

# Tax-Exempt Private Activity Bonds

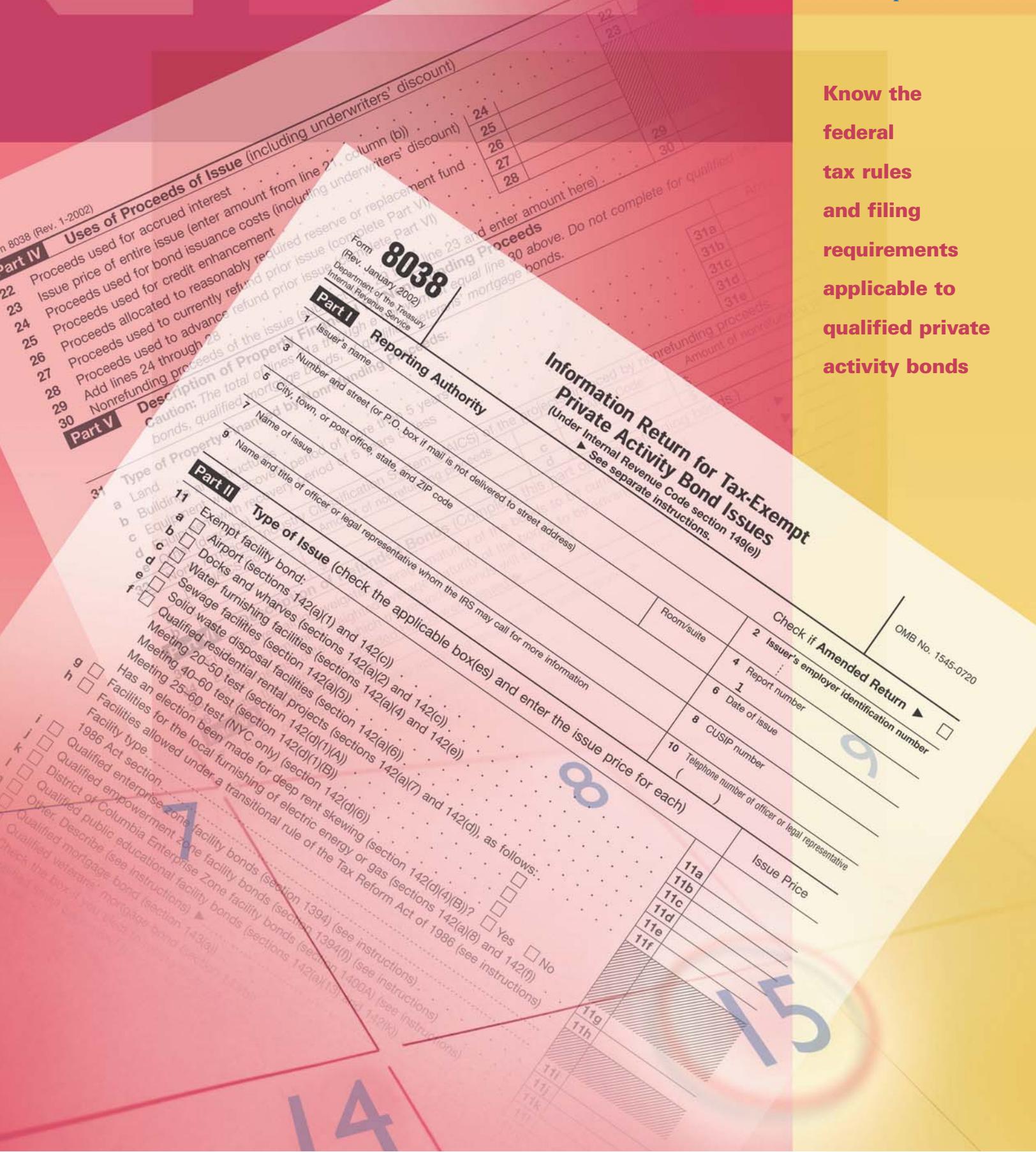
Internal Revenue Service

Tax Exempt and Government Entities

## Compliance Guide

from the office of Tax Exempt Bonds

Know the federal tax rules and filing requirements applicable to qualified private activity bonds



Form 8038 (Rev. 1-2002)

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

22 Proceeds used for accrued interest

23 Issue price of entire issue (enter amount from line 21, or column (b))

24 Proceeds used for credit enhancement

25 Proceeds allocated to reasonably required reserve or replacement fund

26 Proceeds used to advance refund prior issue (complete Part VI)

27 Proceeds used to advance refund prior issue (complete Part VI)

28 Add lines 24 through 28

29 Nonrefunding proceeds

30

**Part V Description of the Issue**

31 Type of Property

a Land

b Building

c Equipment

d Docks and wharves

e Water furnishing facilities

f Sewage disposal facilities

g Meeting 20-50 test

h Meeting 25-60 test

i Meeting 40-50 test

j Meeting 25-60 test (NYC only)

k Other

l Other

m Other

n Other

o Other

p Other

q Other

r Other

s Other

t Other

u Other

v Other

w Other

x Other

y Other

z Other

1 Issuer's name

2 Number and street (or P.O. box if mail is not delivered to street address)

3 City, town, or post office, state, and ZIP code

4 Name of issue

5 Name and title of officer or legal representative whom the IRS may call for more information

6 Room/suite

7 Check if Amended Return

8 Issuer's employer identification number

9 Report number

10 Date of issue

11 CUSIP number

12 Telephone number of officer or legal representative

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

11a Exempt facility bond:

a Airport facility bonds (sections 142(a)(1) and 142(c))

b Airport facility bonds (sections 142(a)(2) and 142(c))

c Docks and wharves (sections 142(a)(4) and 142(e))

d Water furnishing facilities (section 142(a)(6))

e Sewage disposal facilities (sections 142(a)(7) and 142(d))

f Meeting 20-50 test (section 142(d)(1)(A))

g Meeting 25-60 test (NYC only) (section 142(d)(1)(B))

h Meeting 40-50 test (section 142(d)(6))

i Meeting 25-60 test (NYC only) (section 142(d)(6))

j Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))

k Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))

l Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))

m Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))

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u Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))

v Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))

w Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))

x Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))

y Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))

z Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))

11a Issue Price

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**T**he 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 4078, *Tax-Exempt Private Activity Bonds*, provides an overview for state and local government issuers and borrowers of bond proceeds of the general post-issuance rules under the federal tax law that apply to municipal financing arrangements commonly known as qualified private activity 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”). The Code is available on the Internet at [http://uscode.house.gov/title\\_26.htm](http://uscode.house.gov/title_26.htm).

For information regarding the general rules applicable to governmental bonds or qualified 501(c)(3) bonds, see IRS Publications 4079, *Tax-Exempt Governmental Bonds*, and 4077, *Tax-Exempt Bonds for 501(c)(3) Charitable Organizations*, 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](http://www.irs.gov/bonds).

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## 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.

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## Tax-Exempt Private Activity Bonds

Qualified private activity bonds are tax-exempt bonds issued by a state or local government, the proceeds of which are used for a defined qualified purpose by an entity other than the government issuing the bonds (the “conduit borrower”). For a private activity bond to be tax-exempt, 95% or more of the net bond proceeds must be used for one of the several qualified purposes described in sections 142 through 145, and 1394 of the Code. The general rules covered in this publication apply to the qualified purposes listed below. In addition, the general rules applicable to qualified private activity bonds financing 501(c)(3) exempt purposes (section 145) are covered in IRS Publication 4077, *Tax-Exempt Bonds for 501(c)(3) Charitable Organizations*. Publication 4077 can be downloaded from the TEB Web site at [www.irs.gov/bonds](http://www.irs.gov/bonds).

### Internal Revenue Code Sections and Corresponding Qualified Purposes:

- Section 142 – exempt facilities such as: airports, docks and wharves, mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, qualified residential rental projects, facilities for the furnishing of local electric energy or gas, local district heating or cooling facilities, qualified hazardous waste facilities, high-speed intercity rail facilities, environmental enhancements of hydro-electric generating facilities, and qualified public educational facilities

**Access FREE**  
**online information and services**  
**at the**  
**Tax Exempt Bonds**  
**Web site at**  
**[www.irs.gov/bonds](http://www.irs.gov/bonds)**

- Section 143 – qualified mortgages and qualified veterans’ mortgages
- Section 144 – qualified small issue manufacturing facilities, qualified small issue farm property, student loans, and qualified redevelopment projects
- Section 1394 – qualified enterprise zone and empowerment zone facilities

While the bonds issued to finance these qualified purposes must comply with unique requirements applicable to each individually, the post-issuance federal tax rules covered in this publication are applicable to qualified private activity bonds generally. These rules fall into three basic categories: requirements related to issuance; use of proceeds and financed property requirements; and arbitrage yield restriction and rebate requirements.

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

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## Requirements Related to Issuance

The following is an overview of several general rules related to the issuance of qualified private activity bonds.

### Volume Cap Limit

The volume cap limit for certain qualified private activity bonds, as set forth in section 146 of the Code, limits an issuing authority to a maximum amount of tax-exempt bonds that can be issued to finance a particular qualified purpose during a calendar year. If, during a given year, an issuing authority issues qualified private activity bonds in excess of its applicable volume cap limit, the tax-exempt status of those bonds is jeopardized. The following types of qualified private activity bonds are either subject to or not subject to volume cap:

#### Qualified Private Activity Bonds

##### **Subject to Volume Cap**

- exempt facility bonds [mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, qualified residential rental projects, facilities for the local furnishing of electric energy or gas, local district heating or cooling facilities, qualified hazardous waste facilities, privately owned high-speed intercity rail facilities (only 25% of the bond proceeds), qualified enterprise zone and empowerment zone facilities]
- qualified mortgage revenue bonds
- qualified small issue bonds
- qualified student loan bonds
- qualified redevelopment bonds

### **Qualified Private Activity Bonds Not Subject to Volume Cap**

- exempt facility bonds [airports, docks and wharves, environmental enhancements of hydro-electric generating facilities, qualified public educational facilities, governmentally owned solid waste disposal facilities, governmentally owned high-speed intercity rail facilities, privately owned high-speed intercity rail facilities (only 75% of the bond proceeds)]
- qualified veterans' mortgage revenue bonds
- qualified 501(c)(3) bonds

The amount of volume cap allocated to an issuing authority for qualified mortgage revenue bonds is reduced when that authority establishes a mortgage credit certificate program under section 25 of the Code.

**Carryforward of Unused Volume Cap** – An issuing authority may elect to carry any unused volume cap of a calendar year forward for three years. This election can be made for each of the qualified private activity bond purposes subject to volume cap except for the purpose of issuing qualified small issue bonds. This election is made by filing IRS Form 8328, *Carryforward Election of Unused Private Activity Bond Volume Cap*, by the earlier of February 15th following the year in which the unused amount arises or the date of issue of bonds pursuant to the carryforward election. Once Form 8328 is filed, the issuer may not revoke the carryforward election or amend the carryforward amounts shown on the form.

### **Public Approval Requirement**

Generally, prior to issuance, qualified private activity bonds must be approved by the governmental entity issuing the bonds and, in some cases, each governmental entity having jurisdiction over the area in which the bond-financed facility is to be located. Public approval can be accomplished by either voter referendum or by an applicable elected representative of the governmental entity after a public hearing following reasonable notice to the public. Section 147(f) of the Code and section 5f.103-2 of the Treasury regulations define the specific rules for this requirement.

Section 1.147-2 of the Treasury regulations provides that issuers can use the remedial action rules under section 1.142-2 of the Treasury regulations (available to correct nonqualified uses of proceeds) to cure noncompliance with the public approval requirement (covered under *Qualified Use of Proceeds and Financed Property Requirements*, page 6).

### **Registration Requirement**

Section 149(a) of the Code provides that any tax-exempt bond, including qualified private activity 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.

### Information Return for Tax-Exempt Private Activity Bond Issues – Form 8038

At the time of issuance, issuers of qualified private activity bonds must comply with certain information filing requirements under section 149(e) of the Code by filing IRS Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues*.

## Filing Requirements for Issuers of Qualified Private Activity Bonds

<b>Information Return</b>	Form 8038, <i>Information Return for Tax-Exempt Private Activity Bond Issues</i> . This form is included in this publication on page 15, and can also be downloaded from the Internet at <a href="http://www.irs.gov/bonds">www.irs.gov/bonds</a> .
<b>Due Date</b>	Form 8038 is 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.
<b>Where to File</b>	Form 8038 must be filed with the IRS at the following address: Internal Revenue Service, Ogden Submission Processing Center, Ogden UT 84201-0027.
<b>Requesting an Extension of Time to File</b>	An issuer may request an extension of time to file Form 8038 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 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.

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## Qualified Use of Proceeds and Financed Property Requirements

Section 141 of the Code sets forth private activity bond tests for the purpose of limiting the volume of tax-exempt bonds that finance the activities of persons, other than state and local governments. However, under section 141(e), tax-exempt qualified private activity bonds are distinguished from taxable private activity bonds based largely upon the bond proceeds being used, or allocated, for one of several listed qualified purposes. An overview of the basic rules applicable to all qualified private activity bonds that relate to the qualified use of proceeds and bond-financed property follows. In each instance, additional requirements or exceptions will apply that relate to the particular qualified use for which the bonds were issued to finance. These additional use requirements are beyond the scope of this publication.

### Applicable Ninety-Five Percent Use Tests

As a general rule, qualified private activity bonds must satisfy a use test whereby 95% or more of the net proceeds of the bond issue must be used to finance the qualified purpose for which the bonds were issued. If the 95% use test applicable to a particular qualified purpose (as described under sections 142 through 145, and 1394 of the Code) is not satisfied, the result is a loss of the tax-exempt qualified status of the bond issue. Hence, the bonds become taxable private activity bonds. In applying these tests, the term “net bond proceeds” means the proceeds of a bond issue reduced by amounts allocated to a reasonably required reserve or replacement fund. Where bond proceeds are used to finance property, the use of such property is treated as a use of the bond proceeds.

With each qualified purpose, the law requires that 95% or more of the net bond proceeds must be used to finance that purpose. Each qualified purpose has a unique compliance regime required under its respective section of the Code. For information about these unique requirements, visit TEB’s Web site at [www.irs.gov/bonds](http://www.irs.gov/bonds).

### Costs Related to the Issuance of Bonds

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

In the case of an issue of qualified mortgage revenue bonds or qualified veterans’ mortgage revenue bonds, where the proceeds of the issue do not exceed \$20M, the issuance costs limitation is 3.5% of the proceeds of the issue. Qualified mortgage revenue bonds and qualified veterans’ mortgage revenue bonds are types of qualified private activity bonds issued to finance certain homeownership assistance programs.

Issuance costs financed with bond proceeds are treated as nonqualified use when applying the applicable 95% use test. Issuers can always finance issuance costs with funds other than the proceeds of the bond issue.

### **Failure to Properly Use Proceeds**

A qualified private activity bond issue can lose its tax-exempt status if a failure to properly use proceeds occurs subsequent to the issue date, which results in sufficient nonqualified use to cause the issue to fail any of the applicable use requirements. Hence, the issue becomes a taxable private activity bond issue. Generally, a failure to properly use proceeds occurs when an action is taken which results in the bonds not being allocated to the qualified purpose for which they were issued. However, with respect to unspent proceeds, a failure to properly use those proceeds may occur as early as the date on which either the issuer or conduit borrower reasonably determines that the bonds will not be expended on the qualified purpose for which they were issued.

### **Remedial Actions for Nonqualified Use**

Treasury regulations provide that certain prescribed remedial actions can be taken to cure nonqualified uses of proceeds that would otherwise cause qualified private activity bonds to lose their tax-exempt status. Such remedial actions can include the redemption or defeasance of bonds and, when the disposition of bond-financed property is exclusively for cash, the alternative use of such disposition proceeds to acquire replacement property within 6 months of the disposition date.

The following sections of the Treasury regulations provide remedial actions available for certain qualified private activity bonds. These Treasury regulations can be accessed through the Internet at <http://www.access.gpo.gov/nara/cfr-table-search.html>.

### **Sections of Treasury Regulations and Corresponding Qualified Private Activity Bonds**

- Section 1.142-2 – exempt facility bonds
- Section 1.144-2 – qualified small issue bonds and qualified redevelopment bonds
- Section 1.145-2 – qualified 501(c)(3) bonds
- Section 1.1394-1(m)(4) – qualified enterprise zone facility bonds, qualified empowerment zone facility bonds, and District of Columbia enterprise zone facility bonds

Issuers and conduit borrowers 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 14, in this publication.

### **Limitations on Acquisition of Land or Other Property**

Under section 147(c) of the Code, a qualified private activity bond will lose its tax-exempt status if 25% or more of the net bond proceeds are used directly or indirectly to acquire real property or if any amount of the proceeds are used directly or indirectly to acquire real property for farming purposes. However, certain exceptions to this rule are available for first-time farming and environmental purposes. This rule does not apply to qualified mortgage revenue bonds, qualified veterans' mortgage revenue bonds, qualified public educational facility bonds, or qualified 501(c)(3) bonds.

Generally, a qualified private activity bond will not be tax-exempt if any amount of the net proceeds is used for the acquisition of existing property unless the purpose of the acquisition is the first such use of that property. However, section 147(d) of the Code provides an exception to this prohibition for certain rehabilitation expenditures. This rule does not apply to qualified mortgage revenue bonds, qualified veterans' mortgage revenue bonds, or qualified 501(c)(3) bonds.

Section 1.147-2 of the Treasury regulations provides that issuers can use the remedial action rules under section 1.142-2 of the Treasury regulations to cure noncompliance with respect to the exceptions noted above for rehabilitation expenditures and acquiring property for environmental purposes. Section 1.142-2 is referenced under **Remedial Actions for Nonqualified Use**, page 7, in this publication.

### **Allocation of Proceeds**

The conduit borrower of the proceeds of a qualified private activity bond issue must allocate those proceeds among the various project expenditures in a manner demonstrating compliance with the qualified use requirements. These allocations must generally be consistent with the allocations made for determining compliance with the arbitrage yield restriction and rebate requirements as well as other federal tax filings. See **Arbitrage Yield Restriction and Rebate Requirements**, page 8, for an overview of these rules.

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## **Arbitrage Yield Restriction and Rebate Requirements**

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

Types of Investments	Materially Higher
general rule for purpose and nonpurpose investments	1/8 of one percentage point
investments in a refunding escrow	1/1000 of one percentage point
investments allocable to replacement proceeds	1/1000 of one percentage point
program investments	one and one-half percentage points
student loans	two percentage points
general rule for investments in tax-exempt bonds	no yield limitation
mortgage loans	must meet the requirements of section 143(g) of the Code

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 11, for information on how to file IRS Form 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate*, to make yield reduction payments.

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

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

**Rebate Requirements**

The rebate requirements of section 148(f) of the Code generally provide that, unless certain earnings on nonpurpose investments allocable to the gross proceeds of an issue are paid to the U.S. Department of the Treasury, the bonds in the issue will be arbitrage bonds. The arbitrage that must be rebated is based on the excess (if any) of the amount actually earned on 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, certain spending exceptions to the rebate requirements available for qualified private activity bonds.

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

**Spending Exceptions**

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

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

### **Arbitrage Rebate/Yield Reduction Filing Requirements – Form 8038-T**

Issuers of tax-exempt bonds file IRS Form 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate*, to make the following types of arbitrage payments: 1) yield reduction payments; 2) arbitrage rebate payments; 3) penalty in lieu of rebate payments; 4) the termination of the election to pay a penalty in lieu of arbitrage rebate; and 5) penalty for failure to pay arbitrage rebate on time. This form is included in this publication on page 21, and can also be downloaded from the Internet at [www.irs.gov/bonds](http://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 27, and can also be downloaded from the Internet at [www.irs.gov/bonds](http://www.irs.gov/bonds).

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### **Substantial User Prohibition**

Section 147(a) of the Code provides that no person who is a substantial user of a facility financed with qualified private activity bonds, or person related to such a user, can receive tax-exempt interest income as a holder of those bonds. Generally, a substantial user regularly uses a part of the bond-financed property in its trade or business. A complete definition of “substantial user” is set forth in section 1.103-11(b) of the Treasury regulations. This prohibition does not apply to qualified mortgage revenue bonds, qualified veterans’ mortgage revenue bonds, or qualified 501(c)(3) bonds.

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## Maturity Limitation

The average maturity of qualified private activity bonds may not exceed 120% of the average reasonably expected economic life of the financed facilities as determined under section 147(b) of the Code.

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## Prohibition Against Federal Guarantees

Section 149(b) of the Code provides that any tax-exempt bond, including a qualified private activity 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.

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## 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.

Even if an issue consists of hedge bonds, it will generally still be tax-exempt if two requirements are satisfied. First, at least 95% of the reasonably expected legal and underwriting costs associated with issuing the bonds must be paid within 180 days after the issue

date, *and* the payment of such costs must not be contingent upon the disbursement of the bond proceeds. Second, the issuer must reasonably expect that the net proceeds of the issue will be allocated to expenditures for governmental or qualified purposes within the following schedule:

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

## Refunding of Qualified Private Activity 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:

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

Qualified private activity bonds can be current refunded. However, with the exception of qualified 501(c)(3) bonds, section 149(d) of the Code disallows the advance refunding of qualified private activity bonds. Thus, with respect to the refunding of tax-exempt bond issues, governmental bonds and qualified private activity bonds are distinguished as follows:

	Current Refunding	Advance Refunding
<b>Governmental Bonds</b>	yes	yes
<b>Qualified Private Activity Bonds, generally</b>	yes	no
<b>Qualified 501(c)(3) Bonds</b>	yes	yes

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

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## 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](http://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](http://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](http://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.

### Telephone Information:

**The Voluntary Closing  
Agreement Program (VCAP):  
(202) 283-9798**

**The Office of Tax Exempt Bonds:  
(202) 283-2999**

**Customer Account Services, Toll Free:  
(877) 829-5500**

**Information Return for Tax-Exempt  
 Private Activity Bond Issues**  
 (Under Internal Revenue Code section 149(e))  
 ▶ See separate instructions.

**Part I Reporting Authority**

Check if Amended Return

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

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

Issue Price

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

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

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

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

**Part V Description of Property Financed by Nonrefunding Proceeds**  
**Caution:** The total of lines 31a through e below must equal line 30 above. Do not complete for qualified student loan bonds, qualified mortgage bonds, or qualified veterans' mortgage bonds.

<b>Part V Description of Property Financed by Nonrefunding Proceeds:</b>		Amount
a	Land . . . . .	31a
b	Buildings and structures . . . . .	31b
c	Equipment with recovery period of more than 5 years . . . . .	31c
d	Equipment with recovery period of 5 years or less . . . . .	31d
e	Other (describe) . . . . .	31e

<b>32 North American Industry Classification System (NAICS) of the projects financed by nonrefunding proceeds.</b>					
	NAICS Code	Amount of nonrefunding proceeds		NAICS Code	Amount of nonrefunding proceeds
a		\$	c		\$
b		\$	d		\$

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

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

- Part VII Miscellaneous**
- 37 Name of governmental unit(s) approving issue (see the instructions) ▶ \_\_\_\_\_
- 38 Check the box if you have designated any issue under section 265(b)(3)(B)(i)(III) . . . . . ▶
- 39 Check the box if you have elected to pay a penalty in lieu of arbitrage rebate . . . . . ▶
- 40 Check the box if you have identified a hedge (see instructions) . . . . . ▶
- 41 Check the box if the issue is comprised of qualified redevelopment, qualified small issue, or exempt facilities bonds and provide name and EIN of the primary private user . . . . . ▶
- Name ▶ \_\_\_\_\_ EIN ▶ \_\_\_\_\_

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

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.

**Sign Here**

▶ \_\_\_\_\_ ▶ \_\_\_\_\_  
 Signature of officer Date

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





# Instructions for Form 8038

(Rev. January 2002)

## Information Return for Tax-Exempt Private Activity Bond Issues

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

### A Change To Note

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

## General Instructions

### Purpose of Form

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

### Who Must File

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

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

### When To File

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

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

### Where To File

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

### Signature

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

### Other Forms That May Be Required

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

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

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

### Rounding Off to Whole Dollars

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

### Definitions

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

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

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

It also includes a bond, the proceeds of which **(a)** are to be used (directly or indirectly) to make or finance loans (other than loans described in section 141(c)(2)) to

persons other than governmental units and **(b)** exceeds the lesser of 5% of the proceeds or \$5 million.

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

### Qualified public educational facilities.

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

- Are owned by a private, for-profit corporation,
- Have a public-private partnership agreement with a state or local educational agency, and
- Are operated by a public educational agency as part of a public school system.

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

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

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

**Qualified mortgage bond.** This is part of an issue:

1. Of which all proceeds (except issuance costs and reasonably required reserves) are to be used to finance owner-occupied residences,
2. That meets the requirements of subsections (c) through (i) and (m)(7) of section 143,
3. That does not meet the private business tests of sections 141(b)(1) and (2), and
4. For which repayments of principal on financing provided by the issue (that are received more than 10 years after the date of issuance) are used to redeem bonds that are part of the issue. Amounts of less than \$250,000 need not be used to redeem bonds under this requirement.

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

1. Of which 95% or more of the net proceeds are to be used to provide residences for veterans,
2. For which the payment of the principal and interest is secured by the general obligation of a state,
3. That meets the requirements of subsections (c), (g), (i)(1), and (l) of section 143, and
4. That does not meet the private business tests of sections 141(b)(1) and (2).

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

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

1. 90% or more of the net proceeds are to be used to make or finance student loans under a program of general application to which the Higher Education Act of 1965 applies (see section 144(b)(1)(A) for additional requirements), or
2. 95% or more of the net proceeds are to be used to make or finance student loans under a program of general application approved by the state (see section 144(b)(1)(B) for additional requirements).

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

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

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

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

- Qualified hospital bond, i.e., part of an issue of which 95% or more of the net proceeds are to be used for a hospital.
- Qualified nonhospital bond, i.e., other than a qualified hospital bond. In general, an organization cannot have more than \$150 million of qualified 501(c)(3) nonhospital on 145(b). However, the

limit does not apply to bonds issued after August 5, 1997, if 95% or more of the net proceeds of the issue are to be used solely for capital expenditures incurred after that date.

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

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

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

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

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

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

1. At least 75% of the available construction proceeds are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, and
2. All the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

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

## Specific Instructions

### Part I—Reporting Authority

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

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

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

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

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

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

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

### Part II—Type of Issue

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

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

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

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

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

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

**Line 11i.** Check the box if the bonds are part of any issue 95% or more of the net proceeds of which are to be used to provide

any enterprise zone facility in an empowerment zone or enterprise community. See section 1394.

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

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

The updated information on the designated urban empowerment zones is available at [www.hud.gov](http://www.hud.gov); for the designated rural empowerment zones, go to [www.ezec.gov](http://www.ezec.gov).

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

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

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

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

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

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

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

**Line 17.** Attach a schedule listing the name and EIN for each 501(c)(3) organization

benefiting from these qualified hospital bonds.

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

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

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

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

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

### Part III—Description of Bonds

#### Line 21

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

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

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

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

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

### Part IV—Uses of Proceeds of Issue

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

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

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

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

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

### Part V—Description of Property Financed by Nonrefunding Proceeds

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

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

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

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

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

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

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

The NAICS codes are available on the U.S. Census Bureau Web Site at [www.census.gov/naics](http://www.census.gov/naics).

## Part VI—Description of Refunded Bonds

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

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

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

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

## Part VII—Miscellaneous

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

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

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

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

**Line 41.** Check this box if:

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

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

## Part VIII—Volume Cap

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

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

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

- Airports.
- Docks.
- Wharves.
- Environmental enhancements of hydroelectric generating facilities.
- Solid waste facilities. **Note:** *These facilities may have to be governmentally owned. See section 146(h).*
- High-speed intercity rail facilities. **Note:** *Only 75% of any exempt facility bond for these facilities is not subject to the volume cap; however, no volume cap applies if all the bond-financed property is governmentally owned. See sections 146(g) and 142(b)(1)(B).*

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

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

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

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

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

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

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

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

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

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

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

# Arbitrage Rebate 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

**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 <b>7</b>	
5 City, town, or post office, state, and ZIP code		6 Date of issue	
7 Name of issue		8 CUSIP number	
9 Name and title of officer or legal representative whom the IRS may call for more information		10 Telephone number of officer or legal representative ( )	

11 Type of issue	Issue price	11	\$
12 Amount of arbitrage rebate previously paid for this issue		12	\$
13 If Form 8038, Form 8038-G, or Form 8038-GC was not filed, check here	<input type="checkbox"/>		
14 Date of most recently filed Form 8038-T for this issue (MMDDYYYY)			
15 Is this the final Form 8038-T for this issue?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

**Part II Yield Reduction, Arbitrage Rebate, and Penalty in Lieu of Arbitrage Rebate**

**Yield Reduction**

16 Amount of yield reduction payment (see instructions)	16	\$
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**Arbitrage Rebate**

17 Amount of rebate paid for the period (MMDDYYYY) from to	17	\$
18 Penalty for failure to pay arbitrage rebate on time (attach statement)	18	\$
19 Interest on underpayment of arbitrage rebate (see instructions)	19	\$

**Penalty in Lieu of Arbitrage Rebate**

20 Number of months since date of issue, check the box: <input type="checkbox"/> 6 mos <input type="checkbox"/> 12 mos <input type="checkbox"/> 18 mos <input type="checkbox"/> 24 mos <input type="checkbox"/> Other. No. of mos		
21 Available construction proceeds \$ Unspent \$		
22 If you elected to terminate the election to pay the penalty in lieu of arbitrage rebate, check one of the following (see instructions): <input type="checkbox"/> A <input type="checkbox"/> B Date of termination (MMDDYYYY)		
23 Penalty in lieu of rebate	23	\$
24 Penalty upon termination	24	\$
25 Penalty for failure to pay on time (attach statement)	25	\$
26 Interest on underpayment of penalty in lieu of rebate or upon termination (see instructions)	26	\$
27 <b>Total payment.</b> Add lines 16, 17, 18, 19, 23, 24, 25, and 26. Enter total here	27	\$

**Part III Elections by the Issuer** Check "Yes" or "No" for each question (see instructions)

		Yes	No
<b>A. Elections made under the 1992 regulations. Did you elect to:</b>			
28 Apply the rules under section 148 to determine if the bond complies with section 103(c)(6)(D) of the 1954 Code?	28		
29 Treat the last day of the bond year on a variable yield issue as the computation date?	29		
30 Treat a transitioned variable yield issue as a fixed yield issue?	30		
31 Treat a variable yield bond that is not a tender bond as a fixed yield bond after it converted to a fixed rate?	31		
32 Continue treating an issue as a variable yield issue after all the bonds in the issue converted to a fixed rate?	32		
33 Recompute the yield on a transitioned fixed yield issue?	33		
<b>B. Elections made under the 1993 regulations. Did you elect to:</b>			
34 Identify a hedge?	34		
35 Use an actual facts analysis?	35		
36 Exclude earnings on a reasonably required reserve or replacement fund from available construction proceeds?	36		
37 Treat the different purposes of a multipurpose issue as separate issues for purposes of the 2-year exception?	37		
38 Treat each loan of a pooled financing issue as a separate issue for purposes of applying the spending exception?	38		
39 Apply certain provisions of section 1.148-11(b) before the effective date?	39		
40 Apply certain provisions of section 1.148-11A(i) before the effective date?	40		

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.

**Sign Here**

Signature of officer	Date	Type or print name and title
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# Instructions for Form 8038-T



Department of the Treasury  
Internal Revenue Service

(Rev. January 2002)

## Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate

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

### General Instructions

**Note:** In general, the 1993 regulations apply to bonds sold after July 7, 1997. For the 1993 regulations, see T.D. 8476, 1993-2 C.B. 13 and T.D. 8538, 1994-1 C.B. 26. However, if the 1992 regulations apply, see T.D. 8418, 1992-1 C.B. 29.

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

#### 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 on Form 8038-T arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments.

**Note:** For *Who Must File and When To File* see page 2.

#### Qualified mortgage bonds and qualified veterans' mortgage bonds.

Section 143(g)(3) and section 103A(i)(4) of the 1954 Code provide the arbitrage rebate rules for qualified mortgage bonds and qualified veterans' mortgage bonds issued after August 15, 1986. 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.

#### Industrial development bonds.

Obligations that are part of an issue of industrial development bonds issued before 1986 (other than housing obligations described in section 103(b)(4)(A) of the 1954 Code or section 11(b) of the Housing Act of 1937) are subject to the rebate requirements of section 103(c)(6)(D) of the 1954 Code. However, see the instructions for line 28 on page 4.

### Arbitrage Rebate

**Computation of arbitrage rebate.** The amount of the rebatable arbitrage is:

1. The excess of the amount earned on all nonpurpose investments over the amount which would have been earned if the nonpurpose investments were invested at a rate equal to the bond yield, plus
2. Any income attributable to the excess described in 1.

For rules on computing the arbitrage rebate for bonds subject to section 148(f), see the regulations under section 148.

The 1993 regulations, as amended, are generally effective for bonds sold after July 7, 1997. Generally, an issuer may apply these regulations to bonds that are outstanding on July 8, 1997, and to which certain prior regulations apply. Moreover, the 1997 amendments to the 1993 regulations, redesignating the temporary rules as sections 1.148-1A through 1.148-6A and 1.148-9A through 1.148-11A, together with the applicable provisions of the original 1993 regulations, continue to apply to bonds issued before July 8, 1997. The 18-month spending exception to the rebate requirement cannot be applied to any bond sold before July 1, 1993.

For rules on computing the arbitrage rebate for bonds subject to section 143(g)(3) or section 103A(i)(4) of the 1954 Code, see Temporary Regulations section 6a.103-2(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. Also, see line 28 and its instructions as well as the 1992 and 1993 regulations.

**Exceptions.** There is no rebate requirement under section 148(f) if the exception for temporary investments under section 148(f)(4)(B) applies or the exception for governmental units issuing \$5 million or less of bonds under section 148(f)(4)(D) applies.

**Note:** The exception under section 148(f)(4)(D) is modified as follows: a governmental issuer may issue up to \$10 million in bonds after 1997 (\$15 million after 2001) per calendar year (aggregate face amount of bonds other than private activity bonds), if no more than \$5 million is used to finance expenditures other than public school capital expenditures.

Also, the rebate requirement does not apply to "available construction proceeds" of a construction issue if certain spending requirements are met; or if those spending requirements are not met, an election is made to pay a penalty in lieu of arbitrage rebate. See section 148(f)(4)(C).

The arbitrage rebate exception for a construction issue only applies to "available construction proceeds." Other proceeds of a construction issue do not qualify for this exception.

Further, the rebate requirement generally does not apply to bond 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.

#### Failure To Pay Arbitrage Rebate on Time

Failure to pay the proper amount of arbitrage rebate on time may cause the bond to be treated as not being, and as never having been, tax exempt.

**Under the regulations effective prior to July 1, 1993.** Generally, if the failure is an innocent failure, the failure will be treated as not having occurred if the issuer pays a correction amount to the United States. Detailed rules relating to innocent failures, the correction amount, and the time to pay the correction amount are contained in Regulations section 1.148-1(c) (1992 regulations).

Even if the failure is not innocent or not so treated, the failure will be treated as not having occurred if the failure is not due to willful neglect and the issuer pays a correction amount and a penalty to the United States. Detailed rules relating to willful neglect, the correction amount, and the penalty and interest are contained in Regulations section 1.148-1(c) (1992 regulations).

**Under the regulations effective after July 7, 1997.** If the failure is not due to willful neglect, the failure will be treated as not having occurred if, in addition to payment of the proper arbitrage rebate amount, the issuer pays a penalty and interest to the United States. Detailed rules relating to the penalty and interest are contained in Regulations section 1.148-3(h).

#### Penalty in Lieu of Arbitrage Rebate

In the case of a construction issue, an exception from the rebate requirement is provided under section 148(f)(4)(C) for the available construction proceeds of the issue if certain spending requirements are met. Since this exception only applies to available construction proceeds, other proceeds of a construction issue do not qualify for this exception. Thus, rebatable arbitrage may be owed for proceeds other than available construction proceeds even if this exception is satisfied for the available construction proceeds. The issuer may have elected to pay a penalty in lieu of rebating arbitrage for the available construction proceeds if the spending requirements of section 148(f)(4)(C) are not satisfied. The penalty, if any, is payable for each applicable

6-month period after the date the bonds are issued. For detailed rules concerning these provisions see Regulations section 1.148-7.

A "construction issue" is an issue of tax-exempt bonds that meets both of the following conditions:

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

2. All bonds that are part of such 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.

Generally, the "available construction proceeds" means the amount equal to the issue price of the construction issue:

1. Increased by earnings on the issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue, and earnings on all of the foregoing earnings, **and**

2. Reduced by the amount of the issue price in any reasonably required reserve or replacement fund and the issuance costs financed by the issue. See section 148(f)(4)(C)(vi).

The penalty in lieu of arbitrage rebate is equal to 1½% of the amount of the available construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and Regulations section 1.148-7 for the rules for construction proceeds, available construction proceeds, and spending requirements needed to compute the penalty in lieu of arbitrage rebate.

### **Penalty for the Termination of Election To Pay a Penalty in Lieu of Arbitrage Rebate**

You may terminate the election to pay a penalty in lieu of arbitrage rebate by paying a 3% penalty. Generally, compute the penalty for the termination election under section 148(f)(4)(C)(viii) with reference to the end of the initial temporary period. See section 148(c) and Regulations section 1.148-2(e) for definitions of a temporary period. Compute the amount of the penalty for the termination election under section 148(f)(4)(C)(ix) with reference to the date of the election. See section 148(f)(4)(C)(viii) and (ix) for the rules for terminating an election to pay a penalty in lieu of rebate.

### **Failure To Pay Timely the Penalty in Lieu of Arbitrage Rebate or the Termination Penalty**

Failure to pay the proper amount of penalty and interest on time (after an appropriate election either to pay penalty in lieu of arbitrage rebate or to pay a

termination penalty) may cause the bond (or any refunding bond with respect thereto) to be treated as not being, and as never having been, tax exempt. In general, the rules discussed in **Failure To Pay Arbitrage Rebate on Time**, on page 1, also apply to these penalties. See Regulations section 1.148-6(n) (1992 regulations) and 1.148-3(h) (1993 regulations).

### **Who Must File**

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

1. Any yield reduction payments in accordance with Regulations section 1.148-5(c).

2. The arbitrage rebate to the United States under section 143(g)(3), section 148(f), or the corresponding provisions of the 1954 Code. Payments may be made by a person acting for the issuer for bonds subject to section 103(c)(6)(D) of the 1954 Code.

3. The penalty:

- In lieu of arbitrage rebate, or
- To terminate the election to pay a penalty in lieu of arbitrage rebate.

**Note:** *Issuers must also use Form 8038-T to pay any penalties and interest on the failure to pay on time amounts due in 2 and 3 above.*

### **When To File**

#### **Yield Reduction Payments**

File Form 8038-T when paying yield reduction payments to the United States in accordance with Regulations section 1.148-5(c). In general, an amount is paid under Regulations section 1.148-5(c) if it is paid to the United States at the same time and in the same manner as rebate amounts are required to be paid.

A yield reduction overpayment may also be recovered. For details, see Regulations section 1.148-3(i) and **Recovery of Overpayment** below.

#### **Arbitrage Rebate**

File Form 8038-T when paying the arbitrage rebate to the United States. Under section 148(f), the installments are due 60 days after the end of every 5th bond year during the term of the issue. The final installment is due 60 days after the date the last bond of the issue is discharged.

Under Regulations section 1.148-1(b) (1992 regulations), each installment must be in an amount that equals at least 90 percent of the rebatable arbitrage as of the computation date (i.e., the end of the 5-year period). In addition, under Regulations section 1.148-1(b) (1992 regulations), the final installment must include all of the rebatable arbitrage as of the last computation date, plus any income attributable to the rebatable arbitrage.

Under Regulations section 1.148-3(f), each installment must be in an amount that, when added to the future value as of the computation date (i.e., the end of the 5-year period) of previous rebate payments made for the issue, equals at least 90 percent of the rebatable arbitrage as of the computation date. In addition, under Regulations section 1.148-3(f), the final installment must include 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 sections 1.148-3(f)(3) and 1.148-3(c) for detailed rules determining future value for these purposes.

**Special rules.** For a tax and revenue anticipation bond, you need not make the last installment of arbitrage rebate until at least 8 months after the bond issue date. See also section 143(g)(3) and section 103A(i)(4) of the 1954 Code for rules concerning qualified mortgage bonds and qualified veterans' mortgage bonds. See Temporary Regulations section 1.103-15AT(e) (1992 regulations) for rules concerning industrial development bonds.

#### **Penalties**

Under section 148(f)(4)(C), the payment of a penalty in lieu of arbitrage rebate must be made no later than 90 days after the end of each 6-month period relating to the penalty.

Payment of the 3% penalty to terminate the penalty in lieu of arbitrage rebate must be made to the United States no later than 90 days after (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).

See the instructions for line 25 for paying a penalty for failure to pay on time either of the penalties described above.

See the instructions for line 18 for paying a penalty for failing to pay the arbitrage rebate to the United States on time.

#### **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. To request recovery of amounts paid under rebate provisions, including yield reduction payments, see new **Form 8038-R**, Request For Recovery of Overpayments Under Arbitrage Rebate Provisions.

#### **Where To File**

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

#### **Signature**

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

Also type or print the name and title of the person signing Form 8038-T.

## Specific Instructions

### Part I—Reporting Authority

**Amended Return.** If you are filing an amended Form 8038-T, check the amended return box. Complete Part I and only those parts of Form 8038-T you are amending. Use the same report number (line 4) that was used in the original report.

**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 4.** After the predesignated 7, enter two self-designated numbers. Number reports consecutively during any calendar year (e.g., 734, 735, etc.).

**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. If the issue does not have a CUSIP number, enter "None."

**Line 11.** Enter the type of issue as was checked for this issue on Form 8038 or Form 8038-G. For bonds previously reported on Form 8038-GC, enter "Small Governmental Bond." Also enter the total issue price that was listed on Form 8038, 8038-G, or 8038-GC filed for this issue.

**Line 14.** Enter the date of the most recently filed (previous) Form 8038-T for this issue.

**Line 15.** In case of a rebate of arbitrage, check the box marked "Yes" only if the issue has been discharged (redeemed, called, etc.). In the case of the payment of a penalty in lieu of arbitrage rebate, check the box marked "Yes" only if the spending provisions of section 148(f)(4)(C) have been fully complied with or if a termination penalty payment is made with this form. In all other cases, check the box marked "No."

### Part II—Yield Reduction, Arbitrage Rebate, and Penalty in Lieu of Arbitrage Rebate

Under limited circumstances, you may be rebating arbitrage **and** paying a penalty in lieu of rebating arbitrage.

#### Yield Reduction

**Line 16.** To determine the yield reduction payment to which Regulations section 1.148-5(c) applies, treat any amount paid to the United States, including a rebate amount, as a payment for that investment which reduces the yield.

#### Arbitrage Rebate

**Line 17.** Enter the period of time relating to this rebate payment. For any installment other than the final installment, the period of time should reflect the bond years selected.

**Line 18.** If the issuer failed to make the appropriate arbitrage rebate payment with Form 8038-T, see **Failure To Pay Arbitrage Rebate on Time** on page 1. Compute the penalty for failure to pay on time and enter the total on line 18.

In addition, whichever is applicable, attach a statement to this Form 8038-T explaining why there was (1) an innocent failure or (2) no willful neglect in the issuer's failure to pay the arbitrage rebate due. Submit the statement relating to an innocent failure according to the format and procedure of Section 4, Rev. Proc. 90-11, 1990-1 C.B. 469. Submit the statement relating to why there was no willful neglect according to the format and procedure of Section 3, Rev. Proc. 88-10, 1988-1 C.B. 635.



*Follow the procedures for each of the revenue procedures except use the mailing address under **Where To File** on page 2.*

**Line 19.** If the issuer failed to make the appropriate rebate payment with Form 8038-T, see **Failure To Pay Arbitrage Rebate on Time** on page 1. Compute the interest on the underpayment of arbitrage rebate and enter the total on line 19.

#### Penalty in Lieu of Arbitrage Rebate

If you are completing this section, you must have made a timely election under section 148(f)(4)(C)(vii). See also section 148(f)(4)(C)(xv).

**Line 20.** The expenditure requirements for available construction proceeds change at the end of each 6-month period following the date the bonds are issued. Check the appropriate box for the number of months between the date that the bonds were issued and the end of the reporting period for which this Form 8038-T is being filed. If the period is over 24 months (2 years), or is other than that given for the labeled boxes, check the box marked "Other" and give the number of months since the date of issue.

**Note:** *File a separate Form 8038-T for each different time period associated with a checked box.*

**Line 21.** Indicate the available construction proceeds and the unspent available construction proceeds as of the end of the 6-month period for which this Form 8038-T is filed.

#### Line 22. Check Box A if:

1. The election to terminate the 1½% penalty in lieu of arbitrage rebate was made not later than 90 days after the earlier of the end of the initial temporary period or the date the construction is substantially completed,

2. The issuer pays with this Form 8038-T an amount equal to 3% of the available construction proceeds of the issue that have not been spent for the governmental purpose of the issue as of the close of the initial temporary period multiplied by the number of years (including fractions) in the initial temporary period,

3. The amount of the available construction proceeds of the issue that is not spent for the governmental purposes of the issue as of the close of the initial temporary period is invested at a yield not exceeding the yield on the issue or which is invested in any tax-exempt bond which is not investment property, **and**

4. The amount of the available construction proceeds of the issue that is not spent for the governmental purposes of the issue as of the earliest date on which bonds may be redeemed is used to redeem bonds on that date.

#### Check Box B if:

1. The election to terminate the 1½% penalty in lieu of arbitrage rebate was made before the end of the initial temporary period, and not later than 90 days after the date the construction was substantially completed,

2. The construction financed by the construction issue has been substantially completed before the end of the initial temporary period,

3. The issuer has identified on its records an amount of available construction proceeds that will not be spent for the governmental purposes of the issue, **and**

4. The issuer pays with this Form 8038-T an amount equal to 3% of the available construction proceeds of the issue that have not been spent for the governmental purpose of the issue as of the close of the temporary period (shortened as if the temporary period ended as of the date the election was made), multiplied by the number of years (including fractions) in the initial temporary period.

**Line 25.** If the issuer failed to make the appropriate penalty payment with Form 8038-T, see **Failure To Pay Timely the Penalty in Lieu of Arbitrage Rebate or the Termination Penalty** on page 2. Compute the penalty for failure to pay on time and enter the total on line 25. See the instructions for line 18 for the applicable statement to attach to Form 8038-T.

**Line 26.** If the issuer failed to make the appropriate penalty payment with Form 8038-T, see **Failure To Pay Timely the Penalty in Lieu of Arbitrage Rebate or the Termination Penalty** on page 2. Compute the interest on the underpayment of the penalty in lieu of arbitrage rebate, or penalty upon termination, and enter the total on line 26.

**Line 27.** Combine all payment amounts on lines 16, 17, 18, 19, 23, 24, 25, and

26. Enclose a check or money order for this 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 III—Elections by the Issuer

This part applies only if the bonds are subject to the requirements of the regulations under section 148.

For rules relating to elections, see Regulations section 1.148-8(h) (1992 regulations) and 1.148-1(d). See the instructions for lines 39 and 40 on applying the 1993 regulations retroactively.

#### A. Elections made under the 1992 regulations

**Line 28.** This election applies to a bond subject to section 103(c)(6)(D) of the 1954 Code. You may elect to apply the rules under the regulations for section 148 to determine if the bond complies with section 103(c)(6)(D) of the 1954 Code.

**Line 29.** You may elect to treat the last day of any bond year on a variable yield issue as a computation date. If you make this election, the yield on the issue may be computed for periods shorter than 5 years. This election is revocable under certain conditions. See Regulations section 1.148-3(b)(2)(ii)(B).

**Line 30.** You may elect to treat any variable yield issue sold on or before May 15, 1989, and issued on or before June 14, 1989, as a fixed yield issue. If you make this election, the yield on the issue is computed over the term of the issue rather than period-by-period. See Regulations section 1.148-3(b)(1)(ii).

**Line 31.** If you make this election, a variable yield bond that is not a tender bond is treated as a fixed yield bond after the close of business on the first day the bond would be a fixed yield bond if issued immediately after the close of business on that day. See Regulations section 1.148-3(b)(3)(i).

**Line 32.** If you make this election, a variable yield issue that has been converted to a fixed yield issue will continue to be treated as a variable yield issue. See Regulations section 1.148-3(b)(3)(ii).

**Line 33.** You may elect to recompute the yield on certain fixed yield issues sold on or before May 15, 1989, and issued on or before June 14, 1989. Otherwise, you must use the yield computed as of the issue date for such purposes. See Regulations section 1.148-3(c)(5).

#### B. Elections made under the 1993 regulations

**Line 34.** Regulations section 1.148-4(h)(2)(viii) permits an issuer of tax-exempt bonds to identify a hedge for

the hedge to be included in yield calculations that are necessary to compute arbitrage profits. Under Regulations section 1.148-4(h)(5), hedges can be entered into prior to the issuance of the tax-exempt bonds.

**Line 35.** Regulations section 1.148-7(f)(2) permits an issuer to use an "actual facts" analysis for a construction issue under Regulations sections 1.148-7(e) through (m) rather than an analysis based on reasonable expectations. This election does not apply for purposes of determining whether an issue is a construction issue under Regulations section 1.148-7(f)(1) if the election for the 1½% penalty in lieu of arbitrage rebate is made under Regulations section 1.148-7.

**Line 36.** Regulations section 1.148-7(i)(2) permits an issuer to elect to exclude earnings on a reasonably required reserve or replacement fund from the definition of available construction proceeds. Earnings on any reasonably required reserve or replacement fund are available construction proceeds only to the extent that those earnings accrue before the earlier of the date construction is substantially completed or the date that is 2 years after the issue date. If the election is made, the rebate requirement applies to the excluded amounts from the issue date.

**Line 37.** Regulations section 1.148-7(j) permits an issuer to elect to treat the different purposes of a multipurpose issue as two, and only two, separate issues for purposes of the 2-year exception if certain conditions are present. See Regulations section 1.148-7(j)(1).

**Line 38.** Regulations section 1.148-7(b)(6) permits an issuer of a pooled financing issue to apply the spending exceptions separately to each conduit loan. Detailed rules relating to this election are contained in Regulations section 1.148-7(b)(6)(ii).

**Line 39.** Regulations section 1.148-11(b) permits issuers to apply certain provisions of the regulation before the effective date. Regulations section 1.148-11 permits an issuer to retroactively apply the 1993 regulations in whole—but not in part—to issues that were outstanding before July 8, 1997, and that are subject to section 148(f) or sections 103(c)(6) or 103A(i) of the Internal Revenue Code of 1954. Also, the issuer has the option to apply individual provisions of Regulations sections 1.148-1 through 1.148-11 to bonds issued before July 1, 1993. The 18-month spending exception to the rebate requirement cannot be retroactively applied before July 1, 1993. Regulations section 1.148-11 also contains several specific application transition rules.

If a bond was issued after July 7, 1997, check the "No" box. If a bond was issued before July 8, 1997, and the issuer has electively applied the finalized 1993 regulations, check the "Yes" box. All other filers should check the "No" box.

**Line 40.** Regulations section 1.148-11 permits issuers to apply certain amendments to Regulations sections 1.148-1 through 1.148-11 and Regulations sections 1.148-1A through 1.148-6A and 1.148-9A through 1.148-11A before the effective date of the 1993 regulations.

Check the "No" box unless:

1. A bond was issued before June 6, 1994, and before July 8, 1997, the issuer electively applied the above regulations (for example, on a previously filed Form 8038-T), and
2. The issuer intends to continue with that elective application while filing this Form 8038-T.

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**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:

<b>Recordkeeping</b> . . . . .	11 hr., 57 min.
<b>Learning about the law or the form</b> . . . . .	8 hr., 44 min.
<b>Preparing, copying, assembling, and sending the form to the IRS</b> . . . . .	9 hr., 19 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 2.

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# Request for Recovery of Overpayments Under Arbitrage Rebate Provisions

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

**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.

.....

.....

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.....

.....

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.		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.

▶ _____	Date	▶ _____
Signature of issuer's authorized representative		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.

# Carryforward Election of Unused Private Activity Bond Volume Cap

(Under Sections 146(f) and 142(k))

Enter the calendar year for which the election is made ►

**Part I Reporting Authority**

State name for qualifying public educational facility bond or issuer's name for all other bonds		Reporting Authority's EIN :
Number, street (or P.O. box if mail is not delivered to street address)	Room/suite	Report number <b>9</b>
City or town, state, and ZIP code		

**Caution:** Part II is **only** for section 146(f) filers. Part III is **only** for qualifying public educational facility bond filers.

**Part II Unused Volume Cap and Carryforward under Section 146(f)**

**Computation of Unused Volume Cap**

1 Total volume cap of the issuer for the calendar year . . . . .			1
2 Aggregate amount of private activity bonds issued to date that are taken into account under section 146 (see instructions) . . . . .	2		
3 Total amount of volume cap exchanged for authority to issue mortgage credit certificates (see instructions) . . . . .	3		
4 Total amount of volume cap allocated to private activity portion of governmental bonds (see instructions) . . . . .	4		
5 Add lines 2 through 4 . . . . .			5
6 Unused volume cap (subtract line 5 from line 1) . . . . .			6

**Purpose and Amount of Each Carryforward**

7 Qualified student loan bonds . . . . .			7
8 Qualified mortgage bonds or mortgage credit certificates . . . . .			8
9 Qualified redevelopment bonds . . . . .			9
10 Exempt facility bonds:			
a Mass commuting facilities (section 142(a)(3)) . . . . .			10a
b Water furnishing facilities (section 142(a)(4)) . . . . .			10b
c Sewage facilities (section 142(a)(5)) . . . . .			10c
d Solid waste disposal facilities (section 142(a)(6)) . . . . .			10d
e Qualified residential rental projects (section 142(a)(7)) . . . . .			10e
f Facilities for the local furnishing of electric energy or gas (section 142(a)(8)) . . . . .			10f
g Local district heating or cooling facilities (section 142(a)(9)) . . . . .			10g
h Qualified hazardous waste facilities (section 142(a)(10)) . . . . .			10h
i 25% of bonds for privately owned high-speed intercity rail facilities (section 142(a)(11)) . . . . .			10i
j Qualified enterprise zone facility bonds (section 1394) . . . . .			10j
11 Total carryforward amount (add lines 7 through 10j) (not to exceed line 6) . . . . .			11

**Part III Unused Volume Cap and Carryforward Under Section 142(k) (Qualifying Public Educational Facility Bonds)**

12 Total volume cap for the calendar year . . . . .			12
13 Total amount of bonds issued under 142(k) for the calendar year . . . . .			13
14 Unused volume cap available for carryforward (subtract line 13 from line 12) . . . . .			14
15 Amount elected to carryforward (not to exceed line 14) . . . . .			15

<b>Sign Here</b>	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.	
	Signature of authorized public official	Date
Type or print name and title.		

## A Change To Note

Form 8328 has been revised for use by states to compute and carry forward unused volume cap for qualified public educational facility bonds. States will use **Part III** of Form 8328 to report under section 142(k)(5). Revised **Part II** of Form 8328 includes the computation of unused volume cap, and purpose and amount of each carryforward under section 146(f).

## General Instructions

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

### Purpose of Form

Form 8328 is filed by the issuing authority of private activity bonds to elect to carry forward its unused volume cap for one or more carryforward purposes (see section 146(f)). If the election is made, bonds issued with respect to a specified carryforward purpose are not subject to the volume cap under section 146(a) during the 3 calendar years following the calendar year in which the carryforward arose, but only to the extent that the amount of such bonds does not exceed the amount of the carryforward elected for that purpose.

Also, Form 8328 is used by a state to carry forward the unused volume cap under section 142(k). A state may elect to carry forward an unused limitation for any calendar year for 3 calendar years following the calendar year in which the unused limitation arose under rules similar to the rules of section 146(f). However, this election can only be made for the issuance of qualified public educational facility bonds. For definitions related to qualified public educational facilities, see section 142(k).

### When To File

Form 8328 must be filed by the earlier of: (1) February 15 of the calendar year following the year in which the excess amount arises, or (2) the date of issue of bonds issued pursuant to the carryforward election.

Once Form 8328 is filed, the issuer may not revoke the carryforward election or amend the carryforward amounts shown on this form.

### Where To File

File Form 8328 with the Internal Revenue Service Center, Ogden, UT 84201.

## Bonds Taken Into Account Under Section 146

All private activity bonds issued during a calendar year are taken into account under section 146 **except**:

1. Qualified 501(c)(3) bonds.
2. Exempt facility bonds for governmentally owned airports, docks and wharves, environmental enhancements of hydroelectric generating facilities, and solid waste disposal facilities.
3. 75% of any exempt facility bonds for privately owned high-speed intercity rail facilities; 100% if governmentally owned.
4. Qualified veterans' mortgage bonds.
5. Bonds issued pursuant to a carryforward election. See section 146(f)(3)(A).
6. Certain current refundings. See section 146(i).
7. Certain bonds issued by Indian tribal governments for tribal manufacturing facilities. See section 7871(c)(3).
8. Qualified public educational facilities.

In addition, the private activity portion of governmental bonds is taken into account to the extent that the nonqualified amount exceeds \$15 million. See sections 141(b)(5) and 146(m).

## Bonds Eligible for Elections

- An election under section 146(f) may be made by the issuing authority for only the following types of tax-exempt bonds:
  1. Qualified student loan bonds.
  2. Qualified mortgage bonds (or mortgage credit certificates).
  3. Qualified redevelopment bonds.
  4. Exempt facility bonds taken into account under section 146.
- An election under section 142(k) may be made by the state for qualified public educational facility bonds.

## Specific Instructions

Parts I and II of this form must be completed to properly elect the carryforward provisions under section 146(f).

Parts I and III must be completed to properly elect the carryforward provisions under section 142(k).

### Part I. Reporting Authority

**Name.** Enter the name of the state if filing under section 142(k). For all others, enter the name of the entity issuing the bonds.

**Report number.** After the preprinted 9, enter two self-designated numbers. Number reports consecutively during any calendar year (e.g., 928, 929, etc.).

### Part II. Unused Volume Cap and Carryforward Under Section 146(f)

#### Computation of Unused Volume Cap

**Line 1.** Enter the issuing authority's volume cap under section 146 for the current calendar year. Take into account any reduction in the amount of the volume cap under section 25(f) (relating to the reduction in the aggregate amount of qualified mortgage bonds where certain requirements are not met). See section 146(n)(2).

**Line 2.** Enter the total amount of private activity bonds issued by the issuing authority during the current calendar year that are taken into account under section 146. See **Bonds Taken Into Account Under Section 146.**

**Line 3.** Enter the total amount of qualified mortgage bonds the issuing authority has elected not to issue under section 25(c)(2)(A)(ii) during the current calendar year. See section 146(n)(1).

**Line 4.** Enter the total amount of volume cap allocated by the issuer to the private activity portion of governmental bonds. See sections 141(b)(5) and 146(m).

#### Purpose and Amount of Each Carryforward

Enter the amount of unused volume cap the issuer elects to carry forward for each carryforward purpose and the total carryforward amount.

### Part III. Unused Volume Cap and Carryforward Under Section 142(k) (Qualifying Public Educational Facility Bonds)

Complete lines 12 through 15 to compute the amount elected to carry forward under section 142(k).

### Signature

Form 8328 must be signed by an authorized public official responsible for carrying forward unused volume cap.

**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:

<b>Recordkeeping</b> . . . . .	7 hr., 24 min.
<b>Learning about the law or the form</b> . . . . .	2 hr., 47 min.
<b>Preparing and sending the form to the IRS</b> . . . . .	3 hr., 1 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.**



## Power of Attorney and Declaration of Representative

OMB No. 1545-0150

**For IRS Use Only**

Received by:  
 Name \_\_\_\_\_  
 Telephone \_\_\_\_\_  
 Function \_\_\_\_\_  
 Date     /     /

▶ **Type or print.** ▶ See the separate instructions.

**Part I** **Power of Attorney**

**Caution:** Form 2848 will not be honored for any purpose other than representation before the IRS.

**1 Taxpayer information.** Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address	Social security number(s) _____ _____	Employer identification number _____ _____
	Daytime telephone number (     )     -     ____	Plan number (if applicable) _____

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

**2 Representative(s)** must sign and date this form on page 2, Part II.

Name and address	CAF No. _____ SSN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ SSN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ SSN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

**3 Tax matters**

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)

**4 Specific use not recorded on Centralized Authorization File (CAF).** If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for **Line 4. Specific uses not recorded on CAF.** . . . . . ▶

**5 Acts authorized.** The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

**Exceptions.** An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See **Unenrolled Return Preparer** on page 2 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Circular 230. See the line 5 instructions for restrictions on tax matters partners.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**6 Receipt of refund checks.** If you want to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, initial here \_\_\_\_\_ and list the name of that representative below.

Name of representative to receive refund check(s) ▶ \_\_\_\_\_

- 7 Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.
- a** If you also want the second representative listed to receive a copy of notices and communications, check this box
  - b** If you do not want any notices or communications sent to your representative(s), check this box

**8 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you **do not** want to revoke a prior power of attorney, check here.

**YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

**9 Signature of taxpayer(s).** If a tax matter concerns a joint return, **both** husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

**▶ IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**

Signature	Date	Title (if applicable)
Print Name	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> PIN Number	Print name of taxpayer from line 1 if other than individual
Signature	Date	Title (if applicable)
Print Name	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> PIN Number	

**Part II Declaration of Representative**

**Caution:** *Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the instructions for Part II.*

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
  - a** Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
  - b** Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
  - c** Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
  - d** Officer—a bona fide officer of the taxpayer's organization.
  - e** Full-Time Employee—a full-time employee of the taxpayer.
  - f** Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
  - g** Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d) of Treasury Department Circular No. 230).
  - h** Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Treasury Department Circular No. 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See **Unenrolled Return Preparer** on page 2 of the instructions.

**▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.** See the Part II instructions.

Designation—Insert above letter (a–h)	Jurisdiction (state) or identification	Signature	Date

# Instructions for Form 2848

(Rev. March 2004)



Department of the Treasury  
Internal Revenue Service

## Power of Attorney and Declaration of Representative

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

### General Instructions

#### What's New

**Revocation of an existing power of attorney.** The instructions have been revised to allow representatives to use the same procedures as taxpayers for revoking an existing power of attorney. See **Revocation of Power of Attorney/Withdrawal of Representative** on page 2.

**Authorization to file Form 2848 electronically.** Your representative may be able to file Form 2848 with the IRS electronically. PIN number boxes have been added to the taxpayer's signature section. Entering a PIN number will give your representative authority to file Form 2848 electronically using the PIN number as the electronic signature. You can use any five digits other than all zeros as a PIN number. You may use the same PIN number that you used on other filings with the IRS. See **Where To File** below if completing Form 2848 only for this purpose.

**Use of Form 2848 is limited to appointing a representative.** If the representative you appoint is not qualified to sign Part II of this form, Form 2848 will not be honored and will be returned to you. As of March 2004, the IRS will no longer treat such invalid forms as authority for the person you named to receive your tax information.

#### Purpose of Form

Use Form 2848 to authorize an individual to represent you before the IRS. The individual you authorize must be a person eligible to practice before the IRS. The eligible individuals are listed in **Part II**, Declaration of Representative, items **a-h**. You may authorize a student who works in a Qualified Low Income Taxpayer Clinic (QLITC) or Student Tax Clinic Program (STCP) to represent you under a special order issued by the Office of

Professional Responsibility. See page 3. Your authorization of a qualifying representative will also allow that individual to receive and inspect your confidential tax information. See the instructions for line 7 on page 4.

Use **Form 8821**, Tax Information Authorization, if you want to authorize an individual or organization to receive or inspect your confidential tax return information, but do not want to authorize the individual or organization to represent you before the IRS.

Use **Form 56**, Notice Concerning Fiduciary Relationship, to notify the IRS of the existence of a fiduciary relationship. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer, not as a representative. If a fiduciary wishes to authorize an individual to represent or perform certain acts on behalf of the entity, then a power of attorney must be filed and signed by the fiduciary who is acting in the position of the taxpayer.

#### Where To File

Generally, mail or fax Form 2848 directly to the IRS. See the **Where To File Chart** below. Exceptions are listed below.

- If Form 2848 is for a specific use, mail or fax it to the office handling the specific matter. For more information on specific use, see the instructions for line 4 on page 3.
- If you complete Form 2848 only for the purpose of electronic signature authorization, **do not** file Form 2848 with the IRS. Instead, give it to your representative, who will retain the document.

#### Authority Granted

This power of attorney authorizes the representative to perform any and all acts you can perform, such as signing consents extending the time to assess tax, recording the interview, or executing waivers agreeing to a tax adjustment.

#### Where To File Chart

IF you live in...	THEN use this address...	Fax number*
Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, or West Virginia	Internal Revenue Service Memphis Accounts Management Center 5333 Getwell Road Stop 8423 Memphis, TN 38118	901-546-4115
Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, or Wyoming	Internal Revenue Service Ogden Accounts Management Center 1973 N. Rulon White Blvd. Mail Stop 6737 Ogden, UT 84404	801-620-4249
All APO and FPO addresses, American Samoa, nonpermanent residents of Guam or the Virgin Islands**, Puerto Rico (or if excluding income under Internal Revenue Code section 933), a foreign country: U.S. citizens and those filing Form 2555, 2555-EZ, or 4563.	Internal Revenue Service Philadelphia Accounts Management Center 11601 Roosevelt Blvd. DPSW 312 Philadelphia, PA 19255	215-516-1017

\* These numbers may change without notice.

\*\*Permanent residents of Guam should use Department of Taxation, Government of Guam, P.O. Box 23607, GMF, GU 96921; permanent residents of the Virgin Islands should use: V.I. Bureau of Internal Revenue, 9601 Estate Thomas Charlotte Amaile, St. Thomas, V.I. 00802.

Also, you may authorize your representative to substitute another representative or delegate authority to another representative by adding this authority in the space provided on line 5. However, authorizing someone as your power of attorney does not relieve you of your tax obligations.

The power to sign tax returns can be granted only in limited situations. See the instructions for line 5 on page 3.

## Unenrolled Return Preparer

An unenrolled return preparer is an individual other than an attorney, CPA, enrolled agent, or enrolled actuary who prepares and signs a taxpayer's return as the preparer, or who prepares a return but is not required (by the instructions to the return or regulations) to sign the return.

An unenrolled return preparer is permitted to represent you only before customer service representatives, revenue agents, and examination officers, with respect to an examination regarding the return he or she prepared.

An unenrolled return preparer **cannot**:

- Represent a taxpayer before other offices of the IRS, such as Collection or Appeals. This includes the Automated Collection System (ACS) unit.
- Execute closing agreements.
- Extend the statutory period for tax assessments or collection of tax.
- Execute waivers.
- Execute claims for refund.
- Receive refund checks.

For more information, see Rev. Proc. 81-38, printed as **Pub. 470**, Limited Practice Without Enrollment.

If the unenrolled return preparer does not meet the requirements for limited representation, you may file Form 8821, which will authorize the unenrolled return preparer to inspect and/or receive your taxpayer information, but will not authorize the unenrolled return preparer to represent you. See Form 8821.

## Revocation of Power of Attorney/ Withdrawal of Representative

If you want to revoke an existing power of attorney and do not want to name a new representative, or if a representative wants to withdraw from representation, send a copy of the previously executed power of attorney to the IRS, using the **Where To File Chart** on page 1. The copy of the power of attorney must have a current signature of the taxpayer if the taxpayer is revoking, or the representative if the representative is withdrawing, under the original signature on line 9. Write "REVOKE" across the top of Form 2848. If you do not have a copy of the power of attorney you want to revoke or withdraw, send a statement to the IRS. The statement of revocation or withdrawal must indicate that the authority of the power of attorney is revoked, list the tax matters, and must be signed and dated by the taxpayer or representative. If the taxpayer is revoking, list the name and address of each recognized representative whose authority is revoked. If the representative is withdrawing, list the name, TIN, and address (if known) of the taxpayer.

To revoke a specific use power of attorney, send the power of attorney or statement of revocation/withdrawal to the IRS office handling your case, using the above instructions.

## Substitute Form 2848

If you want to prepare and use a substitute Form 2848, see **Pub. 1167**, General Rules and Specifications for Substitute Forms and Schedules. If your substitute Form 2848 is approved, the form approval number must be printed in the lower left margin of each substitute Form 2848 you file with the IRS.

## Additional Information

Additional information concerning practice before the IRS may be found in:

- **Pub. 216**, Conference and Practice Requirements and
- Treasury Department Circular **No. 230**.

For general information about taxpayer rights, see **Pub. 1**, Your Rights as a Taxpayer.

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## Specific Instructions

### Part I. Power of Attorney

#### Line 1. Taxpayer Information

**Individuals.** Enter your name, social security number (SSN), individual taxpayer identification number (ITIN), and/or employer identification number (EIN), if applicable, and your street address or post office box. **Do not** use your representative's address or post office box for your own. If a joint return is, or will be, filed and you and your spouse are designating the same representative(s), also enter your spouse's name and SSN or ITIN, and your spouse's address if different from yours.

**Corporations, partnerships, or associations.** Enter the name, EIN, and business address. If this form is being prepared for corporations filing a consolidated tax return (Form 1120), do not attach a list of subsidiaries to this form. Only the parent corporation information is required on line 1. Also, for line 3 only list Form 1120 in the Tax Form Number column. A subsidiary must file its own Form 2848 for returns that must be filed separately from the consolidated return, such as **Form 720**, Quarterly Federal Excise Tax Return, and **Form 941**, Employer's Quarterly Federal Tax Return.

**Employee plan.** Enter the plan name, EIN of the plan sponsor, three-digit plan number, and business address of the sponsor.

**Trust.** Enter the name, title, and address of the trustee, and the name and EIN of the trust.

**Estate.** Enter the name, title, and address of the decedent's executor/personal representative, and the name and identification number of the estate. The identification number for an estate includes both the EIN, if the estate has one, and the decedent's SSN or ITIN.

#### Line 2. Representative(s)

Enter your representative's full name. Only individuals may be named as representatives. Use the identical full name on all submissions and correspondence. If you want to name more than three representatives, indicate so on this line and attach an additional Form(s) 2848.

Enter the nine-digit CAF number for each representative. If a CAF number has not been assigned, enter "None," and the IRS will issue one directly to your representative. The CAF number is a unique nine-digit identification number (not the SSN, EIN, PTIN, or enrollment card number) that the IRS assigns to representatives. The CAF number is not an indication of authority to practice. The representative should use the assigned CAF number on all future powers of attorney. CAF numbers will not be assigned for employee plans and exempt organizations application requests.

Check the appropriate box to indicate if either the address, telephone number, or fax number is new since a CAF number was assigned.

If the representative is a former employee of the Federal Government, he or she must be aware of the postemployment restrictions contained in 18 U.S.C. 207 and in Treasury Department Circular No. 230, section 10.25. Criminal penalties are provided for violation of the statutory

restrictions, and the Office of Professional Responsibility is authorized to take disciplinary action against the practitioner.

**Students in QLITCs and the STCP.** If the lead attorney or CPA will be listed as a representative, list the lead attorney or CPA first on line 2, then the student on the next line. Also see page 4 for how to complete Part II.

### Line 3. Tax Matters

Enter the type of tax, the tax form number, and the year(s) or period(s) in order for the power of attorney to be valid. For example, you may list "Income tax, Form 1040" for calendar year "2003" and "Excise tax, Form 720" for the "1st, 2nd, 3rd, and 4th quarters of 2003." For multiple years, you may list "2001 through (thru or a dash (-)) 2003" for an income tax return; for quarterly returns, list "1st, 2nd, 3rd, and 4th quarters of 2001 through 2002" (or 2nd 2002 – 3rd 2003). For fiscal years, enter the ending year and month, using the YYYYMM format. Do not use a general reference such as "All years," "All periods," or "All taxes." Any power of attorney with a general reference will be returned. Representation can only be granted for the years or periods listed on line 3.

You may list any tax years or periods that have already ended as of the date you sign the power of attorney. However, you may include on a power of attorney only future tax periods that end no later than 3 years after the date the power of attorney is received by the IRS. The 3 future periods are determined starting after December 31 of the year the power of attorney is received by the IRS. You must enter the type of tax, the tax form number, and the future year(s) or period(s). If the matter relates to estate tax, enter the date of the decedent's death instead of the year or period.

If the type of tax, tax form number, or years or periods does not apply to the matter (i.e., representation for a penalty or filing a ruling request or determination), specifically describe the matter to which the power of attorney pertains and enter "Not Applicable" in the appropriate column(s).

**Civil penalty representation (including the trust fund recovery penalty).** Forms 2848 for civil penalty issues will now be recorded on the CAF. Generally, this applies to non-return related civil penalties, such as the penalty for not meeting the due diligence requirement for return preparers of earned income credit and the penalty for failure to file information returns. For example, Joann prepares Form 2848 authorizing Margaret to represent her before the IRS regarding the penalty for failure to file information returns. Margaret will have authority to represent Joann for all non-return related civil penalties. However, Margaret will not be able to represent Joann for any other tax matters, such as Form 941 or Form 1040 issues unless authorized on Form 2848.

Representation for return related civil penalties, such as the accuracy-related penalty or the failure to file penalty is included when representation is authorized for the related tax return. For example, Diana prepares Form 2848 authorizing Susan to represent Diana for an examination of her 2001 and 2002 Form 1040. If the accuracy-related penalty is proposed by the IRS during the examination, Susan would be authorized to discuss the penalty with the IRS.

**How to complete line 3.** On line 3, enter "Civil penalties" in the type of tax column and the year(s) to which the penalty applies in the year(s) or period(s) column. Enter "Not Applicable" in the tax form number column. You do not have to enter the specific penalty.

### Line 4. Specific Uses Not Recorded on CAF

Generally, the IRS records powers of attorney on the CAF system. However, a power of attorney will not be recorded

on the CAF if it does not relate to a specific tax period (except for civil penalties) or if it is for a specific issue. Examples of specific issues include but are not limited to the following:

- Requests for a private letter ruling or technical advice,
- Applications for an EIN,
- Claims filed on **Form 843**, Claim for Refund and Request for Abatement,
- Corporate dissolutions, and
- Requests to change accounting methods or periods.

Check the box on line 4 if the power of attorney is for a use that will not be listed on the CAF. If the box on line 4 is checked, the representative should mail or fax the power of attorney to the IRS office handling the matter. Otherwise, the representative should bring a copy of the power of attorney to each meeting with the IRS.

A specific-use power of attorney will not revoke any prior powers of attorney.

### Line 5. Acts Authorized

Use line 5 to modify the acts that your named representative(s) can perform. In the space provided, describe any specific additions or deletions. For example, the representative's authority to substitute another representative or to delegate authority must be specifically stated by you on line 5.

**Disclosure of returns to a third party.** A representative cannot execute consents that will allow the IRS to disclose your tax return or return information to a third party unless this authority is specifically delegated to the representative on line 5.

**Authority to sign your return.** Regulations section 1.6012-1(a)(5) permits another person to sign a return for you **only** in the following circumstances:

- (a) Disease or injury,
- (b) Continuous absence from the United States (including Puerto Rico), for a period of at least 60 days prior to the date required by law for filing the return, or
- (c) Specific permission is requested of and granted by the IRS for other good cause.

Authority to sign your income tax return may be granted to (1) your representative or (2) an agent (a person other than your representative).

**Authorizing your representative.** Write a statement on line 5 that you are authorizing your representative to sign your income tax return pursuant to Regulations section 1.6012-1(a)(5) by reason of [enter the specific reason listed under (a), (b), or (c) under **Authority to sign your return** above].

**Authorizing an agent.** To authorize an agent you must do **all four** of the following.

1. Complete lines 1-3.
2. Check the box on line 4.
3. Write the following statement on line 5:

"This power of attorney is being filed pursuant to Regulations section 1.6012-1(a)(5), which requires a power of attorney to be attached to a return if a return is signed by an agent by reason of [enter the specific reason listed under (a), (b), or (c) under **Authority to sign your return** above]. No other acts on behalf of the taxpayer are authorized."

4. Sign and date the form. See the instructions for line 9 for more information on signatures. The agent **does not** complete Part II of Form 2848.

**Tax matters partner.** The tax matters partner (TMP) (as defined in section 6231(a)(7)) is authorized to perform various acts on behalf of the partnership. The following are examples of acts performed by the TMP that **cannot** be delegated to the representative:

- Binding nonnotice partners to a settlement agreement under section 6224 and, under certain circumstances,

binding all partners to a settlement agreement under Tax Court Rule 248 and

- Filing a request for administrative adjustment on behalf of the partnership under section 6227.

## Line 6. Receipt of Refund Checks

If you want to authorize your representative to receive, but not endorse, refund checks on your behalf, you must initial and enter the name of that person in the space provided. Treasury Department Circular No. 230, section 10.31, prohibits an attorney, CPA, or enrolled agent, any of whom is an income tax return preparer, from endorsing or otherwise negotiating a tax refund check that is not issued to him or her.

## Line 7. Notices and Communications

Original notices and other written communications will be sent to you and a copy to the first representative listed. If you check:

- **Box (a).** The original will be sent to you and copies to the first two listed representatives.
- **Box (b).** The original will be sent to you. No copies will be sent to any representatives.

## Line 8. Retention/Revocation of Prior Power(s) of Attorney

If there is any existing power(s) of attorney that you **do not** want to revoke, check the box on this line and attach a copy of the power(s) of attorney. The filing of a Form 2848 will **not** revoke any Form 8821 that is in effect.

## Line 9. Signature of Taxpayer(s)

**Individuals.** You must sign and date the power of attorney. If a joint return has been filed and both husband and wife will be represented by the same individual(s), both must sign the power of attorney. However, if a joint return has been filed and the husband and wife will be represented by different individuals, each spouse must execute his or her own power of attorney on a separate Form 2848.

**Corporations or associations.** An officer having authority to bind the taxpayer must sign.

**Partnerships.** All partners must sign unless one partner is authorized to act in the name of the partnership. A partner is authorized to act in the name of the partnership if, under state law, the partner has authority to bind the partnership. A copy of such authorization must be attached. For purposes of executing Form 2848, the TMP is authorized to act in the name of the partnership. However, see **Tax matters partner** on page 3. For dissolved partnerships, see Regulations section 601.503(c)(6).

**All others.** If the taxpayer is a dissolved corporation, decedent, insolvent, or a person for whom or by whom a fiduciary (a trustee, guarantor, receiver, executor, or administrator) has been appointed, see Regulations section 601.503(d).

## Part II. Declaration of Representative

The representative(s) you name must sign and date this declaration and enter the designation (i.e., items **a-h**) under which he or she is authorized to practice before the IRS. In addition, the representative(s) must list the following in the "Jurisdiction/Identification" column:

- a** Attorney—Enter the two-letter abbreviation for the state (e.g., "NY" for New York) in which admitted to practice.
- b** Certified Public Accountant—Enter the two-letter abbreviation for the state (e.g., "CA" for California) in which licensed to practice.
- c** Enrolled Agent—Enter the enrollment card number issued by the Office of Professional Responsibility.

- d** Officer—Enter the title of the officer (e.g., President, Vice President, or Secretary).
- e** Full-Time Employee—Enter title or position (e.g., Comptroller or Accountant).
- f** Family Member—Enter the relationship to taxpayer (must be a spouse, parent, child, brother, or sister).
- g** Enrolled Actuary—Enter the enrollment card number issued by the Joint Board for the Enrollment of Actuaries.
- h** Unenrolled Return Preparer—Enter the two-letter abbreviation for the state (e.g., "KY" for Kentucky) in which the return was prepared and the year(s) or period(s) of the return(s) you prepared.

**Students in QLITCs and the STCP.** Complete Part II as follows:

1. In the Designation column, enter "Special Orders."
2. In the Jurisdiction column, enter "QLITC" or "STCP."
3. Sign and date Form 2848. Be sure to attach a copy of the letter from the Office of Professional Responsibility authorizing practice before the IRS.



*Any individual may represent an individual or entity before personnel of the IRS when such representation occurs outside the United States. Individuals acting as representatives must sign and date the declaration; leave the Designation and Jurisdiction columns blank. See section 10.7(c)(1)(vii) of Circular 230.*

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Form 2848 is provided by the IRS for your convenience and its use is voluntary. If you choose to designate a representative to act on your behalf, under section 6109, you must disclose your SSN, ITIN, or EIN. The principal purpose of this disclosure is to secure proper identification of the taxpayer. We need this information to gain access to your tax information in our files and properly respond to any request. If you do not disclose this information, the IRS may suspend processing of the power of attorney and may not be able to honor your power of attorney until you provide the number.

We may disclose this information to Department of Justice for civil or criminal litigation. We may also disclose this information to other countries under a tax treaty, or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism. The authority to disclose information to combat terrorism expired on December 31, 2003. Legislation is pending that would reinstate this authority.

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.

The time needed to complete and file Form 2848 will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 6 min.; **Learning about the law or the form**, 31 min.; **Preparing the form**, 26 min.; **Copying and sending the form to the IRS**, 34 min.

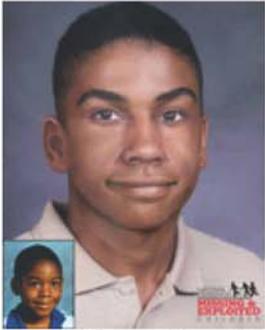
If you have comments concerning the accuracy of these time estimates or suggestions for making Form 2848 simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send Form 2848 to this address. Instead, see the **Where To File Chart** on page 1.

**T**hrough 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 relate 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.

# Picture Them Home



Jamal Abdul'Faruq Richmond, VA  
Date Missing: 04/16/1990  
Last seen playing in his neighborhood



Erica Baker Kettering, OH  
Date Missing: 02/07/1999  
Erica was last seen walking her dog



Reuben Blackwell Clinton, MD  
Date Missing: 05/06/1996  
His photo is age-progressed to 10 yrs



Joshua Adams Houston, TX  
Date Missing: 12/26/1995  
His photo is age-progressed to 13 yrs

## ONE IN SIX MISSING CHILDREN IS

recovered because someone like you takes the time to look at their **picture**, spots **them**, and notifies the authorities to get them **home**. The Internal Revenue Service (IRS) has joined the National Center for Missing and Exploited Children in their search for America's missing children, and we need your help.

As a proud sponsor of the **Picture Them Home** campaign, the IRS now features images and information about missing children in many IRS tax publications. Join us by taking the time to look at pictures of missing children. And please, maintain high quality photos of your own children for use in case of emergency.



**1-800-THE-LOST**

**www.missingkids.com**

Asha Degree Shelby, NC  
Date Missing: 02/14/2000  
Last seen in Shelby, North Carolina



Katherine Caner San Leandro, CA  
Date Missing: 05/15/1998  
She's believed to be out of the country



Matthew Cortes Tulsa, OK  
Date Missing: 10/29/2000  
He's believed to be out of the State



Kelia Critchfield Auburn, WA  
Date Missing: 11/11/1998  
She may have traveled to Costa Rica

