

TAX-EXEMPT BOND RETURNS

by
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1. Introduction

Over the last several years many changes have taken place within the Internal Revenue Service affecting the tax-exempt bond program. First and foremost is the overall restructuring of the IRS into Business Units and the creation of Tax-Exempt Bonds (TEB) as a separate organization within the Government Entities Organization.

As the management structure has changed, so too has the technology and the way the IRS does day-to-day business with regards to tax-exempt bond returns. Processing information reported on the Form 8038 evolved from a stand alone system to the point where these returns are now processed with all other corporate and government returns on the Business Master File (BMF).

This change in processing has provided the opportunity to streamline and expedite certain processes. Whether this involves the implementation of a system to perfect and clarify information reported on the returns or the revision or creation of a new form, the end result is better reporting and service to our customers.

At times, better service may mean the creation of a new form to expedite a process. The new form for requesting recovery of overpayment of arbitrage rebate (Form 8038-R) provides a clear example of our ability to react and provide better service to our customer. As we continue to evolve, our ability to provide better service to the municipal financing industry will be dependent on accurate and detailed information reporting.

This article is intended to provide a discussion of some of the recent form changes made to the various tax-exempt bond returns. It will also provide some insight into the questions raised by our processing personnel at the Ogden Campus regarding information reported or missing on the returns.

2. Return Revisions

Reporting Authority – In 1999, a new line item requesting the name and phone number of an individual who the IRS may contact for more information was added to Forms 8038, 8038-G, 8038-GC and 8038-T. This information helps the IRS expedite the perfection of the return information and facilitates the processing of the return to the Business Master File when reported information is incomplete or missing. The name provided should be that of an individual familiar with the bond issue for which the return is being filed.

Report Number – The 2000 revision of the Form 8038 Series changed this field to begin with a specific number instead of a letter. For example, for years prior to 2000, the report number block on the Form 8038-G began with the letter G and it now starts with a “3”. Issuers are asked to assign the next two numbers and to assign numbers consecutively during a calendar year.

TEB is often asked if the report number should start with the number “01” every year or should an issuer continue with the number where they left off in the previous year. Either method is acceptable as long as the same numbers are not used in the same year. The unique report number identifies a particular bond issue on the Business Master File and allows us to distinguish between bond issues that have the same issue date or that are issued within the same month.

The significance of the report number can be best illustrated when it is used in conjunction with the concept of tax period. IRS reporting systems distinguish between taxpayers and returns by the tax period of the return. The tax period is the period of time for which the return is being filed. For individuals, the tax period is normally a calendar year. For example, returns filed for the year 2001 have a tax period of 200112. Corporations may have tax periods of calendar or fiscal years. For example, a corporation having a fiscal year ending June 30, 2002, has a tax period of 200206.

Although a tax-exempt bond issue does not have a tax period, TEB generally interprets the issue date to be the tax period for processing purposes. For example, if bonds were issued on April 15, 2002, the tax period would be 200204. This works well as long as a municipality only issues one bond during a month. In those instances where multiple bonds are issued in a particular month, the report number allows us to distinguish between bonds issued within the same tax period.

Primary Private User – New Line 41 was added to the 2002 revision of the Form 8038 to identify the primary private user of qualified redevelopment bonds, small issue bonds and exempt facility bonds. This line requests the name and

employer identification number of the primary user of the facilities. A “primary private user” is the nongovernmental entity that meets the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

Form 8038-R – Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, was developed for issuers of state and local bonds to request a refund of amounts paid of arbitrage rebate. The Form, issued in November, 2001, is used to request a refund of payments made for yield reduction, arbitrage rebate, penalty in lieu of arbitrage rebate or penalty to terminate the election to pay a penalty in lieu of arbitrage rebate.

Form 8038-R is expected to expedite the refund process. Form 8038-R updates the instructions previously provided in Rev. Proc. 92-83, 1992-2 C.B. 487, by incorporating the final rebate regulations and updating the location where the request is to be submitted. Rev. Proc. 92-83 instructed issuers to submit the request by memorandum. This resulted, at times, in the misidentification and misrouting of the request. The end result was that the payment of overpayments of rebate was unduly delayed. Form 8038-R is specifically designed for claims and is easy to identify. The proper identification of the material will result in efficient routing within the processing system and, therefore, a faster turn around time in making the payments.

The requests for recovery of overpayments of rebate were previously submitted to the Philadelphia Campus. Today, they are submitted along with all other tax-exempt bond returns to the Ogden Campus.

Form 8038-T – In January, 2002, revisions were made to the Form 8038-T primarily for reformatting purposes. Line items were developed to identify the specific types of payments being made and to create a line for the total amount being paid.

Liberty Bonds – Form 8038 is not being revised to incorporate a new line item for Qualified New York Liberty Bonds under section 142 of the Code. Since these bonds are only applicable to New York City and the State of New York, the Service is asking that these bonds be reported on Line 11(m) – Other. There is space to describe the type of bond by writing in Liberty Bond. Additional information on the reporting requirements related to Liberty Bonds is available in Notice 2002-42, 2002-27 I.R.B. 36.

3. Common Errors Made on Forms 8038, 8038-G and 8038-GC

The Ogden Campus perfects return information and corresponds with the issuer to obtain information missing on the return submitted. This process enables the Service to process the most accurate and complete information available with regard to a bond issue. Keep in mind that at times the letters sent from the Ogden Campus may use the term tax period and not the issue date.

The following is a list of some of the more common errors that were identified in processing tax-exempt bond returns:

- 1) The return is not signed by an authorized representative. An authorized representative of the Issuer must sign the forms and applicable certification. The name and title of the person signing the Form 8038 must also be printed.
- 2) The Employer Identification Number (EIN) and name of issuer on the return is not consistent. Enter the Employer Identification Number on the governmental entity that issued the bonds. The EIN of the entity receiving the benefit should not be used.
- 3) The issue date is not entered on the return. The issue date must be entered on the return. 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. The date of issue for a lease arrangement is the date on which the arrangement first starts accruing interest.
- 4) The issue price is not entered on the return. Generally, the issue price of bonds that are publicly offered is the first price at which a substantial amount of the bonds is sold to the public. Ten percent is a substantial amount.
- 5) An incorrect maturity date is entered. The last date the issuer must redeem the entire issue is the date to enter. For lease arrangements, this will typically be the last date an installment payment is required in the lease-purchase arrangement.
- 6) The block for amended returns is checked in error. Research shows that in most cases the return checked as the amended is the original.

- 7) An explanation is not attached to the request for extension. Returns filed in accordance with Rev. Proc. 88-10, 1988-1 C.B. 635, must have a statement attached setting forth the reason why the return was not timely submitted to the Service. The Campus will correspond to request the reason for late filing if it is not provided with the submission of the return.
- 8) Form 8038-G is being received with either line 19 or 20 checked and no additional information provided. These line items indicate the issue is a Revenue Anticipation Note, Bond Anticipation Note or lease. Information is required on the type of issue and amount of the issue when these items are checked.