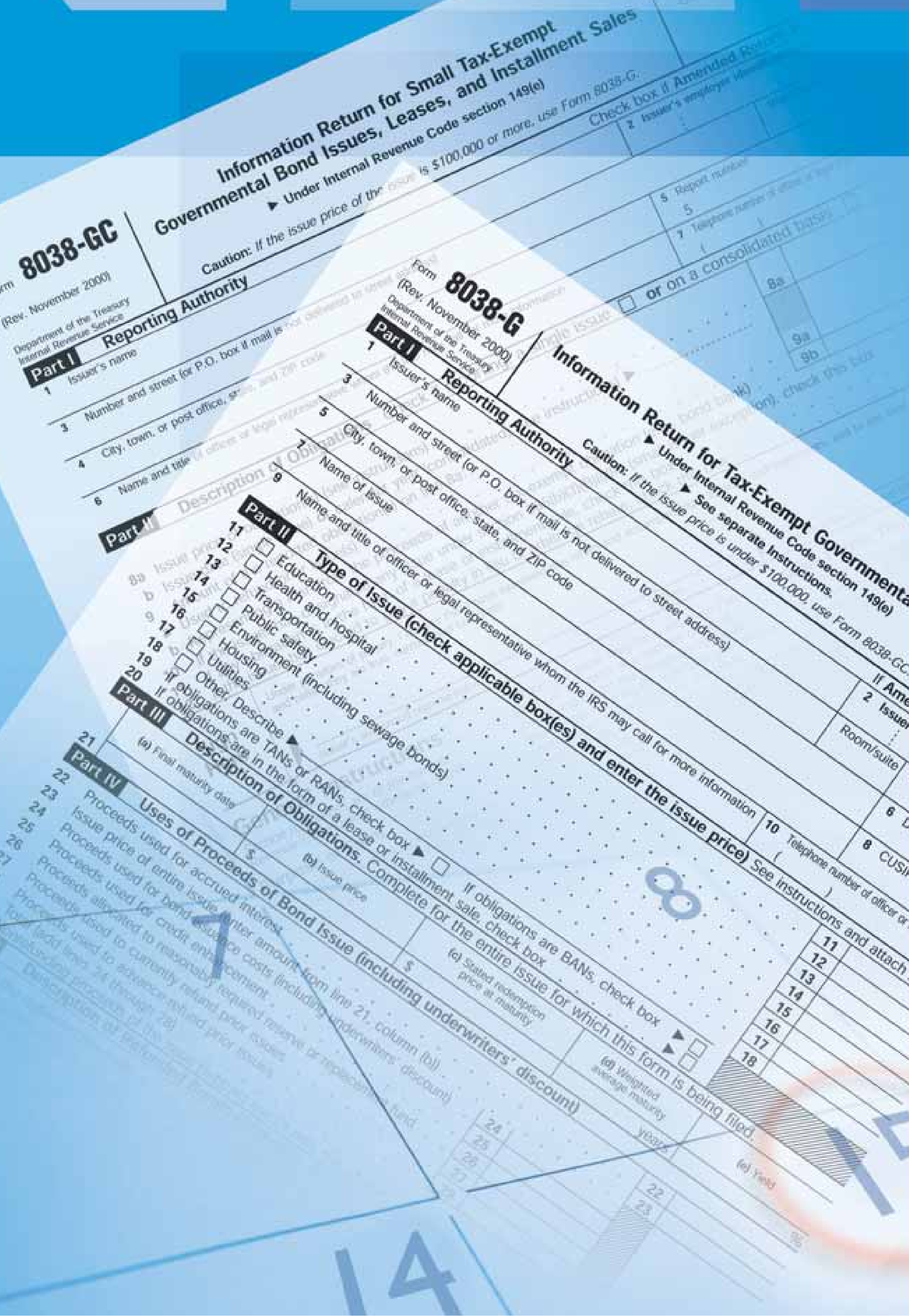
Internal Revenue Service

Tax Exempt and Government Entities

# Tax-Exempt Governmental Bonds

# Compliance Guide

*from the office of*
Tax Exempt Bonds




**Know the federal tax rules and filing requirements applicable to governmental 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 4079, *Tax-Exempt Governmental Bonds*, provides an overview for state and local governments of the general post-issuance rules under the federal tax law that apply to municipal financing arrangements commonly known as governmental 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 rules applicable to qualified 501(c)(3) bonds or other qualified private activity bonds, see IRS Publications 4077, *Tax-Exempt Bonds for 501(c)(3) Charitable Organizations,* 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.

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

## Tax-Exempt Governmental Bonds

Governmental bonds are tax-exempt bonds issued by a state or local government, the proceeds of which are generally used to finance activities or facilities owned, operated, or used by that or another government for its own purposes. This can include financing the building, maintenance, or repair of various types of public infrastructure such as highways, schools, fire stations, libraries, or other types of municipal facilities. Ultimately, though, a tax-exempt governmental bond is a state or local bond that is neither a private activity bond, as defined in section 141 of the Code, nor an arbitrage bond within the meaning of section 148 of the Code.

The post-issuance federal tax rules covered in this publication which are applicable to governmental bonds fall into two general categories: use of proceeds and other requirements related to the private activity bond tests; and arbitrage yield restriction and rebate requirements.

In order to comply with these and any other applicable requirements, issuers must ensure that the rules are met both at the time 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 governmental bonds.

### Information Filing Requirements

At the time of issuance, issuers of governmental bonds must comply with certain information filing requirements under section 149(e) of the Code. The information return that an issuer is required to file is dictated by the size of the issuance.

| Information Return | Due Dates | Where to File |
|---|---|---|
| **Form 8038-G, *Information Return for Tax-Exempt Governmental Obligations*, for governmental bonds with an issue price of $100,000 or greater.**<br><br>**Form 8038-GC, *Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales*, for governmental bonds with an issue price of less than $100,000.**<br><br>**(IRS Forms 8038-G and 8038-GC are included in this publication on pages 11 and 15, respectively, and can also be downloaded at www.irs.gov/bonds.)** | **Generally, both of these returns are required to be filed by the 15th day of the second calendar month following the quarter in which the bonds were issued. For example, the due date of the return for bonds issued on February 15th is May 15th.**<br><br>**Form 8038-GC may, however, also be filed on a consolidated basis for bond issues of less than $100,000 each.**<br><br>**Consolidated returns are due by February 15th following the calendar year in which the bonds were issued.**<br><br>**Example: An issuer issues three governmental bond issues as follows: Issue A issued on 3/1/00 for an issue price of $50,000; Issue B on 6/15/00 for $75,000; and Issue C on 10/5/00 for $30,000. Issuer can file one consolidated return by February 15, 2001, for all three bond issues.** | **File these returns with the IRS at the following address:**<br><br>**Internal Revenue Service**<br>**Ogden Submission Processing Center**<br>**Ogden, UT 84201-0027** |

**Requesting an Extension of Time to File:**
An issuer may request an extension of time to file Forms 8038-G or 8038-GC so long as the failure to file the return on time was not due to willful neglect. To request an extension, the issuer must follow the procedures outlined in Revenue Procedure 2002-48, 2002-37 I.R.B. 531, published September 16, 2002. These procedures generally require that the issuer: 1) attach a letter to Form 8038-G or Form 8038-GC briefly explaining when the return was required to be filed, why the return was not timely submitted, and whether or not the bond issue is under examination; 2) enter on top of the letter "This Statement is Submitted in Accordance With Revenue Procedure 2002-48;" and 3) file this letter and the return with the IRS at the Ogden Submission Processing Center.

### Registration Requirement

Section 149(a) of the Code provides that any tax-exempt bond, including governmental 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. For these purposes, "in registered form" is defined as follows:

**In Registered Form** — Section 5f.103-1(c) of the Treasury regulations provides that an obligation issued after January 20, 1987, pursuant to a binding contract entered into after January 20, 1987, is in registered form if:

- the obligation is registered as to both principal and any stated interest with the issuer (or its agent) *and* that the transfer of the obligation to a new holder may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder; or
- the right to the principal of, and stated interest on, the obligation may be transferred only through a book-entry system maintained by the issuer (or its agent); or
- the obligation is registered as to both principal and any stated interest with the issuer (or its agent) *and* may be transferred through both previous methods.

## Reasonable Expectations, Deliberate Actions, and the Private Activity Bond Tests

The term "governmental bond" means a bond issued as part of an issue, no portion of which consists of private activity bonds. Section 141 of the Code sets forth private activity bond tests for the purpose of limiting the volume of tax-exempt bonds that finance activities of persons other than state and local governmental entities. These tests serve to identify arrangements that actually or reasonably expect to transfer the benefits of tax-exempt financing to nongovernmental persons (including the federal government). The following is an overview of the basic rules relating to the use of bond proceeds and bond-financed property. In certain instances, additional requirements or exceptions may apply.

### Reasonable Expectations

An issue is an issue of private activity bonds (and not tax-exempt governmental bonds) if the issuer reasonably expects, on the issue date, that either: 1) the private business use test *and* the private payment or security test will be met; or 2) the private loan financing test will be met.

**Private Business Use Test** — More than 10% of the proceeds of an issue will be used for any private business use. In applying this test, bond proceeds can be used to finance the working capital expenditures of a government entity.

**Private Payment or Security Test** — More than 10% 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 Loan Financing Test** — The amount of proceeds of the issue which is to be used (directly or indirectly) to make or finance loans to persons other than governmental entities exceeds the lesser of 5% of such proceeds or $5M.

### Private Business Use

Certain uses of proceeds of governmental bonds can result in private business use.

**Trade or Business Use** — Use of bond proceeds or bond-financed property by a nongovernmental person (including the federal government) in furtherance of a trade or business activity is considered nonqualified private business use for tax-exempt bond purposes. Any activity carried on by a *person* (including a governmental entity or corporation) other than a *natural person* (individual acting as a member of the general public) is treated as a trade or business.

**Indirect Use** — Indirect uses of proceeds must also be considered in determining whether more than 10% of the proceeds of an issue will be used in a private business use. For example, a facility is treated as being used for a private business use if it is leased to a nongovernmental person and then sub-leased to a governmental person if the nongovernmental person's use is in a trade or business.

### Management and Service Contracts

Management contracts between government entities 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 government entity 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/bonds.

### Research Agreements

Generally, certain agreements, where private entities (including the federal government) sponsor research through government entities 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/bonds.

### Deliberate Actions

A governmental bond issue can lose its tax-exempt status if the issuer takes a deliberate action, subsequent to the issue date, which causes the issue to become a private activity bond issue. A deliberate action is any action taken by the issuer that is within its control. Intent to violate the requirements of section 141 of the Code is not necessary for an action to be deliberate.

### Remedial Actions

An issuer may take a remedial action prescribed in section 1.141-12 of the Treasury regulations to cure a deliberate action that would otherwise cause a governmental bond issue to become a private activity bond issue. Such remedial actions include redemption or defeasance of bonds, alternative use of disposition proceeds, and alternative use of bond-financed facilities.

Example: **A city simultaneously enters into two agreements through which it sells a building financed with tax-exempt bond proceeds to a corporation and leases the same building back from that corporation. This change in the ownership of the property results in private business use and is a deliberate action. However, this may be remediated if the allocable bonds are redeemed within 90 days of the action.**

Issuers 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 10, in this publication.

### Allocation of Proceeds

The proceeds of a governmental bond issue must be allocated among the various expenditures or other purposes of the issue in a manner demonstrating compliance with the private activity bond tests. 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** (next section) for an overview of these rules.

## Arbitrage Yield Restriction and Rebate Requirements

Tax-exempt bonds, including governmental 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 governmental 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 |
| 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 8, 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) 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 or person acting on the issuer'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 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 nonpurpose 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, two broad exceptions to the general rebate requirements applicable to governmental bonds: the small issuer exception; and the spending exceptions.

**Small Issuer Exception —** This exception provides that governmental bonds issued by certain small governmental issuers, with general taxing powers, are treated as meeting the arbitrage rebate requirement. A governmental entity has general taxing powers if it has the power to impose taxes of general applicability which, when collected, may be used for its general purposes.

An issue (other than a refunding issue) qualifies for the small issuer exception only if the issuer reasonably expects as of the issue date to issue, or in fact issues, $5M or less in tax-exempt governmental bonds during that calendar year. The aggregation rules of section 148(f)(4)(D) of the Code should be considered when determining whether this exception applies. The $5M limit shall be increased when financing public school capital expenditures by the lesser of $10M or so much of the aggregate face amount of the bonds attributable to financing the construction.

**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 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*.

## Prohibition Against Federal Guarantees

Section 149(b) of the Code provides that a tax-exempt bond, including a governmental 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 Governmental 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 distinguished 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.** |

Governmental bonds can be current and advance refunded. However, governmental bonds issued after 1985 can only be advance refunded one time.

Refunding 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*.

## 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-G** (Rev. November 2000)
Department of the Treasury
Internal Revenue Service

# Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)
▶ See separate Instructions.
Caution: If the issue price is under $100,000, use Form 8038-GC.

OMB No. 1545-0720

## Part I Reporting Authority

If Amended Return, check here ▶ ☐

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
3
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 applicable box(es) and enter the issue price)

See instructions and attach schedule

11 ☐ Education . . . 11
12 ☐ Health and hospital . . . 12
13 ☐ Transportation . . . 13
14 ☐ Public safety . . . 14
15 ☐ Environment (including sewage bonds) . . . 15
16 ☐ Housing . . . 16
17 ☐ Utilities . . . 17
18 ☐ Other. Describe ▶ 18
19 If obligations are TANs or RANs, check box ▶ ☐ If obligations are BANs, check box ▶ ☐
20 If obligations are in the form of a lease or installment sale, check box . . . ▶ ☐

## Part III Description of Obligations. 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 Bond Issue (including underwriters' discount)

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 issues . . . 27
28 Proceeds used to advance refund prior issues . . . 28
29 Total (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 Refunded Bonds (Complete this part only for refunding bonds.)

31 Enter the remaining weighted average maturity of the bonds to be currently refunded . . . ▶ years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded . . . ▶ years
33 Enter the last date on which the refunded bonds will be called . . . ▶
34 Enter the date(s) the refunded bonds were issued ▶

## Part VI Miscellaneous

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . 35
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions) 36a
b Enter the final maturity date of the guaranteed investment contract ▶
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units 37a
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the name of the issuer ▶ and the date of the issue ▶
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . ▶ ☐
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . ▶ ☐
40 If the issuer has identified a hedge, check box . . . ▶ ☐

**Sign Here**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the be st 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-G

Department of the Treasury
**Internal Revenue Service**

## (Revised November 2000)

## Information Return for Tax-Exempt Governmental Obligations

**Caution:** *If the issue price is less than $100,000, use Form 8038–GC.*
*Section references are to the Internal Revenue Code, unless otherwise noted.*

## General Instructions

### Purpose of Form

Form 8038-G is used by issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150. Complete Parts II through VI on the basis of available information and reasonable expectations as of the issue date. If an item does not apply to the issue you are reporting, write “N/A” in the space provided for the item.

### Who Must File

| IF the issue price (line 21, column (b)) is... | THEN, for tax-exempt governmental obligations issued after December 31, 1986, issuers must file... |
|---|---|
| $100,000 or more | A **separate** Form 8038-G for **each** issue |
| Less than $100,000 | **Form 8038-GC,** Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales |

### Other Forms That May Be Required

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. For private activity bonds, use **Form 8038,** Information Return for Tax-Exempt Private Activity Bond Issues.

### When To File

File Form 8038-G on or before the 15th day of the 2nd calendar month after the close of the calendar quarter in which the issue is issued. Complete Form 8038-G based on the facts as of the issue date.

**Late filing.** An issuer may be granted an extension of time to file Form 8038-G under Section 3 of Rev. Proc. 88-10, 1988-1 C.B. 635, if it is determined that the failure to file on time is not due to willful neglect. Enter at the top of the form “This Statement Is Submitted in Accordance with Rev. Proc. 88-10.” Attach to the Form 8038-G a letter explaining why Form 8038-G was not submitted to the IRS 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** below.

### Where To File

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

### Rounding to Whole Dollars

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

### Definitions

**Tax-exempt obligation.** This is any obligation, including a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

**Tax-exempt governmental obligation.** A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

**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 activity 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 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.

**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.

**Issue.** Generally, obligations are treated as part of the same issue only if they are issued by the same issuer, on the same date, and as part of a single transaction, or a series of related transactions. However, obligations issued during the same calendar year **(a)** under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or **(b)** with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (e.g., under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meets the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

**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 $1\frac{1}{2}$% 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-G, check the amended return box and complete Part I and only those parts of Form 8038-G you are amending. Use the same report number (line 4) as was used for the original report. Do not amend the estimated amounts previously reported once the actual amounts are determined.

**Line 1.** The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. For a lease or installment sale, the issuer is the lessee or the purchaser.

**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. This form may be obtained at Social Security Administration offices or by calling 1-800-TAX-FORM. If the EIN has not been received by the due date for Form 8038-G, write “Applied for” in the space for the EIN.

**Line 4.** After the preprinted **3**, enter two self-designated numbers. Number reports consecutively during any calendar year (e.g., 334, 335, etc.).

**Line 6.** The date of issue is generally the date on which the issuer physically exchanges the bonds that are part of the issue for the underwriter's (or other purchaser's) funds. For a lease or installment sale, enter the date interest starts to accrue.

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

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

## Part II—Type of Issue

Identify the type of obligations issued by checking the appropriate box(es) and entering the corresponding issue price (see **Issue price** under **Definitions** on page 1). Attach a schedule listing names and EINs of organizations that are to use proceeds of these obligations if different from those of the issuer.

**Line 18.** Check the box on this line only if lines 11 through 17 do not apply. Enter a description of the issue in the space provided.

**Line 19.** If the obligations are short-term tax anticipation notes or warrants (TANs) or short-term revenue anticipation notes or warrants (RANs), check the first box on this line. If the obligations are short-term bond anticipation notes (BANs), issued with the expectation that they will be refunded with the proceeds of long-term bonds at some future date, check the second box on this line.

**Line 20.** Check this box if property other than cash is exchanged for the obligation, e.g., acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a “municipal lease.”) Also check this box if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal. **Do not** check this box if the proceeds of the obligation are received in the form of cash, even if the term “lease” is used in the title of the issue.

## Part III—Description of Obligations

### Line 21

For column (b), see **Issue price** under **Definitions** on page 1.

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 a lease or installment sale, write “N/A” in column (c).

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 a lease or installment sale, enter instead the total number of years the lease or installment sale will be outstanding.

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%). If the issue is a lease or installment sale, enter the effective rate of interest being paid.

## Part IV—Uses of Proceeds of Bond Issue

For a lease or installment sale, write “N/A” in the space to the right of the title for Part IV.

**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 27.** Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds within 90 days of the date of issue.

**Line 28.** Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds after 90 days of the date of issue, including proceeds that will be used to fund an escrow account for this purpose.

## Part V—Description of Refunded Bonds

Complete this part only if the bonds are to be used to refund a prior issue of tax-exempt bonds. For a lease or installment sale, write “N/A” in the space to the right of the title for Part V.

**Lines 31 and 32.** The remaining weighted average maturity is determined without regard to the refunding. The weighted average maturity is determined in the same manner as on line 21, column (d).

**Line 34.** If more than a single issue of bonds will be refunded, enter the date of issue of each issue.

## Part VI—Miscellaneous

**Line 36.** If any portion of the gross proceeds of the issue are or will be invested in a guaranteed investment contract, as defined in Regulations section 1.148-1(b), enter the amount of the gross proceeds so invested, as well as the final maturity date of the guaranteed investment contract.

**Line 37a.** Enter the amount of this issue used to fund a loan to another governmental unit, the interest of which is tax-exempt.

**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 identified a hedge on its books and records in accordance with Regulations sections 1.148-4(h)(2)(viii) and 1.148-4(h)(5). These regulations permit an issuer of tax-exempt bonds to identify a hedge for it to be included in yield calculations for computing arbitrage.

**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 varies depending on individual circumstances. The estimated average time is:

| | |
|---|---|
| **Learning about the law or the form** . | 2 hr., 41 min. |
| **Preparing, copying, assembling, and sending the form to the IRS** ...... | 3 hr., 3 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 office. Instead, see **Where To File** on page 1.

Form **8038-GC**

(Rev. November 2000)

Department of the Treasury
Internal Revenue Service

# Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales

▶ **Under Internal Revenue Code section 149(e)**

**Caution:** *If the issue price of the issue is $100,000 or more, use Form 8038-G.*

OMB No. 1545-0720

**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 if mail is not delivered to street address) | Room/suite |
| 4 City, town, or post office, state, and ZIP code | 5 Report number<br>5 |
| 6 Name and title of officer or legal representative whom the IRS may call for more information | 7 Telephone number of officer or legal representative<br>( ) |

**Part II Description of Obligations** Check if reporting: a single issue ☐ **or** on a consolidated basis ☐ .

| | | | |
|---|---|---|---|
| 8a | Issue price of obligation(s) (see instructions) | 8a | |
| b | Issue date (single issue) **or** calendar year (consolidated) (see instructions) ▶ | | |
| 9 | Amount of the reported obligation(s) on line 8a: | | |
| a | Used to refund prior issue(s) | 9a | |
| b | Representing a loan from the proceeds of another tax-exempt obligation (e.g., bond bank) | 9b | |

10 If the issuer has designated any issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check this box ▶ ☐

11 If any obligation is in the form of a lease or installment sale, check this box ▶ ☐

12 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check this box ▶ ☐

**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.

▶ Issuer's authorized representative Date ▶ Type or print name and title

# General Instructions

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

## Purpose of Form

Form 8038-GC is used by the issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

## Who Must File

Issuers of tax-exempt governmental obligations with issue prices of less than $100,000 must file Form 8038-GC.

Issuers of a tax-exempt governmental obligation with an issue price of $100,000 or more must file **Form 8038-G,** Information Return for Tax-Exempt Governmental Obligations.

**Filing a separate return.** Issuers have the option to file a separate Form 8038-GC for any tax-exempt governmental obligation with an issue price of less than $100,000.

An issuer of a tax-exempt bond used to finance construction expenditures must file a separate Form 8038-GC for each issue to give notice to the IRS that an election was made to pay a penalty in lieu of arbitrage rebate (see the line 12 instructions).

**Filing a consolidated return.** For all tax-exempt governmental obligations with issue prices of less than $100,000 that are not reported on a separate Form 8038-GC, an issuer must file a consolidated information return including all such issues issued within the calendar year.

Thus, an issuer may file a separate Form 8038-GC for each of a number of small issues and report the remainder of small issues issued during the calendar year on one consolidated Form 8038-GC. However, a separate Form 8038-GC must be filed to give the IRS notice of the election to pay a penalty in lieu of arbitrage rebate.

## When To File

To file a **separate return,** file Form 8038-GC on or before the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued.

To file a **consolidated return,** file Form 8038-GC on or before February 15th of the calendar year following the year in which the issue is issued.

**Late filing.** An issuer may be granted an extension of time to file Form 8038-GC under Section 3 of Rev. Proc. 88-10, 1988-1 C.B. 635, if it is determined that the failure to file on time 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-GC a letter briefly stating why the form was not submitted to the IRS on time. Also indicate whether the obligation in question is under examination by the IRS. Do not submit copies of any bond documents, leases, or installment sale documents. See **Where To File** below.

## Where To File

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

## Other Forms That May Be Required

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. For private activity bonds, use **Form 8038,** Information Return for Tax-Exempt Private Activity Bond Issues.

## Rounding 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

**Obligations.** This refers to a single tax-exempt governmental obligation if Form 8038-GC is used for separate reporting or to multiple tax-exempt governmental obligations if the form is used for consolidated reporting.

**Tax-exempt obligation.** This is a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

**Tax-exempt governmental obligation.** A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

**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 activity 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 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.

**Issue.** Generally, obligations are treated as part of the same issue only if they are issued by the same issuer, on the same date, and as part of a single transaction, or a series of related transactions. However, obligations issued during the same calendar year **(a)** under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or **(b)** with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (e.g., under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meets the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

**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 of the issue 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 of 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

In general, a Form 8038-GC must be completed on the basis of available information and reasonable expectations as of the date the issue is issued. However, forms that are filed on a consolidated basis may be completed on the basis of information readily available to the issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

## Part I—Reporting Authority

**Amended return.** If this is an amended Form 8038-GC, check the amended return box. Complete Part I and only those lines of Form 8038-GC that are being amended. Do not amend estimated amounts previously reported once the actual amounts are determined. (See the Part II instructions below.)

**Line 1.** The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. In the case of a lease or installment sale, the issuer is the lessee or purchaser.

**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. This form may be obtained at Social Security Administration offices or by calling 1-800-TAX-FORM. If the EIN has not been received by the due date for Form 8038-GC, write "Applied for" in the space for the EIN.

**Line 5.** After the preprinted 5, enter two self-designated numbers. Number reports consecutively during any calendar year (e.g., 534, 535, etc.).

## Part II—Description of Obligations

**Line 8a.** 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.

**Line 8b.** For a single issue, enter the date of issue, generally the date on which the issuer physically exchanges the bonds that are part of the issue for the underwriter's (or other purchaser's) funds; for a lease or installment sale, enter the date interest starts to accrue. For issues reported on a consolidated basis, enter the calendar year during which the obligations were issued.

**Lines 9a and 9b.** For line 9a, enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds, including proceeds that will be used to fund an escrow account for this purpose. Both line 9a and 9b may apply to a particular obligation. For example, report on line 9a and 9b obligations used to refund prior issues which represent loans from the proceeds of another tax-exempt obligation.

**Line 11.** Check this box if property other than cash is exchanged for the obligation, e.g., acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease.") Also check this box if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal. **Do not** check this box if the proceeds of the obligation are received in the form of cash, even if the term "lease" is used in the title of the issue.

**Line 12.** 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 rebate with Form 8038-GC. See Rev. Proc. 92-22, 1992-1 C.B. 736, for rules regarding the "election document."

### 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 varies depending on individual circumstances. The estimated average time is:

**Learning about the law or the form** . . . . 1 hr., 58 min.

**Preparing the form** . . . . 3 hr., 3 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<br>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<br>( ) |
| 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.

IRS

Department of the Treasury
Internal Revenue Service

www.irs.gov

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