Department of the Treasury
Internal Revenue Service

Instructions for Form 8038

(Rev. March 1995)

Information Return for Tax-Exempt Private Activity Bond Issues

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

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.

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

Learning about the law or the form . . . . 6 hr., 2 min.

Preparing the form . . 7 hr., 37 min.

Copying, assembling, and sending the form to the IRS . . . . 16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the **Internal Revenue Service,** Attention: Tax Forms Committee, PC:FP, Washington, DC 20224. **DO NOT** send the form to this address. Instead, see **Where To File** below.

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

General Instructions

Changes To Note

- The Revenue Reconciliation Act of 1993:

a. Extended permanently the authority to issue qualified mortgage bonds and qualified small issue bonds.

b. Created a new category of exempt facility private activity bonds—qualified enterprise zone facility bonds for use in empowerment zones and enterprise communities.

c. Removed the 25% volume cap for a high-speed rail facility bond issue if the bond-financed property is governmentally owned.

- Regulation sections 1.148-4T(h)(2)(ix) and 1.148-4T(h)(5)(ii)(A) permit an issuer of tax-exempt bonds to identify a hedge for inclusion in yield calculations for computing arbitrage. Under these regulations, hedges can be entered into prior to the issuance of the tax-exempt bonds.

Purpose of Form

Issuers of state or local bonds must comply with certain information reporting requirements to qualify for tax exemption. The information must be reported by the issuers about bonds issued by them during each preceding calendar quarter.

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.

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.

Who Must File

Form 8038 must be filed by all issuers of the following tax-exempt private activity bonds issued after December 31, 1986:

- Exempt facility bonds, including qualified enterprise zone 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. Send a late Form 8038 to: Internal Revenue Service, Philadelphia Service Center, Statistics of Income Unit, P:DA:Unit F-SOI, Philadelphia, PA 19255, Stop #335. 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 submitted to the IRS on time. Also indicate whether the bond issue in question is under examination by the IRS. Do not submit copies of the trust indenture or other bond documents.

Where To File

File Form 8038 with the Internal Revenue Service Center, Philadelphia, PA 19255.

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 cents through 99 cents to the next higher dollar.

Definitions

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

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.

A **private activity bond** is generally part of an issue of which **(a)** more than 10% of the proceeds are to be used for any private business use, and **(b)** more than 10% of the payment of the principal or interest is either secured by an interest in property to be used for a private business use (or payments for such property), or is to be derived from payments for property (or borrowed money) used for a private business use. A bond is also considered a private activity bond if the amount of the proceeds to be used to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units exceeds the smaller of 5% of the proceeds, or $5 million.

An **exempt facility bond** 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 (12).

Note: *The Revenue Reconciliation Act of 1993 created a new category of exempt facility private activity bonds—qualified enterprise zone facility bonds for use in empowerment zones and enterprise communities. Nine empowerment zones and 95 enterprise communities have been designated (by the Secretaries of HUD and Agriculture) from areas nominated by state and local governments. Qualified enterprise zone facility bonds may only be issued while a zone designation is in effect, which generally will be a period of 10 years. These bonds are fully subject to the state private activity bond limitations.*

A **qualified mortgage bond** is part of an issue **(a)** of which all proceeds (except issuance costs and reasonably required reserves) are to be used to finance owner-occupied residences, **(b)** that meets the requirements of subsections (c) through (i) and (m)(7) of section 143, **(c)** that does not meet the private business tests of sections 141(b)(1) and (2), and **(d)** 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 requirement **(d).**

A **qualified veterans' mortgage bond** is part of an issue **(a)** of which 95% or more of the net proceeds are to be used to provide residences for veterans, **(b)** for which the payment of the principal and interest is secured by the general obligation of a state, **(c)** that meets the requirements of subsections (c), (g), (i)(1), and (l) of section 143, and **(d)** that does not meet the private business tests of sections 141(b)(1) and (2).

A **qualified small issue bond** 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).

A **qualified student loan bond** is part of an issue of which **(a)** 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 **(b)** 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).

A **qualified redevelopment bond** 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.

A **qualified 501(c)(3) bond** is any private activity bond meeting the following conditions: **(a)** 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 **(b)** the bond would not be a private activity bond if section 501(c)(3) organizations were treated as governmental units and the private activity bond definition was applied using a 5% threshold (instead of 10%).

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

A **qualified hospital bond** is any qualified 501(c)(3) bond that is part of an issue of which 95% or more of the net proceeds are to be used for a hospital.

A **qualified 501(c)(3) nonhospital bond** is a qualified 501(c)(3) bond other than a qualified hospital bond. An organization cannot have more than $150 million of qualified 501(c)(3) nonhospital bonds. See section 145(b).

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).

A **construction issue** is an issue of tax-exempt bonds if **(a)** at least 75% of the available construction proceeds of such issue are to be used for construction expenditures with respect to property which is to be owned by a governmental unit or a 501(c)(3) organization, and **(b)** all of the 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. 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).

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 the estimated amounts previously reported once the actual amounts are determined.)

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

Line 2.—An issuer that does not have an EIN should apply for one on **Form SS-4,** Application for Employer Identification Number. This form may be obtained from most IRS and Social Security Administration offices. File Form SS-4 according to the instructions on that form. If the EIN has not been received by the due date for Form 8038, write "Applied for" in the space for the EIN.

Line 4.—Number reports consecutively based on the filing date (not the issue date). For example, if the issuer already filed two Forms 8038 in the 1995 calendar year, the report number for the third Form 8038 would be "PA1995-3."

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

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, 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 of the bonds issued. The issue price does not include interest from the date the bonds are dated to the date of issue (if payable at regular intervals of one year or less).

Line 9g.—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, 1994-37 I.R.B. 4, for guidance on computing the income limits applicable to these bonds.

Line 9k.—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 depreciation under section 167 or 168, or to claim any credit against its income tax with respect to the property financed with the net proceeds of the issue.

Line 9m.—Bonds issued to finance certain facilities may also qualify as exempt facility bonds if **(a)** they were permitted as exempt facility bonds under prior law, and **(b)** they were issued under one of the transitional rules of the Tax Reform Act of 1986. These facilities include: a sports facility, as described in former section 103(b)(4)(B); a convention or trade show facility, as described in former section 103(b)(4)(C); a parking facility, as described in former section 103(b)(4)(D); a pollution control facility, as described in former section 103(b)(4)(F); a hydroelectric facility, as described in former section 103(b)(4)(H); and an industrial park, as described in former section 103(b)(5). If one of the above applies, **indicate the facility type** and then give the **specific provision of the Act** pertaining to the facility on line 9m.

Line 9n.—Check this 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. See section 1394.

Line 11.—Check the box 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 12.—Check the appropriate box on line 12 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 15.—Attach a schedule listing the name and employer identification number (EIN) for each 501(c)(3) organization benefiting from these qualified hospital bonds.

Line 16.—Enter the total amount of qualified nonhospital bonds described in section 145(b)(2) that are a part of this issue. Attach a schedule listing for each 501(c)(3) organization benefiting from these qualified nonhospital bonds **(a)** the name of the organization, **(b)** its EIN, **(c)** the amount of this issue of bonds benefiting the organization, and **(d)** the amount of all other nonhospital bonds outstanding as of the date of this issue that benefit the organization.

Line 17.—Check this 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 18.—Check this box only if none of the other boxes apply. On 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 19.—Enter the maturity date, the interest rate (or coupon rate), the issue price, and the stated redemption price at maturity. If there is more than one maturity date for bonds that are part of the issue, enter the information for the bonds with the latest maturity date. Interest rates should be carried out to three decimal places. If the interest rate is a variable rate, enter “VR.” If the bonds are reoffered to the public, determine the issue price based on the reasonably expected reoffering price. The issue price does not include interest from the date the bonds are dated to the date of issue (if payable at regular intervals of 1 year or less). The stated redemption price at maturity is the amount payable (without regard to optional redemption) at maturity (excluding interest payable at regular intervals of 1 year or less).

Line 20—Columns (c), (d), and (e).— Enter the issue price, stated redemption price at maturity, and weighted average maturity in years (e.g., 8.7 years). 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. 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 20, column (c)).

Line 20—Columns (f) and (g).—Enter the yield only if it has been computed. The yield on the issue is defined under section 148(h). Generally, the yield 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, enter “VR” as the yield of the issue. In addition, enter the net interest cost percentage (NIC) in column (g). The NIC for an issue may be determined by dividing the total interest payments for the issue (increased by any discount and reduced by any premium or accrued interest) by the product of the issue price (from line 20, column (c)) and the weighted average maturity (from line 20, column (e)).

$$NIC = \frac{a + b - c}{x\,y}$$

a = total interest payments

b = discount

c = premium or accrued interest

x = issue price

y = weighted average maturity

If the issue is a variable rate issue, enter “VR” as the NIC of the issue. For other than variable rate issues, carry the yield and the NIC out to four decimal places (e.g., 5.3125%).

Part IV—Uses of Proceeds of Issue

Line 21.—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 23.—Enter the amount of the proceeds that will be used to pay bond issuance costs, including fees for trustees and bond counsel.

Line 24.—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 25.—Enter the amount of the proceeds that will be allocated to such a fund.

Line 26.—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

Caution: *Do not complete this part for qualified student loan bonds, qualified mortgage bonds, or qualified veterans’ mortgage bonds.*

Line 29.—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, the buildings, and the 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 29a, b, c, or d, enter the amount of those proceeds in category 29e, *Other,* and briefly describe them.

Line 30.—Enter the four-digit Standard Industrial Classification (SIC) code and corresponding face amount of each project to be financed by the issue. If there are more than four projects to be financed by the issue, attach a separate sheet of paper stating the SIC codes and face amount of each project. SIC codes are developed by the Office of Management and Budget and are published in the **Standard Industrial Classification Manual.**

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

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.

Line 31.—Enter the remaining weighted average maturity of the bonds being refunded. Determine the remaining weighted average maturity without regard to the refunding. The weighted average maturity is determined in the same manner as on line 20, column (e).

Line 32.—Enter the last date on which any of the bonds being refunded will be called.

Line 33.—Enter the date of issue of the bonds being refunded. 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 34.—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 34. Also enter on line 34 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 and section on line 34.

Line 35.—If any portion of the issue will qualify for the small issuer exception to section 265 contained in section 265(b)(3), enter the amount of the bonds that will qualify for the exception.

Line 36.—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 37.—Check this box if the issuer has identified a hedge on its books and records in accordance with Regulation sections 1.148-4T(h)(2)(ix) and 1.148-4T(h)(5)(ii)(A) that permit an issuer of tax-exempt bonds to identify a hedge for it to be included in yield calculations for computing arbitrage.

Part VIII—Volume Cap

Line 38.—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 should also include the information requested by lines 1 through 3 and 5 through 8 of this Form 8038, as well as the title of the certifying official.

Line 39.—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 nonqualfied 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 40a.—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, high-speed intercity rail facilities, and solid waste facilities. Only 75% of any exempt facility bond for high-speed intercity rail facilities is not subject to the volume cap. Beginning on or after January 1, 1994, no volume cap applies to a high-speed facility bond issue if all the bond-financed property is governmentally owned. The applicable solid waste facilities may have to be governmentally owned. See sections 146(g), 146(h), and 142(b)(1)(B).

Line 40b.—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 40c.—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 the amount of the bonds excepted from the volume cap by that rule.

Line 40d.—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 41a.—Enter the amount of the bonds issued as part of the issue that are qualified hospital bonds under section 145(c).

Line 41b.—Enter the amount of qualified 501(c)(3) bonds issued as part of the issue that are qualified nonhospital bonds under section 145(b)(2).

Line 41c.—Enter the amount of all other bonds issued as part of issues that are outstanding tax-exempt nonhospital bonds described under section 145(b)(2). Lines 41b and c together should generally not exceed $150 million.

Line 42b.—Enter the state limit on qualified veterans' mortgage bonds for the calendar year.

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.

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