest on that amount.

Line 22. Compute interest at the underpayment rate under section 6621, beginning on the date the correct rebate amount is due and ending on the date 10 days before it is paid.

For issues to which the 1992 Regulations apply, see 1992 Regulations section 1.148-1(c)(2) for computation of the correction amount.

Part V—Total Payment

Line 23. Combine all payment amounts on lines 13, 14, 15, 17, 19, 21, and 22. Enclose a check or money order for the total amount made payable to the "United States Treasury." Include the issuer's name, address, EIN, "Form 8038-T", and the date on the payment.

Part VI—Miscellaneous

Line 24. Enter the amount of proceeds (consisting of sale, investment and transferred proceeds) not allocated to expenditures for a governmental purpose of the issue.

Line 25. Enter the amount of proceeds used to pay principal of and call premiums on the bonds for which this form is being filed.

Line 26. Under Regulations section 1.148-5(e)(2), qualified administrative costs are taken into account in determining payments and receipts on nonpurpose investments. Regulations section 1.148-5(e)(2)(iii) and (iv) provide special rules for qualified administrative costs for guaranteed investment contracts and yield restricted defeasance escrows. Enter the amount of any qualified administrative costs taken into account in computing the rebate amount under these special rules.

Line 27. Under Regulations section 1.148-4(f), fees properly allocable to payments for a qualified guarantee for an issue are treated as additional interest in computing the yield on that issue. Enter the amount of such fees.

Line 28. A variable rate issue is an issue that contains a bond that has a yield that is not fixed and determinable on the issue date.

Line 29. In general, payments made or received by an issuer under a qualified hedge are taken into account to determine the yield on the issue. A hedge may be entered into before, at the same time as, or after the date of issue. See Regulations section 1.148-4(h). Enter the name of the provider of the hedge and term of the hedge to the nearest tenth of a year (for example, 2.4 years). Attach additional sheets if necessary.

Line 30. Enter "yes" if any gross proceeds of the issue were invested in a guaranteed investment contract ("GIC"). A GIC includes any nonpurpose investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply investments on two or more dates (for example, a forward supply contract). Enter the name of the provider of the GIC and term of the GIC to the nearest tenth of a year. Attach additional sheets if necessary.

Line 31. Indicate if any gross proceeds were invested beyond the temporary periods set forth in Regulations section 1.148-2(e) or 1.148-9(d).

Line 32. Indicate who prepared the calculations necessary for the filing of this form. If other than "Issuer", indicate the name of the entity or individual preparing the calculations.

Signature

Form 8038-T must be signed by an authorized representative of the issuer.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to collect the right amount of arbitrage rebate, yield reduction payments, and penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	10 hr., 2 min.
Learning about the law or the form	5 hr., 51 min.
Preparing, copying, assembling, and sending the form to the IRS	6 hr., 16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224. Do not send the form to this address. Instead, see *Where to File* on page 2.

Form **8038-R** (November 2001) Department of the Treasury Internal Revenue Service

Request for Recovery of Overpayments Under Arbitrage Rebate Provisions

▶ File a separate form for each issue. ▶ See instructions on back.

OMB No. 1545-1750

Part I Reporting Authority

1 Issuer's name	2 **Issuer's employer identification number**
3 Number and street (or P.O. box if mail is not delivered to street address) — Room/suite	4 Report number
5 City, town, or post office, state, and ZIP code	6 Date of issue
7 Name of issue	8 CUSIP number
9 Name and title of officer or legal representative whom the IRS may call for more information	10 Telephone number of officer or legal representative ( )

Part II Request for Refund of Amounts Paid Under Rebate Provisions (see instructions)

11 If the issue is outstanding on June 30, 1993, and the issuer elects **not** to apply the 1992 regulations, check here (see instructions) . . . ▶ ☐

12 Total amount paid under rebate provisions . . .			12
13 Rebate amount as of the most recent computation date . . .	13		
14 Amounts (not included in line 12) required to be paid under section 148 as of the date the recovery is requested . . .	14		
15 Add lines 13 and 14 . . .			15
16 Amount of overpayment. Subtract line 15 from line 12 . . .			16

17 Computations and relevant facts that led to overpayment (see instructions). Attach additional sheets if necessary.

18 Schedule of payments (see instructions). Attach additional sheets if necessary.

Part III Other Information (see instructions)

Check the "Yes" or "No" box for each question below.

		Yes	No
19 Was the overpayment paid as penalty in lieu of rebate under section 148(f)(4)(C)(vii)? . . . ▶	19		
20 Has the final computation date for the issue occurred? . . . ▶	20		
21 Is the issue comprised of qualified redevelopment, qualified small issue, or exempt facilities bonds? If "Yes," provide name and EIN of the primary private user. Name ▶ EIN ▶	21		

Sign Here

Under penalties of perjury, I declare that I have examined this request for recovery of overpayment, including accompanying schedules and statements, and to the best of my knowledge and belief, the facts represented in support of the request are true, correct, and complete.

Signature of issuer's authorized representative — Date — Type or print name and title

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Note: *Use a separate Form 8038-R for each issue.*

Purpose of Form

Form 8038-R is used by issuers of state and local bonds to request a refund of amounts paid with **Form 8038-T,** Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

Note: *Form 8038-R replaces the letter procedure of Rev. Proc. 92-83, 1992-2 C.B. 487.*

Payments made with Form 8038-T that may be recoverable include:

1. Yield reduction payments,

2. The arbitrage rebate to the United States,

3. A penalty in lieu of rebating arbitrage to the United States, or

4. A penalty to terminate the election to pay a penalty in lieu of rebating arbitrage.

Recovery of Overpayment

In general, an issuer may recover an overpayment of rebate for an issue of tax-exempt bonds by establishing to the Internal Revenue Service that the overpayment occurred. An overpayment is the excess of the amount paid to the United States for an issue under section 148 over the sum of the rebate amount for the issue as of the most recent computation date and all amounts that are otherwise required to be paid under section 148 as of the date the recovery is requested.

An overpayment may be recovered only to the extent that a recovery on the date that it is first requested would not result in an additional rebate amount if that date were treated as a computation date.

Except for overpayments of penalty in lieu of rebate under section 148(f)(4)(C)(vii) and Regulations section 1.148-7(k), an overpayment of less than $5,000 may not be recovered before the final computation date. See Regulations section 1.148-3(i).

Processing the Request

Generally, the information requested on Form 8038-R will be sufficient to determine whether a refund is appropriate. However, if additional information is necessary, the IRS will contact the issuer or its representative. Processing of the request will then be suspended and the issuer will have 30 calendar days to submit the requested information. If all the requested information is not timely received, a letter will be sent explaining that the request for recovery is deficient and that its processing is terminated. This letter may also be sent instead of a request for additional information if the initial request for recovery is severely deficient.

Any proposed adverse determination may be appealed. See Rev. Proc. 99-35, 1999-2 C.B. 501, for details.

Where To File

File Form 8038-R, and any attachments, with the Internal Revenue Service Center, Ogden, UT 84201.

Signature

Form 8038-R must be signed by an authorized representative of the issuer. Also type or print the name and title of the person signing Form 8038-R.

Specific Instructions

Part I—Reporting Authority

Line 1. Enter the name of the governmental entity that issued the bonds, not the name of the entity receiving the benefit of the financing.

Line 6. Enter the date of issue. This is generally the first date on which there is a physical exchange of the bonds for the purchase price.

Line 7. Enter the name of the issue. If there is no name, please provide other identification of the issue.

Line 8. Enter the CUSIP (Committee on Uniform Securities Identification Procedures) number of the bond with the latest maturity. Enter "None" if the issue does not have a CUSIP number.

Part II—Request for Refund

Line 11. Current Regulations sections 1.148-1 through 1.148-11 apply to issues outstanding after June 30, 1993. If the issue was outstanding prior to July 1, 1993, the 1992 regulations apply (i.e., Regulations sections 1.148-1 through 1.148-12 effective May 18, 1992 (T.D. 8418, 1992-1 C.B. 29)). However, check the box if the issue was outstanding prior to July 1, 1993, and the issuer has elected **not** to apply the 1992 regulations; the current Regulations sections 1.148-1 through 1.148-11 apply.

Line 17. Provide the computations of the overpayment paid as part of a rebate payment, penalty in lieu of rebate, or to terminate the penalty in lieu of rebate. Also, include the computations for interest (if any). If relevant, a description of the facts that led to the overpayment may also be included.

Line 18. Provide a schedule showing amounts and dates that payments were made to the United States for the issue. Do not attach copies of Form(s) 8038-T that accompanied payments to the United States; doing so may delay your request.

Part III—Other Information

Line 20. The final computation date is the date the issue is discharged. For details, see Regulations section 1.148-3(e)(2).

Line 21. Check the "Yes" box if:

The issue is comprised of...	As described in section...
Qualified redevelopment bonds	144(c)
Qualified small issue bonds	144(a)
Exempt facilities bonds	142(a)(4) through 142(a)(11) and 142(a)(13)

If one of the above applies, then enter the name and employer identification number (EIN) of the primary private user. A "private user" is the nongovernmental entity that meets the private business tests of section 141(b) or private loan financing test of section 141(c).

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping,** 5 hr., 44 min.; **Learning about the law or the form,** 3 hr., 10 min.; **Preparing, copying, assembling, and sending the form to the IRS,** 3 hr., 24 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the form to this address. Instead, see **Where To File** above.

Through the TEB Web site *www.irs.gov/bonds*, you can access tax-exempt bond-related materials and information on TEB programs and services including:

- IRS news releases, publications, notices and announcements

- basic and advanced student text for training purposes

- articles (on technical topics, best practices, compliance initiatives and current developments) issued as part of our continuing professional education (CPE) technical instruction program

- the tax-exempt bonds tax kit that includes return and election forms and instructions; IRM materials; Treasury regulations; and revenue procedures, all of which relates specifically to tax-exempt bonds

- private letter rulings and memoranda that are taxpayer-specific rulings furnished by the IRS in response to requests made by taxpayers and/or Service officials

- information about TEB voluntary closing agreement program

In addition to these materials, the TEB staff is available to provide outreach and educational services relating to tax-exempt bonds. Services may include delivering speeches, participating in panel discussions, conducting training sessions, and assisting in preparation of newsletter articles. The Web site posts contacts, email addresses, and telephone numbers for personal assistance.

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