



EFFECTIVE DATE

(07-02-2021)

PURPOSE

- (1) This update transmits revised IRM 4.82.3, Tax Exempt Bonds Examination Guidelines, Procedures for Conducting Examination of Direct Pay Bonds.

BACKGROUND

- (1) This IRM contains updated procedures for conducting examinations of Direct Pay Bonds, DPBs, a type of tax-advantaged bond where the interest paid on the bonds is taxable to the holder and the bond issuer is allowed a refundable tax credit. Direct Pay Bonds were first introduced by the American Recovery and Reinvestment Act of 2009. In 2010, the Hiring Incentives to Restore Employment Act extended the refundable tax credit option to four types of previously authorized tax credit bonds. The Tax Cuts and Jobs Act ended the issuance of tax credit bonds, including DPBs, after December 31, 2017, but did not change the status of bonds issued before January 1, 2018.
- (2) Any text marked with # is for Official Use Only.

SCOPE

- (1) This IRM contains the examination guidelines for DPBs.

MATERIAL CHANGES

- (1) This document updates, references, and indicates the reassignment of certain aspects of the Compliance Review process for Form 8038-CP from Government Entities Compliance Services to Compliance Planning & Classification, Field Assistance Support Team (FAST).

| IRM Reference | Description of Change |
|----------------------|--|
| Throughout the IRM | Updated manual to change references to certain TEB positions as a result of the 2019 TE/GE reorganization that created separate Indian Tribal Governments and Tax Exempt Bonds (TEB) programs within the Government Entities function. |
| Throughout the IRM | Changed references from TEB Field Operations Manager to Program Manager, Tax Exempt Bonds. |
| Throughout the IRM | Changed references from Manager, ITG/TEB Technical Group II to Group Manager, Technical. |

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| Throughout the IRM | Changed ITG/TEB Technical Groups I and II to TEB Technical. |
| Program Scope and Objectives | Changed reference to Director, Exempt Organizations/ Government Entities (formerly Director, Indian Tribal Governments/Tax Exempt Bonds). |
| IRM 4.82.3.1.3, Roles & Responsibilities | Delineation of general duties and titles of key functions including DPBCRC, FAST. |
| 4.82.3.1.4, Acronyms and Terms | Definitions of common acronyms used throughout the IRM. |
| 4.82.3.1.8, Penalties | New section for applicability of penalties to DPBs. |
| Throughout the IRM | Impact of IQI on examinations of DPBs. |
| Throughout the IRM | Updates on Statute computation and controls. |
| IRM 4.82.3.4.3, Initial Statute Control of Direct Pay Bonds | Incorporation of Internal Guidance Memo TEGE-04-0720-0018, Elimination of requirement to use paper Form 895/895-EP. |
| IRM 4.82.3.5, Revenue Agent Report Procedures | New text added. |
| IRM 4.82.3.8, Post Examination Procedures for Subsequent Claims | New text added. |
| IRM 4.82.3.9, Statutory Notice of Deficiency Procedures | New text added. |
| IRM 4.82.3.9.10, Post Issuance Procedures for Notice of Deficiency Cases | New text added. |
| IRM 4.82.3.10.1, Examination Referrals for Direct Pay Bonds Claims | New text added. |
| IRM 4.82.3.10.2, Expedited Case Procedures | New text added. |
| IRM 4.82.3.10.3, Compliance Activity Review Procedures | New text added. |
| IRM 4.82.3.10.6, Claim Disallowance Procedures for Amended From 8038-CP Returns | New text added. |

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| Exhibit 4.82.3-1, Form 4549-T Line Instructions | New added text and examples. |
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EFFECT ON OTHER DOCUMENTS

This IRM incorporates and supersedes IRM 4.82.3, issued on October 3, 2017.
This IRM incorporates the following Interim Guidance Memorandums:
TEGE-04-0819-0015, Consolidation of Policy Statements and Delegation Orders into Two New IRM sections, dated August 23, 2019;
NHQ-01-1019-0001, Clarification of Policy for Use of Fax in Taxpayer Submissions, dated October 29, 2019;
TEGE-04-0720-0018, Elimination of Requirement to Use Paper Form 895/895-EP issued July 31, 2020; and
TEGE-04-0221-0003, Interim Guidance on Letter Consolidation, issued on February 2, 2021.

AUDIENCE

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4.82.3

Direct Pay Bonds

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Exhibits

4.82.3-1 Form 4549-T Line Instructions

4.82.3.1
(07-02-2021)
Program Scope and Objectives

- (1) **Purpose:** This IRM section contains examination guidelines for Direct Pay Bonds, a type of tax-advantaged bonds where the interest paid on the bonds is taxable to the holder and the bond issuer (Issuer) is allowed a refundable tax credit.
- (2) **Audience:** The procedures in this manual apply to Tax Exempt Bond employees.
- (3) **Policy Owner:** Director, Exempt Organizations/Government Entities
- (4) **Program Owner:** Director, Exempt Organizations/Government Entities
- (5) **Authority:** DPBs are obligations that meet applicable requirements for credits allowed under IRC 6431.

4.82.3.1.1
(07-02-2021)
Background

- (1) Under IRC 6431, Issuers of DPBs are allowed a refundable credit for each interest payment under the bonds.
- (2) The table lists the refundable credit for DPBs (see Acronyms, below, for details on DPBs type):

| Type of bond | Refundable credit allowed |
|---------------------|--|
| BABs | 35% of the interest payment |
| RZEDBs | 45% of the interest payment |
| QZABs and QSCBs | Lesser of the interest payment or the amount that would be paid if interest was payable at 100% of the applicable credit rate determined under IRC 54A(b)(3) |
| New CREBs and QECBs | Lesser of the interest payment or the amount that would be paid if interest was payable at 70% of the applicable credit rate determined under IRC 54A(b)(3) |

- (3) All DPBs must meet an information return filing requirement similar to the requirement for traditional tax-exempt bonds. Issuers of:
 - a. Build America bonds, including recovery zone economic development bonds, were required to file Form 8038-B, Information Return for Build America Bonds and Recovery Zone Economic Development Bonds.
Reminder: They were initially required to file Form 8038-G, Information Return for Tax-Exempt Governmental Obligations.
 - b. Specified tax credit bonds were required to file Form 8038-TC, Information Return for Tax Credit Bonds and Specified Tax Credit Bonds.
- (4) To receive payment of allowed credits, Issuers of DPBs must file Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds. Form 8038-CP is:

4.82 Tax Exempt Bonds Examination Guidelines

- a. A tax return filed for an interest payment or interest payments made or to be made under the DPBs.
 - b. Generally accepted by the IRS for processing before the related interest payment date so that the return can be processed and the credit payment made contemporaneously with the interest payment.
- (5) The credit payment is made to the Issuer, or if so designated, any person who makes interest payments on behalf of the Issuer (IRC 6431).

4.82.3.1.2
(07-02-2021)

Authority

- (1) The table below outlines the authorities for direct pay bonds.

| Type of Bond | Authority |
|--|--|
| Build America Bonds (BABs) and recovery zone economic development bonds (RZEDBs). | American Recovery and Reinvestment Act of 2009 introduced Build America Bonds and included a special type of BABs eligible for an increased credit amount called recovery zone economic development bonds. |
| <ul style="list-style-type: none"> • New clean renewable energy bonds (New CREBS) • Qualified energy conservation bonds (QECBs) • Qualified zone academy bonds issued under the 2009 and 2010 volume caps (QZABs) • Qualified school construction bonds (QSCBs). | Hiring Incentives to Restore Employment Act extended the refundable tax credit option to four types of previously authorized qualified tax credit bonds, defined as specified tax credit bonds in IRC 6431(f). |

4.82.3.1.3
(07-02-2021)

Roles & Responsibilities

- (1) The following roles are referred to in this IRM 4.82.3:

| Role | Definition |
|---------|---------------------------------------|
| Appeals | The IRS Independent Office of Appeals |

| Role | Definition |
|-------------------------------------|--|
| Closing Unit | TE/GE's Governmental Entities Closing Unit (RCCMS 400-20011-7204, labeled 7204- GE Closing Unit in RCCMS) |
| DPB Compliance Database | The database described in 4.82.3.10.4 |
| DPBCRC | The DPB Compliance Review Coordinator: the revenue agent or tax law specialist assigned to perform the DPBCRC responsibilities described in this section |
| Examiner | The employee assigned the exam of: <ul style="list-style-type: none"> • A DPBs issue information return • Form 8038-CP |
| FAST DPB Compliance Review Function | FAST managers and employees responsible for the compliance review of credit claims filed on Form 8038-CP |
| Group manager | The direct supervisor of an examiner, specialist or DPBCRC, as applicable |
| TEB Exam Groups | The groups of revenue agents in TEB |
| TEB Program Manager | The Program Manager, TEB responsible for the TEB Exam Groups and TEB Technical |
| TEB Technical | The group of tax law specialists in TEB |

4.82.3.1.4
(07-02-2021)

Acronyms and Terms

(1) The table lists commonly used acronyms and their definitions.

| Acronym | Definition |
|----------------|---|
| ASED | Assessment statute expiration date |
| BABs | Build America bonds |
| CUSIP | Committee on Uniform Security Identification Procedures |
| DPBs | Direct pay bonds |
| EFTPS | Electronic Federal Tax Payment System |

| Acronym | Definition |
|--------------------------------|---|
| EIN | Employer Identification Number |
| FAST | Compliance Planning & Classification, Field Assistance Support Team |
| IDRS | Integrated Data Retrieval System |
| IPD | Interest payment date |
| New CREBS | New clean renewable energy bonds |
| QECBs | Qualified energy conservation bonds |
| QSCBs | Qualified school construction bonds |
| QZABs | Qualified zone academy bonds issued under the 2009 and 2010 volume caps |
| RCCMS | Reporting Compliance Case Management System |
| RZEDBs | Recovery zone economic development bonds |
| STCBs | Specified tax credit bonds |
| TEB | Office of Tax Exempt Bonds in TEGE |
| Terms | |
| Identified Qualification Issue | The examiner-identified potential noncompliance that may result in an adverse determination for the DPBs qualification. |

4.82.3.1.5
(07-02-2021)

Examination Procedures

- (1) For DPBs examinations:
- a. Generally, the exam is initiated on the information return on which the bond transaction was reported (such as, Form 8038-G, Form 8038-B, or Form 8038-TC) using Letter 6031.
 - b. For adjustments of credit amounts claimed on Form 8038-CP returns related only to computation or timing of the credit amount (or otherwise not related to qualification of the bonds), the exam is initiated on the Form 8038-CP returns. But see IRM 4.82.3.7, Additional Procedures for Credits paid on Non-Issuer EIN Accounts, if the Payee is different from the Issuer.
 - c. Follow the exam procedures that generally apply to tax-exempt bonds (see IRM 4.81.5) considering the modifications and additional procedures in this section.
 - d. Follow the special procedures for expedited cases in 4.82.3.10.2, when applicable.
 - e. For cases involving potential fraud, review the case file and discuss with the group manager. If the case appears to be potentially fraudulent, the examiner and group manager meet with the TEB Fraud Coordinator to discuss the case and determine the next action. Contact the filer only after coordinating the case with the appropriate Fraud Technical Advisor.

4.82.3.1.6

(07-02-2021)

Examination of Related Claim Returns

- (1) An adverse determination on the qualification of DPBs directly impacts whether the credits claimed on all related Form 8038-CP returns are allowable. Accordingly, generally you open an exam of related Form 8038-CP returns when issuing Form 5701-B, Notice of Proposed Issue, for the DPBs. (See IRM 4.82.3.3.2)
- (2) You may open Form 8038-CP exams directly for examination without having an open exam on the related information return (but see IRM 4.82.3.7, Additional Procedures for Credits paid on Non-Issuer EIN Accounts, if the Payee is different from the Issuer). In addition, you must open related Form 8038-CP returns established on RCCMS for exam when you determine that the statutes of one or more returns need to be protected.

Caution: Never solicit statute consents from the Payee.

- (3) You may also start exams of an individual Form 8038-CP return for matters related to the credit amount allowable for any interest payment date that doesn't involve qualification noncompliance (but see IRM 4.82.3.7, Additional Procedures for Credits paid on Non-Issuer EIN Accounts, if the Payee is different from the Issuer). Focus on the facts and circumstances requiring an adjustment of the credit requested on the affected Form 8038-CP return.

Example: duplicate claims, incorrect credit percentages, incorrect interest amounts, and failure to file within time limits for submission of claims for the credit payment.

4.82.3.1.7

(07-02-2021)

Issuer Signatures Submitted by FAX

- (1) If you've made taxpayer contact and documented both the date and taxpayer's desire to fax documents, you can accept by fax:
 - Consents to assess additional tax (Form 4549-T, Form 870, and others).
 - Taxpayer closing agreements.
 - Consents to extend the time to assess tax (Form 872-A or Form 872).

Note: The term "faxed signatures" should be construed to include electronic images of scanned original signatures transmitted by Enterprise Electronic Facsimile (EEFAX) or e-mail.

4.82.3.1.8

(07-02-2021)

Penalties

- (1) Penalties related to DPBs may be appropriate in certain instances, such as the penalty under IRC 6676 for submission of a claim in an excessive amount.
- (2) Refer to IRM 20.1, Penalty Handbook for guidance on developing applicable penalties.
- (3) Ensure the case file includes a copy of the group manager's written approval for the assertion of any penalty other than the failure to file, failure to pay or estimated tax penalties. Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties is available for use to meet the proper managerial involvement requirement.
- (4) Complete the appropriate IRC 6676 penalty lead sheet and include it in the case file. Managerial involvement must also be documented on the penalty lead sheet and/or related workpapers.

- (5) As noted in IRM 4.82.3.9 (5), a suit for refund would not be applicable to penalties asserted as part of the deficiency. Accordingly, when penalties have been assessed, if the taxpayer files suit in district court or the U.S. Court of Claims (rather than Tax Court) to seek review of a claim denial, penalties will be assessed after the 90-day period has elapsed following the notice of claim denial.

4.82.3.2
(07-02-2021)

**Statute Considerations
for Direct Pay Bonds**

- (1) As an examiner, you may have statute control issues for DPBs examinations when you make an assessment on a return module other than the one initially assigned for exam. This IRM section contains procedures for statute identification and statute control procedures.
- (2) IRS policy permits you to extend the period for assessment only in unusual circumstances. Accordingly, the examiner and group manager must identify and treat any case in which a consent is required under these IRM procedures as a priority case.
- (3) As an identified priority case, document in the case file any delay in soliciting a consent, executing a consent, or otherwise protecting the government's interest on the expiring assessment period.

4.82.3.2.1
(07-02-2021)

**Statute Identification
Procedures**

- (1) When opening a DPBs examination, the examiner identifies all Form 8038-CP returns filed for the DPBs information return under examination having 180 days or more remaining on the period for assessment.
- (2) Examiner: Via secure e-mail to the DPBCRC, request a list of all Form 8038-CP returns for the bond issue and the Debt Service Schedule (DSS) on file. Include in the request the following:
- Issuer's EIN
 - Issue date
 - Issue price, and
 - Report number of the bond issue.
- (3) DPBCRC: from the DPB Compliance Database, provide the DSS on file and, an Excel worksheet listing all Form 8038-CP returns the Issuer filed (EIN matched).
- (4) Examiner: Based on the information you receive from the DPBCRC, prepare Form 14711-B, TEB Evaluation of Statute Expiration for Related Form 8038-CP Returns, for the DPBs information return under exam. Follow these Form 14711-B requirements:
- a. Include, as an attachment, the current DSS on file for the DPBs. Form 8038-CP returns may be processed on the Issuer's EIN or a designated payee's EIN, as elected by the Issuer for each return filed. Form 14711-B, Related Form 8038-CP Returns, must reflect the EIN of the payee, whether the Issuer or a designated payee.
- Note:** More than one Form 8038-CP return may be filed and processed for an interest payment date.
- b. Form 14711-B is a permanent part of a DPBs exam case file and is required to be updated every six months or more frequently, if necessary.

Note: Form 8038-CP records that were processed for zero dollars may reflect returns that weren't considered because of missing return information and the taxpayer didn't respond to a written request for additional information. In "no consideration" cases, the taxpayer was notified that we couldn't consider their claim due to missing information and their failure to respond to our request for information. The "no consideration" letter instructed the taxpayer to file a new return with complete information if they want the IRS to

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4.82.3.2.2
(07-02-2021)
**Criteria for Establishing
Case Controls of
Related Cases**

- (1) Examiner: When you identify potential noncompliance that may result in an "Identified Qualification Issue," establish case controls for all Form 8038-CP returns related to the DPBs information return under exam that have 180 days or more remaining on the period for assessment on RCCMS in status 10. (See also IRM 4.82.3.2.2 (3) of this section and IRM 4.82.3.4.2, Computing Statute Expiration Date for Direct Pay Bonds).
- (2) The establishment of case controls for related Form 8038-CP returns:
 - a. Uses the AIMS and RCCMS systems to monitor and protect the statutory period of assessments.
 - b. Does not open an examination of the related Form 8038-CP returns. See IRM 4.82.3.3.2 for criteria for opening a related Form 8038-CP return exam.

Note: When establishing case controls in RCCMS, the examiner determines the correct ASED and ensures it is reflected in RCCMS and AIMS.

- (3) An Identified Qualification Issue:
 - a. Is the identification of potential noncompliance for consideration during the exam.
 - b. Must involve the qualification of the DPBs for the credit allowed under IRC 6431 and must be reasonably present in the case.
 - c. Is sufficiently present if you have a reasonable basis to believe that a violation of the qualification requirements has occurred, but you haven't fully developed it.
- (4) You don't have to prepare Form 5701-B, *Notice of Proposed Issue*, when you identify an Identified Qualification Issue, but you must document sufficient information for a Letter 531, Statutory Notice of Deficiency ("90-day Letter") to inform the taxpayer of the IRS' intention to assess a tax deficiency, if necessary (See also IRM 4.82.3.9).

4.82.3.2.3
(07-02-2021)

**Time-frames for
Considering Case
Controls of Related
Cases**

- (1) Examiner: When you open the DPBs exam, consider within 30 days whether, based on the information available, an Identified Qualification Issue is present. If an Identified Qualification Issue doesn't exist at that time, document it on Form 14711-B, TEB Evaluation of Statute Expiration for Related Form 8038-CP Returns, by:
- a. Entering "None" in the Identified Qualification Issue(s) column.
 - b. Entering the date.
 - c. Electronically signing the form.

Note: You don't need your manager's concurrence on Form 14711-B for the exam opening evaluation.

- (2) Throughout the examination, consider whether sufficient information is present to constitute an Identified Qualification Issue.
- a. At least every six months, document on Form 14711-B your consideration of any issues.
 - b. For cases in which you haven't identified an Identified Qualification Issue, notate no issues identified on Form 14711-B and submit the form to your group manager for concurrence.

4.82.3.2.4
(07-02-2021)

**Managerial Approval of
Establishing Case
Controls**

- (1) Examiner: When you identify an Identified Qualification Issue during an exam of DPBs, note it on Form 14711-B and send the form to your group manager for concurrence that there is a reasonable basis to believe that a violation of the qualification requirements may exist in the case.
- (2) Group manager:
- a. Discuss the issues with the examiner and consider whether there's sufficient basis for a statutory notice of deficiency (Letter 531, Notice of Deficiency), that would be supported by TEGE Division Counsel based on the existing information in the case file.
 - b. Electronically sign Form 14711-B if you agree and return to the examiner.
 - c. Discuss the additional development required before controls are established or explain why establishing case controls is not required.

4.82.3.3
(07-02-2021)

**Establishing Related
Case Controls**

- (1) Multiple Form 8038-CP return modules may be affected by any information return exam conclusion. This IRM section describes the procedures for establishing related case controls.

4.82.3.3.1
(10-03-2017)

**Establishment of Case
Controls for Related
Form 8038-CP Returns**

- (1) Examiner:
- a. When you identify an Identified Qualification Issue and document your manager's agreement, establish all related Form 8038-CP returns with 180 days or more (from the date your manager agrees) remaining on the statutory period for assessment of tax on RCCMS.
 - b. Establish the related cases in status 10.

4.82.3.3.2
(07-02-2021)
**Opening Examinations
of Established Form
8038-CP Returns**

- (1) Related Form 8038-CP returns established on RCCMS in status 10 upon an Identified Qualification Issue aren't generally opened for examination until the examiner either:
 - a. Issues Form 5701-B on the primary examination of the information return for the DPBs.
 - b. Solicits a consent to extend the period for assessment on one or more related Form 8038-CP returns.

Note: Caution must be taken if Form 8038-CP has a Payee different from the Issuer, due to disclosure issues. Form 8038-CP is the Issuer's return.

- (2) Examiner: Discuss opening related returns with your manager and, upon concurrence:
 - a. Document it in the case chronology record.
 - b. Update Form 14711-B.
 - c. Notify the DPBCRC that the related returns are now under examination by sending an e-mail, with copy of Form 14711-B attached.
 - d. Issue Letter 5871-B, TEB 8038-CP Related Return Examination, to the Issuer of the DPBs indicating that the listed related Form 8038-CP returns will be opened in connection with the current exam of the DPBs information return. The letter briefly states the issue(s) identified during the exam of the related DPBs information return.
- (3) The DPBCRC:
 - a. Updates the approval status of the bond issue to "Exam" in the DPB Compliance Database.
 - b. Refers any subsequent filings of Form 8038-CP for the bonds referred to the DPBCRC by FAST to CP&C Classification for case file establishment and assignment.
- (4) Examiner:
 - a. Prepare Form 4549-T (Revenue Agent Report or Adjustments to Credits Under Section 6431 for Certain State and Local Bonds). See also IRM 4.82.3.9.9 and Exhibit 4.82.3-1.
 - b. Compute the proposed adjustment to the related returns opened.
 - c. Submit Form 8278 to secure manager's approval.
 - d. Submit for group manager approval, Form 4549-T with Form 5701-B describing the matters concerning the DPBs qualifications for the credit allowed under IRC 6431 (see IRM 4.82.3.5 for RAR procedures).
 - e. Document group manager approval in the case chronology record.

4.82.3.3.3
(10-03-2017)
**Survey of Non-Examined
Form 8038-CP Returns**

- (1) Close a Form 8038-CP return as disposal code 908, Survey After Assignment if it's:
 - a. Established on RCCMS.
 - b. Not opened before you close the related DPBs information return exam with no changes, either with or without a closing agreement.

- 4.82.3.4
(10-03-2017)
Statute Controls for Direct Pay Bonds
- (1) Statute protection for DPBs is similar to the control procedures for most tax assessments. There are, however, several important differences. This IRM section describes procedures for controlling the statute on Direct Pay Bonds.
- 4.82.3.4.1
(07-02-2021)
Direct Pay Bond Statute Control Procedures
- (1) Follow the Statute Control procedures in IRM 25.6.23, modified or clarified in this section, for procedures unique to DPBs to establish Form 8038-CP returns in RCCMS. Replace references to ERCS, EPIC, or EOIC with RCCMS for purposes of DPBs statute controls. See IRM 25.6.23.
- 4.82.3.4.2
(07-02-2021)
Computing Statute Expiration Date for Direct Pay Bonds
- (1) Subject to the special rule in paragraph (2) below for calculating assessment statute expiration date, treat the period for assessment of tax on Form 8038-CP returns as three years from the date the return is received.
- Note:** Because there is no last date prescribed by law or regulation for filing the Form 8038-CP, the rule in section 6501(b)(1) concerning early filed returns doesn't apply to Form 8038-CP returns. Consequently, the ASER begins to run on the date that the Form 8038-CP is filed, which generally is the date that it is received.
- (2) The period for assessment of tax is three years from the date the return is filed (mailed) when the filing (mailing) date is before the return due date, but the form is received after the return due date. The "return due date" for Form 8038-CP is effectively the Line 18 interest payment date.
- (3) The filing (mailing) date of any return received after the prescribed return due date is deemed to be the postmark date (IRC 7502). The postmark date isn't available from electronic copies of the return or from the information data retrieval system (IDRS). If the postmark date isn't available, absent satisfactory evidence of the actual date the return was filed, compute the statute expiration date for Form 8038-CP returns by treating the return as filed seven days before the IDRS return received date.
- (4) For unagreed cases closing from the group having an assessment statute period less than 450 days remaining and not extended by agreement, request the original return using the ESTAB IDRS command.
- a. Evidence of the postmark date is generally included with the original return.
 - b. Update the assessment statute expiration date (ASER) field in RCCMS, if necessary, before closing the case from the exam group.
- 4.82.3.4.3
(07-02-2021)
Initial Statute Control of Direct Pay Bonds
- (1) An adverse determination may affect the availability of the IRC 6431 credit for DPBs. Therefore, you may need to protect the statute for the period of limitation to assess tax for affected Forms 8038-CP.
- (2) Upon your manager's approval of the establishment of related returns (see also IRM 4.82.3.3.1, Establishment of Case Controls for Related Form 8038-CP Returns), for each related Form 8038-CP return identified on Form 14711-B with less than one year remaining on the statute either:
- a. Use the statute tools in RCCMS (the bottom of the Activity Screen on the General (1 of 2) tab) to report systemically your control of the statute, or
 - b. Prepare Form 895.

4.82.3.4.4
(07-02-2021)
Procedures for Solicitation of Extensions for Direct Pay Bonds

- (1) Generally, follow the procedures in IRM 25.6.22, as clarified or modified in this section, when requesting an extension of the period to assess tax on Form 8038-CP returns.
- (2) Use Letter 907-A, TE/GE Request to Extend Statute, when consents are requested through the mail. In completing the Letter 907-A, enter a Response due date of no earlier than 10 calendar days, from the mailing of the letter. Enclose copies of Form 872-A. Provide a copy of the correspondence to the authorized representative.
- (3) Send Pub 1035, *Extending the Tax Assessment Period*, to the taxpayer whenever a consent is requested by mail.
- (4) Include any enclosure required.
- (5) If there is no response to the Letter 907-A by the response due date, prepare and send Letter 928, TE/GE Request to Extend Statute – Follow-up Letter. Enter a Response due date of no earlier than 14 calendar days or 10 business days, whichever is longer, from the mailing of the letter.
- (6) When a face-to-face request for a consent is made to the taxpayer or authorized representative, give the consent, Letter 907-A and Pub 1035 to the taxpayer or authorized representative.

Note: When orally soliciting a consent, give taxpayers or authorized representatives an explanation of taxpayers' rights and options.

4.82.3.4.5
(07-02-2021)
Form for Solicitation of Extensions for Direct Pay Bonds

- (1) Examiners will generally use Form 872-A to request an extension for the assessment period(s). The use of Form 872-A minimizes the administrative burden of statute controls with respect to Form 8038-CP returns during the remaining exam process and any potential action by Appeals.
 - Form 872-A is used to extend the assessment period related to a return indefinitely.
 - Letter 907-A, *Request to Extend Assessment Statute*, will be used to explain and transmit Form 872-A.
 - Letter 1343, Transmittal Letter – Form 872-A, will be used to provide the fully executed Form 872-A to the Issuer.
 - Extensions pursuant to Forms 872-A end when tax is assessed or the extension is terminated by either the taxpayer or the IRS.
 - For IRS initiated termination of Form 872-A, refer to IRM 25.6.22.7.1.
 - Letter 1344, Transmittal Letter – Form 872-T, will be used when an Issuer initiates the termination of Form 872-A.
- (2) Form 872 with a specific statute extension date may be used as an alternative to Form 872-A if requested by the Issuer. If a Form 872 is requested, the examiner will advise the Issuer of the differences and advantages of each of these statute extension forms.
 - Form 872 is used to extend the assessment period related to a return to a specific date.
 - Letter 907-A, TE/GE Request to Extend Statute, is used to explain and transmit Form 872.
 - Letter 929, Transmittal to Taxpayer or Copy of Signed Consent, will be used to provide the fully executed Form 872 to the Issuer.

4.82 Tax Exempt Bonds Examination Guidelines

- Extensions pursuant to Forms 872 end on the date specified in the form. The examiner must monitor this date and take steps to seek extension if necessary.

(3) Form 10949, Statute Extension Checksheet, is available as a guide when extending the time to assess tax and when updating the statute controls.

4.82.3.4.6
(10-03-2017)

Name and Address of Taxpayer on Extension Form for Direct Pay Bonds

(1) The Issuer of the DPBs is the only party permitted to extend the period for assessment for Form 8038-CP returns, regardless of any payee the Issuer may have designated on Form 8038-CP. Accordingly, enter on Form 872-A, the Issuer's:

- EIN
- name
- address

Note: Don't enter a designated payee's EIN, name, and address in Part I of the Form 8038-CP return.

4.82.3.4.7
(07-02-2021)

Type of Tax on Extension Form for Direct Pay Bonds

(1) Enter "Income" for the type of tax on the extension form.

4.82.3.4.8
(07-02-2021)

Return Period(s) and Restrictive Consents for Form 872-A

(1) Generally, the assessment period extended for the DPBs exam is restricted to those credits attributable to one or more specific DPBs issue(s) under exam. Because there may be insufficient space on Form 872-A to specify both the periods covered by the consent and the matters to which the consent applies, enter "**See Attachment I for periods covered by this consent and the bond issues to which this consent applies**" on the line following "for the period(s) ended" on the form.

(2) Prepare and attach a schedule titled "**Attachment I to Form 872-A**" when requesting an extension. Include the following:

- Identification of the Issuer, including the name, address, and EIN as specified on Form 872-A.
- A restrictive paragraph as follows: "The amount of any deficiency assessment is to be limited to that resulting from any adjustment to the credit or credits allowed under IRC 6431 with respect to the bond issue(s) specified below, any penalties and additions to tax attributable thereto, and any consequential changes to other items based on such adjustment."

Note: If you change the restricted consent language, you need TEGE Division Counsel approval for the consent (See IRM 25.6.22.8.6, Area Counsel Approval).

- A complete description of the bond issue(s) covered by the extension, including the name of the issue, the issue date, and a statement "including CUSIP number _____" where the CUSIP of the last maturity is entered, if available.
- The specific interest payment dates corresponding to all Form 8038-CP return periods covered by the extension.

- (3) Generally, an initial statute extension:
 - a. Includes all periods with one year or less remaining as of the date the Identified Qualification Issue described in IRM 4.82.3.2.2 is initially identified.
 - b. May include, with the group manager and Issuer’s concurrence, additional interest payment dates when factors indicate the exam may not be concluded with at least 450 days remaining on the statutory period for assessment.
- (4) The 450-day period is to allow:
 - a. Normal processing of the case
 - b. A minimum of one year remaining on the statutory period for assessment required by IRM 8.20.5.3.1.3, Cases Not Accepted by Appeals, for consideration by Appeals.
- (5) If more than one Form 8038-CP return was filed for a single interest payment date, but relate to the same information return (for example, BABs and RZEDBs in the same bond issue, fixed rate bonds and variable rate bonds in the same bond issue, or multiple maturity specified tax credit bonds) you only need to enter the interest payment date once on Attachment I. The period for assessment of each Form 8038-CP return with the same interest payment date is extended accordingly.

4.82.3.4.9
(07-02-2021)
Address for Delivery of Form 872-T

- (1) Form 872-T is used to terminate the extension of the period for assessment and may be used by the Issuer or the IRS to terminate the Form 872-A agreement. For Issuer initiated terminations, Form 872-T must be delivered to the address specified by the IRS using Letter 1344, Transmittal Letter - Form 872-T. For IRS initiated terminations, examiners must use the Transmittal Letter - IRS, Termination of Form 872-T. For taxpayer initiated terminations:
 - a. The examiner must enter their group manager’s name and address (see format below) on Line 4 for where the taxpayer must deliver the executed Form 872-T.
 - b. The taxpayer must deliver the form to the line 4 address.

| If MAILING Form 872-T, send to: | If HAND CARRYING Form 872-T, deliver to: |
|--|---|
| Internal Revenue Service | Manager’s Name |
| ATTN: Manager’s Name | Internal Revenue Service |
| Mailing Address | Physical Address |
| Manager’s Telephone Number | |

- (2) If the address for delivery changes during the exam, the examiner must notify the Issuer by issuing Form 872-U. The change of delivery address may change due to the transfer of a case to another group or change in manager.
- (3) For cases sent to Appeals, the assigned Appeals Officer issues Form 872-U. The examiner must indicate on Form 3198-A that Form 872-A is in the case file and that Form 872-U must be sent to the Issuer to update the Form 872-T

address. If an examiner receives Form 872-T after a case has been transferred to another group or to Appeals, the examiner immediately notifies the group or Appeals, as applicable.

4.82.3.4.10
(07-02-2021)

Signature Authority for Form 872-A, Consent to Extend the Time to Assess Tax

- (1) Delegation Order 25-2 delegates Field Group Managers (see IRM 1.2.2.14.2(3) g) authority to extend the period of limitations on assessment on behalf of the Commissioner of Internal Revenue Service. Thus, the signature authority for Form 872-A or 872 to be signed by managers of TEB Exam groups or the TEB Technical Manager is under the Commissioner's Delegation Order 25-2 (Rev. 3) (formerly DO-25-2 and DO-42, Rev 28), dated March 28, 2019.

4.82.3.4.11
(07-02-2021)

Termination of Form 872-A for No-Change Cases

- (1) Examiners must prepare a Form 872-T terminating the Form 872-A extensions for DPBs exams resulting in no change in the qualifications of the bond issue when they've extended assessment periods for related Form 8038-CP returns using Form 872-A:
 - a. Include this termination information with the no-change closing letter.
 - b. Complete Attachment I (similar to the schedule described in IRM 4.82.3.4.8 with an appropriate modification to the restrictive paragraph) identifying the periods covered by the notice.
 - c. Enter "**See Attachment I**" in the Form 872-T "Tax Period(s) Covered by this Notice" box and attach the completed Attachment I to Form 872-T.
 - d. Prepare the cover letter for Form 872-T for an IRS initiated Form 872-A termination.
- (2) See IRM 4.82.3.4.12 if :
 - a. The Form 872-A extension also includes periods for which an assessment or over assessment of tax may be made.
 - b. A Letter 531, statutory notice of deficiency is issued.

4.82.3.4.12
(07-02-2021)

Termination of Form 872-A for Other than No-Change Cases

- (1) The agreement to extend the period for assessment on Form 872-A is terminated when:
 - a. The assessment of tax or over assessment of tax is made representing the final determination of tax for a period.
 - b. The IRS issues a Letter 531, statutory notice of deficiency.
- (2) The termination in paragraph (1) above is only for the period for which the assessment, over assessment, or statutory notice relates. **Attachment I** for Form 872-T must only identify those periods for which an assessment, over assessment, or statutory notice of deficiency is not required. If the Form 872-A covers periods with no changes, or periods that were not opened for exam, then you must issue a separate Form 872-T.
 - Use Letter 1344 to mail Form 872-T for an Issuer initiated termination of Form 872-A.
 - Use the appropriate cover letter (Letter 1344 or a no-change closing letter) to mail Form 872-T for an IRS initiated termination of Form 872-A.

- 4.82.3.4.13
(10-03-2017)
Issuer Refusal to Extend Assessment Period
- (1) If an Issuer refuses to extend the period for assessment of tax on Form 8038-CP return(s) in order to allow the completion of the examination with more than one year remaining for the period of assessment, discuss with the Issuer the:
 - Potential noncompliance identified in the exam.
 - Remaining case development required.
 - Notice of deficiency process.
 - (2) If the Issuer still refuses to extend the assessment period, follow the Notice of Deficiency procedures in IRM 4.82.3.9.
- 4.82.3.4.14
(10-03-2017)
Case File Location of Statute Extension
- (1) Attach completed original Form 872, Form 872-A, and Form 872-T to the back of each Form 8038-CP return to which the statute extension applies. Include copies with the return in the electronic work paper file.
- Note:** See IRM 4.82.3.1.7 for conditions when you may accept the taxpayer's signature by fax.
- 4.82.3.5
(07-02-2021)
Revenue Agent Report Procedures
- (1) This IRM section provides the procedures and special requirements for resolving DPBs cases in which an adjustment or adverse determination is proposed.
- 4.82.3.5.1
(07-02-2021)
Agreed Adverse Determination Procedures
- (1) Generally, qualification noncompliance for DPBs is addressed during the examination of the information return for the bond issue. As such, usually we discuss with the Issuer potential noncompliance and resolution procedures before opening the Form 8038-CP examination. However, the case will start as an examination of the Form 8038-CP when the compliance issue is not qualification of the bonds for payment of a credit but is related to other matters, for example, the computation or timing of the credit amount. In either instance, you may use Form 4549-T to present the proposed tax adjustment for changes in the credit amount paid on Form 8038-CP.
- Note:** Refer to IRM 4.82.3.3.2(4) for instructions on preparation of Form 4549-T and securing the manager's approval.
- (2) If you determine the bonds are not qualified or payment of the credit claimed was not appropriate for other reasons, discuss the issues with the Issuer. If the Issuer agrees the bonds are not qualified bonds under IRC 6431 and requests a closing agreement to resolve the matter, follow standard closing agreement procedures. If the Issuer agrees that payment of the credit claimed was not appropriate for reasons not related to qualification of the bonds, the Issuer may resolve the matter by signing the Form 4549-T consenting to the assessment and collection of the amounts improperly paid.
 - (3) Closing agreements resolving examinations of DPBs:
 - a. Generally, follow the procedures for tax-advantaged bonds (currently in IRM 4.81.6).
 - b. Cover the subject bond issue and all related Form 8038-CP returns.

4.82 Tax Exempt Bonds Examination Guidelines

- c. Have a closing agreement resolution amount generally based upon the refund previously received, penalty, and interest that would be due to adjust all related Form 8038-CP returns where the period for assessment is not barred by statute.
- (4) The disposal code for closing agreements is used in RCCMS for the DPBs information return case and all related Form 8038-CP cases opened.
- (5) If the resolved matter involves a compliance issue reasonably expected to affect any future Form 8038-CP filings, notify the DPBCRC. Include in the notice the dates of all future filings expected to be affected.
- (6) DPBCRC: update the DPB Compliance Database based on the information received from the examiner.

4.82.3.5.2

(07-02-2021)

Unagreed Adverse Determination Procedures

- (1) If the Issuer doesn't agree with the adjustments, IRS policy requires you to follow deficiency procedures for claims made on an original return.
- (2) Follow the normal TEB procedures (including those in IRM 4.81.14) for proposing issues and proposed adverse determinations for the information return exam. Then:
 - a. List the proposed adjustments to the credit amounts of related Form 8038-CP returns on Form 4549-T.

Note: Refer to IRM 4.82.3.3.2(4) for instructions on preparation of Form 4549-T and securing the manager's approval.
 - b. Attach a copy of the Explanation of Items (Form 5701-B or Form 886-A) prepared for the Proposed Adverse Determination Letter to Form 4549-T supporting the proposed adjustments.
 - c. Prepare Letter 5871-A, *TEB Proposed Adjustments to Credits Under IRC 6431*, 30 Day Letter, to include all Form 8038-CP periods listed on Form 4549-T.
 - d. Submit Letter 5871-A with enclosures to group manager for review.
 - e. Upon group manager approval, group manager sends the examiner a dated and signed copy of letters issued for the case files and issues Letter 5871-A. For examinations of the information return for the bonds, the group manager will simultaneously issue the Proposed Adverse Determination Letter, Letter 4413.

4.82.3.5.3

(07-02-2021)

Revenue Agent Report of Adjustments to Form 8038-CP Accounts

- (1) Potential noncompliance related to the qualification of DPBs is presented on Form 5701-B for the exam of the information return reporting the DPBs transaction. If you've determined that the DPBs weren't qualified:
 - a. Adjust the credit amount for each affected Form 8038-CP return on Form 4549-T.
 - b. Explain the items which support the adjustments on Form 4549-T in the Explanation of Items (Form 5701-B or Form 886-A) associated with the Proposed Adverse Determination Letter.
 - c. Submit the Proposed Adverse Determination (Letter 4413) with Form 4549-T and all applicable enclosures to group manager for review.
 - d. Manager: Issue Form 4549-T with the Proposed Adverse Determination Letter.

- (2) Compute adjustments to the credit amounts claimed on Form 8038-CP on Form 4549-T. You can use this form to adjust all Form 8038-CP accounts related to a specific DPBs information return.
 - a. The form has two pages and can include up to 25 related Form 8038-CP returns.
 - b. For cases having more than 25 Form 8038-CP returns, use additional Forms 4549-T and number "X of Y" in the Other Information section.
 - c. The examiner (and Issuer, for agreed cases) must sign each Form 4549-T included in multiple report cases.
- (3) For adjustments of credit amounts claimed on Form 8038-CP returns related only to the computation or timing of the credit amount (that is, not related to qualification of the bonds), don't prepare Form 5701-B and a Proposed Adverse Determination Letter for the DPBs exam case file. However, you must attach an Explanation of Items (Form 886-A) including the facts, law, and arguments to Form 4549-T to support the adjustments included in the report.
 - a. Prepare Letter 5871-A, TEB Proposed Adjustment to Credits under IRC 6431 (30 Day Letter).
 - b. Submit Letter 5871-A, Form 4549-T, and Form 886-A to group manager for approval.
 - c. Document group manager's approval of Form 4549-T and any attachments.
 - d. Group Manager: Issue Letter 5871-A with Form 4549-T.
- (4) Agreed Adjustments: If the Issuer agrees to the proposed adjustments listed on Form 4549-T by signing, dating and returning Form 4549-T with full payment:
 - Examiner: Prepare the closing letter, Letter 5987, with appropriate text options, covering each Form 8038-CP return identified in the Forms 4549-T signed by the Issuer.
 - Examiner: Close the case file with disposal code RCCMS 102/AIMS 03 (Agreed).
 - Group manager: Review the case file and issue the closing letter.
- (5) Unagreed Adjustments:
 - a. If the Issuer does not agree to the proposed adjustments listed on Form 4549-T, follow the procedures in IRM 4.82.3.5.6.

4.82.3.5.4
(10-03-2017)
**Specific Line
Instructions for Form
4549-T**

- (1) Review instructions to complete Form 4549-T in Exhibit 4.82.3-1.

4.82.3.5.5
(07-02-2021)
**Processing Balance Due
Payments Made via
EFTPS**

- (1) The resolution amount reflected in a closing agreement or Issuer-signed Form 4549-T must be paid via Electronic Federal Tax Payment System (EFTPS). Verify the payment was made using the IDRS EFTPS command. If needed, request a copy of the EFTPS confirmation from the Issuer.
- (2) Notify the Closing Unit that a payment has been made and request transfer of the payment to the information return (Forms 8038-G, 8038-B, or 8038-TC) period module.

4.82.3.5.6
(10-03-2017)
**Unagreed Revenue
Agent Report and
Issuance of the 30-Day
Letter**

- (1) If the Issuer doesn't agree:
 - a. Examiner: Prepare Letter 5871-A, commonly referred to as the 30-Day Letter.
 - b. Examiner: List all related Form 8038-CP periods included on Form 4549-T.
 - c. Examiner: Submit Letter 5871-A with applicable enclosures to group manager for review, approval and issuance.
 - d. Group Manager: Issue Letter 5871-A at the same time as the Proposed Adverse Determination Letter if the exam includes the information return.
- (2) If the Form 8038-CP returns are examined without conducting an exam of the related information return, prepare an explanation of items to describe the facts, law, and arguments supporting the proposed adjustments (Form 886-A).
- (3) Attach to Letter 5871-A: Form 4549-T, an explanation of the items (when a Proposed Adverse Determination is not issued), and Pub 1 and Pub 5.

4.82.3.6
(10-03-2017)
Appealed Cases

- (1) For cases where the only potential noncompliance involves the DPBs' qualification, no separate protest is required apart from an adequate protest of the related Proposed Adverse Determination Letter. If adjustments on Form 4549-T relate to the credit amount or the allowance of any specific credit(s), not involving the overall qualification of the bonds for which a separate explanation of items is required under IRM 4.82.3.5.1, then the Issuer's protest must identify and address the specific adjustments to which they do not agree.
- (2) The IRS generally continues to process Form 8038-CP returns until a final adverse determination. If you receive subsequent Form 8038-CP returns, associate them with the case in Appeals for consideration.
 - a. Prepare a schedule of anticipated Form 8038-CP returns, Form 14711-A, TEB Analysis of Future Related Form 8038-CP Returns, to notify the appeals officer of the anticipated claims during the next three years.
 - b. Include Form 14711-A in the exam case file at closing (see TEB treatment of subsequent claims at IRM 4.82.3.8).

4.82.3.7
(07-02-2021)
**Additional Procedures
for Credits paid on
Non-Issuer EIN
Accounts**

- (1) When an Issuer designates another party to receive credit payments on Form 8038-CP, you must establish a new tax module when you're assessing tax (whether pursuant to an Issuer-signed Form 4549-T or an unagreed case) because:
 - a. If the notices generated from balance due master file accounts were sent to the designated payee, making an assessment on the account module for the return processed under the designated payee's EIN could be a disclosure violation.
 - b. A balance due could adversely impact the designated payee by erroneously reflecting a tax liability or transferring tax deposits or refunds from the designated payee's other tax accounts to offset the balance due.
- (2) If you close a case no change or via a closing agreement, don't make an assessment to the Form 8038-CP module. No further procedures are required under this subsection. See IRM 4.82.3.4.11, Termination of Form 872-A for No-Change Cases; IRM 4.82.3.4.12, Termination of Form 872-A for Other than No-Change Cases; IRM 4.81.5, Tax Exempt Bonds Examination Program and

Procedures, Conducting the Examination; and IRM 4.81.6, Tax Exempt Bonds (TEB) Examination Program and Procedures, Closing Agreements.

- (3) If an Issuer has designated another party to receive credit payments on Form 8038-CP and IRS hasn't paid the refund, determine whether the account module will have a zero balance, result in a balance due, or a credit balance account after any adjustments to be proposed. For exams resulting in zero or credit balance accounts, no further procedures are required under this IRM subsection.
- (4) When your manager approves your decision to open a Form 8038-CP exam processed under the EIN of a designated payee that may result in the assessment of tax, penalties, and/or interest that could result in a balance due account at any time, prepare a substitute for return ("SFR") for the Form 8038-CP for the interest payment date(s) placed under exam using the following procedures:
- a. Get your group manager's authorization to establish an SFR for each Form 8038-CP to be placed under exam.
 - b. Write "Form 8038-CP" across the top of the return "Substitute for Return prepared by TEB".
 - c. Complete Part I of the return with the Issuer's information from Part II of the original return filed by the Issuer (the "Original Return").
 - d. Enter "Same" on Part II, line 7 (don't check box on line 24)
 - e. Research BMFOLI to determine a report number available for the Original Return period for the Issuer's EIN and insert on line 10.
 - f. Enter identifying information from the Original Return:
 - Line 12 – Issue Date
 - Line 14 – CUSIP
 - Line 17a – Type of Issue (check box)
 - Line 17b – Issue Price
 - Line 17c – Rate Type
 - Line 18 – Interest Payment Date
 - Line 25 – Final return (check box)

Note: This was line 23 on returns filled using the 2012 and earlier versions of the Form 8038-CP.
 - g. Enter zeros for the following lines:
 - Line 19a – Interest payable
 - Line 19b – Treasury Rate (For STCBs only)
 - Line 19c – Interest payable using Treasury Rate (For STCBs only)
 - Line 20a-f – Credit Amount (Enter zero for the type of DPBs issue)
 - Line 22 – Total Amount of credit payment claimed
 - h. Secure e-mail a copy of the SFR Form 8038-CP return(s) with a copy of the Original Return to the TE/GE Closing Unit with instructions to process the SFR.
 - i. Monitor IDRS for the SFR to be processed and post a TC 150.
 - j. Establish a compliance activity in RCCMS and request AIMS establishment

- (5) Establish the SFR return module as early in the examination as possible because creating the new SFR return module(s) may take up to eight weeks.
- (6) Document the Original Return RCCMS case file to note you established the related SFR return module to adjust the credits allowable. Include a statement that a SFR was processed for the interest payment date related to the Original Return under the Issuer's EIN. Provide the report number assigned.
- (7) Present proposed adjustments to tax on Form 4549-T. Show zero as the credit amount per return or previously adjusted to reflect the amount per each SFR period adjusted.
- (8) Maintain the Original Return case in RCCMS until final resolution of the SFR case. Statute controls depend on the statute date and any extensions. Accordingly, if you close the SFR case to Appeals, you must close the Original Return case as a related return to Appeals as well. If you close an SFR case with an adjustment to the SFR account module, you must also close the Original Return with a disposal code indicating "Adjustment to Related Return."
- (9) If the Original Return account module reflects a credit balance and the refund is frozen (in other words, the Form 8038-CP has been processed, but the refund has not been paid due to an -X freeze), make an adjustment for any reduction in the credit amount (TC 767) to the Original Return account module to reflect the proper adjusted credit amount, but not below zero. Adjust the SFR account module if assessing penalties or other amounts (in other words, an adjustment equals the amount on Line 21b) causes a balance due. Show the adjustment to the credit amount as a TC 300 adjustment with any penalty assessment reflected with the appropriate transaction codes (generally, TC 240). Remember that the Original Return processed under the payee's EIN is actually the Issuer's return but was processed under the designated payee's EIN for administrative convenience. Include clear instructions for the adjustments needed to the Original Return and the SFR account modules with the Form 4549-T and place a copy in both case files.

Example: Form 8038-CP is filed with the trustee designated as the payee claiming a refund of \$10,000 for credit on interest for build America bonds. The return was determined to duplicate a previously paid claim and not allowable. The Issuer did not have a reasonable basis for making the claim. The duplicate claim was identified during the TE/GE compliance review and referred for examination. The Issuer agrees to the disallowance of the \$10,000 credit claimed and the assessment of a penalty of \$2,000. The Form 4549-T would reflect the decrease in the credit of \$10,000, the pending refund amount (\$10,000), and the penalty of \$2,000. The Examiner would instruct the GE Closing Unit to enter the \$10,000 reduction in the credit (TC 767) with a TC 290 \$0 priority code 8 on the Original Return account module to reduce that account balance to zero and assess the \$2,000 penalty (TC 240) on the SFR account module with a TC 300 \$0 . The \$2,000 payment on deficiency must be posted to the SFR account module. The Examiner includes a copy of the Form 4549-T and the processing instructions in both case files.

4.82.3.8
(10-03-2017)
**Post Examination
Procedures for
Subsequent Claims**

- (1) It's important to notify the DPBCRC by e-mail after you resolve a DPBs exam with a/an:
 - closing agreement
 - assessment of tax
 - appeal to Appeals
 - final adverse determination
- (2) The DPBCRC updates the DPB Compliance Database to ensure future Form 8038-CP returns are processed according to the exam resolution.

4.82.3.8.1
(10-03-2017)
**Notification of
Compliance Review
Function**

- (1) Follow these procedures to notify the DPBCRC:

| Case resolution | Procedure |
|---|--|
| <ul style="list-style-type: none"> • Issuer agrees DPBs are not qualified or credit payments were not allowed • Issuer enters into a closing agreement in which future credits are reduced • IRS issues a Final Adverse Determination Letter | <ul style="list-style-type: none"> • Prepare Form 14711-C, TEB Notification of Changes in Allowable Direct Payment Bond Credits to the DPBCRC. • Identify the DPBs transaction for which the agreement or final adverse determination is made • Instruct disallowance for any claims filed for refund of credits on Form 8038-CP returns related to the nonqualified DPBs • Attach a copy of the agreed Form 4549-T, closing agreement, or Final Adverse Determination Letter • Include sufficient information to support the claim disallowance because this notification will be used to disallow any subsequent claims |

| Case resolution | Procedure |
|---|--|
| <ul style="list-style-type: none"> • Issuer appeals case | <ul style="list-style-type: none"> • Identify the DPBs transaction, including all affected Forms 8038-CP for which the appeal may have an impact when sustained in Appeals. • Reference need for examiner to associate any affected Form 8038-CP filing with the case in Appeals. • Attach a copy of the Form 4549-T. |

- (2) When future credit amounts are modified from those originally expected based on the terms of the bonds (such as, under terms of a closing agreement):
 - a. Complete Form 14711-C.
 - b. Attach a modified debt service schedule for the remaining term of the bonds including credits expected and a copy of the closing agreement or proof for the modification.
- (3) If the 30-Day Letter has been protested, complete Form 14711-C to indicate that the case is currently in Appeals and notify the DPBCRC of any subsequent claim activity.
- (4) Form 14711-C isn't required for DPBs information return exam cases with no change to the qualification of bonds.
- (5) For agreed assessments without a closing agreement, complete Form 14711-C and attach the signed Form 4549-T
- (6) Put Form 14711-C and all required attachments in a single PDF file and secure e-mail to the DPBCRC as soon as you determine the exam resolution, but no later than when you close the case.

4.82.3.8.2 (07-02-2021)

Processing Form 14711-C, Notification to FAST

- (1) DPBCRC: when you receive Form 14711-C:
 - a. Review it for completeness and verify all required attachments are included.
 - b. Identify all approved transaction records for the subject bond issue in the DPB Compliance Database. Generally, this will be one record, but if the same bond issue had more than one type of qualified bond or both fixed and variable rate bonds, there could be more than one record.
 - c. Ensure that each identified record is modified by inserting the Form 14711-C and applicable attachments into the file. When FAST employees perform compliance checks on any future Form 8038-CP returns filed for these bonds, the Form 14711-C will notify them of:

1. The modified expected credit amounts.
 2. Whether the claim should be disallowed.
 3. Whether the case is currently in Appeals.
- d. Update the debt service schedule on file in the DPB Compliance Database with a schedule indicating the updated amounts if the credit amounts indicated on the debt service schedule on file for the DPBs transaction have been modified, for example, by the terms of a closing agreement.

4.82.3.8.3
(07-02-2021)
Treatment of Form 8038-CP Returns Filed During Appeal

- (1) If IRS receives and processes a new Form 8038-CP on a case indicated in the DPB Compliance Database as pending in Appeals (IRM 4.82.3.8.1), FAST establishes an RCCMS Compliance Activity case. The RCCMS case is transferred to the DPBCRC, who:
 - a. Reviews the Form 14711-C attached to the debt service schedule file.
 - b. Posts a copy of Form 14711-C to the RCCMS case file documents.
 - c. Documents the case activity record that the return is related to cases currently in Appeals.
 - d. Requests transfer of the case to the listed examiner’s group manager.
- (2) examiner: Follow these procedures if you receive subsequent Forms 8038-CP:

| If then table listing procedures examiner must follow if they receive a Form 8038-CP on a case in Appeals | |
|--|--|
| If ... | Then... |
| You receive a subsequent Form 8038-CP case related to a case pending in Appeals | Review the Form 8038-CP to determine whether the potential noncompliance in the Appeals case is present in the case assigned. |
| The same potential noncompliance is present | Determine whether the related cases are still in Appeals by reviewing AMDISA. |
| The cases are still in Appeals | <ul style="list-style-type: none"> • Prepare Form 4549-T. • Open the exam of the subsequent Form 8038-CP return using Letter 5871-B, TEB 8038-CP Related Return Examination. |

- (3) Because you may receive the referral before the Form 8038-CP return is processed, you may have to wait to establish case controls on AIMS. Confirm the master file account has been established on IDRS before establishing AIMS controls through RCCMS.
- (4) Prepare Letter 5871, *Proposed Adjustment to Credits under Section 6431 Associated with an Appealed Bond Determination*, for review and signature. Letter 5871:

4.82 Tax Exempt Bonds Examination Guidelines

- a. Advises the Issuer that we've examined a subsequent return.
- b. Offers an expedited procedure to associate this return with the DPBs information return and related Form 8038-CP returns currently in Appeals without any additional protest required.
- c. Serves as the 30-Day Letter if the Issuer does not request the expedited protest.

Note: You must complete the information on the Expedited Appeal Request attachment and mail with the Letter 5871.

- (5) If the Issuer returns the attachment to Letter 5871, requesting immediate Appeals consideration:
 - a. Notify your group manager.
 - b. Prepare Form 3198-A and list the key case associated with this return.
 - c. Close the case to Appeals using RCCMS closing code 601 Appealed – Protest to Appeals.
- (6) The group manager:
 - a. Notifies the Supervisory Appeals Officer that TEB is closing a related return under expedited procedures to associate with a key case already under Appeals jurisdiction.
 - b. Ensures AIMS control has been established and the Assessment Statute Expiration Date was properly updated before closing the case to Appeals.
- (7) If the Issuer does not elect the expedited Appeals consideration option, follow the normal 30-Day Letter procedures. (See IRM 4.82.3.5.6).

4.82.3.9
(07-02-2021)

Statutory Notice of Deficiency Procedures

- (1) The assessment of income taxes is subject to the deficiency procedures, which require that before an assessment of tax may be made, the IRS must send a notice of deficiency to the taxpayer (Internal Revenue Code of 1986, as amended, Chapter 63, Subchapter B). The taxpayer may waive the restrictions on assessment by giving the Secretary a signed written notice (such as, Form 3363, Form 870 or Form 4549-T).
 - a. TEB needs to issue a notice of deficiency in cases in which the taxpayer doesn't timely protest the Letter 5871-A, TEB Proposed Adjustment to Credits under IRC 6431 (30-Day Letter).
- (2) A Letter 531, also called a "statutory notice of deficiency" or "90-Day Letter," is a legal notice in which the Commissioner determines the taxpayer's tax deficiency. The notice of deficiency is a legal determination that is presumptively correct and consists of:
 - a. A letter explaining the purpose of the notice, the amount of the deficiency, and the taxpayer's options.
 - b. A waiver to allow the taxpayer to agree to the additional tax liability.
 - c. A statement showing how the deficiency was computed.
 - d. An explanation of the adjustments.
- (3) The purpose of a notice of deficiency is to:
 - a. Ensure the taxpayer is formally notified of the IRS's intention to assess a tax deficiency.
 - b. Inform the taxpayer of their opportunity and right to petition the Tax Court to dispute the proposed adjustments.

- (4) When taxpayers disagree with a tax determination, they may petition the United States Tax Court (Tax Court) for a judicial determination of the tax liability after receiving a notice of deficiency. This section outlines procedures for issuing statutory notices of deficiency under IRC 6212, Notice of Deficiency.
- (5) Generally, a notice of deficiency is not a notice of claim disallowance, but if the IRS has not issued a notice of claim disallowance within six months of the claim, then the timing requirements of IRC 6532(a) are satisfied and the taxpayer may bring a suit for refund. Accordingly, add language to the notice of deficiency to make it also function as a notice of claim disallowance and start the IRC 6532(a) period within which the taxpayer may sue for a refund.

Note: Any suit for refund would not be applicable to penalties asserted as a part of the deficiency. Accordingly, should the taxpayer forego petitioning the Tax Court and file suit in district court or the U.S. Court of Claims, penalties must be assessed after the 90-day period.

4.82.3.9.1
(07-02-2021)
**Notice of Deficiency
Review**

- (1) For all cases that require a Statutory Notice of Deficiency, Letter 531, TEB Technical reviews the unagreed issues.
 - a. The examiner will prepare the case file(s) for the Notice of Deficiency case(s) as outlined in IRM 4.82.3.9.5.
 - b. Group manager: transfer the RCCMS case file to TEB Technical (see IRM 4.82.3.9.5 (4)).
 - c. Upon receipt of the RCCMS case file(s), the TEB Technical group manager will assign a specialist to review the case(s) to ensure the accuracy of the statutory notice and ensure it is legally sufficient.
 - d. The assigned TEB Technical specialist will review the case file to confirm:
 1. Correct technical conclusions.
 - a. Verify supporting workpapers support the examiner's audit conclusions and the conclusions are technically correct.
 2. Proper consideration and computation of penalties:
 - a. All appropriate penalties must be asserted and computed correctly.
 - b. Supporting workpapers must comment on the assertion or non-assertion of applicable penalties.
 3. Accurate computation of tax deficiency.
 4. Proper completion of all procedural requirements.
 - a. Verify that all returns are controlled on AIMS and RCCMS.
 - b. Obtain current IDRS prints and review to verify the following items:
 - AMDISA to verify the applicable years are on AIMS and to verify if any freeze codes are present.
 - INOLES to verify the taxpayer's name and address.
 - TXMOD to verify whether freeze codes are present and to get a complete history of the taxpayer's account.
 - c. Include current IDRS prints in the case file.
 - d. Confirm that all returns (original and amended) are in the case file.

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- e. Verify that the case file has a copy of Letter 5871-A (the 30-Day Letter) sent to the taxpayer if adequate time remained on the statute(s). The file must contain documentation with details if the 30-day letter was not sent because insufficient time remained.
 - f. Confirm that the statute of limitations is correctly reflected on AIMS.
 - g. Ensure that the Form 895, Notice of Statute Expiration, is properly completed, if required because the statute controls in RCCMS are not used.
5. Proper managerial involvement.
 - a. Ensure the case file includes a copy of the group manager's written approval for the assertion of any penalty other than failure to file, failure to pay, or estimated tax penalties. See IRM 4.82.3.1.8.
 - b. If the case file does not reflect written managerial approval, ensure the written approval is included in the case file prior to issuing the statutory notice of deficiency.
 6. Proper protection of taxpayer rights:
 - Adherence to the Taxpayer Bill of Rights
 - Power of attorney (POA) requirements
 - Confidentiality privileges – accountant/client privilege
 - Notification of appeal rights
 - Interest abatement
 - Bankruptcy
 - Consideration of collectibility
 - Early referrals to Appeals
 - Confidentiality of taxpayer information/privacy requirements
 - Unauthorized access (UNAX) requirements
 - Third-party contact requirements

Note: The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

- (2) TE/GE Division Counsel must review all cases closed for issuance of a notice of deficiency. Accordingly, the assigned TEB Technical specialist must submit a request to their manager for the assignment of a TEGE Division Counsel attorney to the case as soon as possible after the specialist confirms that a notice of deficiency is required.
- (3) The assigned TEB Technical specialist prepares and forwards to group manager a Notice of Deficiency Package consisting of the following:
 - a. A copy of the notice prepared per IRM 4.82.3.9.8.
 - b. A copy of each return to which the notice applies.
 - c. A copy of the Letter 5871-A (30-day letter) (if issued) with Form 4549-T and an Explanation of Items (Form 886-A) for the issues raised. If Letter

5871-A was not issued, include the reason for not issuing the letter and provide Form 4549-T with an Explanation for the Items (Form 886-A) for the adjustments proposed.

- d. A copy of any statute extensions (Form 872-A or Form 872) executed for any assessment period covered by the notice. Include a description in the file for situations in which the taxpayer refused to extend the statutory period for assessment of one or more periods.
- (4) The TEB Technical group manager reviews the Notice of Deficiency Package for completeness and sends it to the TEGE Division Counsel Attorney assigned for review.
 - (5) TE/GE Division Counsel may request information to review the case and coordinate with TEB on any additional case development.
 - (6) TE/GE Division Counsel notifies the TEB Technical group manager that the notice of deficiency is approved/disapproved. If disapproved, the reviewing attorney describes the reasons.
 - (7) If the notice of deficiency is approved for issuance, the TEB Technical group manager instructs the assigned TEB Technical specialist to document TEGE Division Counsel's approval, issue the notice of deficiency and update status code to 24.
 - (8) If the Issuer petitions tax court, send a paper copy of the electronic file to Appeals or TEGE Division Counsel. Print all electronic documents in the RCCMS case file to prepare a hard copy case file.
 - (9) If the notice of deficiency is not approved for issuance, the TEGE Division Counsel attorney discusses their position with the TEB Technical group manager. The assigned TEB Technical specialist and the TEB Technical group manager discuss the case and decide if the case requires further development or normal closure.
 - (10) TEGE Division Counsel reviews and approves notices of deficiency before they are issued. However, for cases having less than two weeks remaining on the statutory period for assessment, notices of deficiency are issued regardless of whether the TEGE Division Counsel has reviewed them to protect the government's interest.

4.82.3.9.2
(07-02-2021)
No 30-Day Letter Issued

- (1) When the examiner has identified one or more items of potential noncompliance that may result in an adverse determination (see also IRM 4.82.3.5.1 and IRM 4.82.3.5.2) and the Issuer has either refused to extend or terminated an extension and the period(s) will expire in less than one year, TEB will protect the government's interests by issuing a notice of deficiency.
- (2) Examiner: First discuss with the Issuer the examination/appeals/notice of deficiency process noting the following:
 - a. TEB will open exams of Form 8038-CP returns (See IRM 4.82.3.3.2) related to the exam of the information return for the DPBs transaction (Form 8038-G, Form 8038-B or Form 8038-TC).
 - b. TEB will propose an assessment of tax based on the current development of specified potential noncompliance.
 - c. TEB will prepare a notice of deficiency in order to protect the government's interests.

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- d. The assessment of tax cannot be appealed directly to Appeals without an extension of the statutory period.
 - e. If other material areas of potential noncompliance have not been fully developed, TEB may continue the exam for the information return and related Form 8038-CP returns not impacted by the short statute dates.
 - f. If a petition is filed with the U.S. Tax Court for cases where the taxpayer was not allowed an administrative appeal, TEGE Division Counsel will generally refer the docketed case to Appeals for its consideration. The period for assessment is stayed while the case is docketed.
 - g. If a petition is not filed with the U.S. Tax Court in the time prescribed, after a notice of deficiency has been issued, the proposed tax, penalty, and interest will be assessed.
- (3) Examiner: Document in the case chronology record that the Issuer has been informed of the process described in the preceding paragraph and doesn't wish to extend the statutory period for assessment.
- (4) Examiner: Determine whether any material areas of potential noncompliance affecting qualification of the bonds and affecting returns not subject to statutes that will expire in less than one year have not been fully developed. If so, discuss the remaining areas of potential noncompliance with your group manager and determine if you must :
- a. Keep the case open to complete case development.
 - b. Issue a Proposed Adverse Determination Letter if and when appropriate.

4.82.3.9.3
(07-02-2021)
**No Undeveloped
Material Potential
Noncompliance
Remaining**

- (1) Examiner: If you determine that no material potential noncompliance remains undeveloped in the exam:
- a. If applicable, issue a Proposed Adverse Determination Letter for the information return under examination regardless of whether a Form 5701-B has been previously issued.
 - b. Open the examination of all Form 8038-CP returns for which case controls have been established. See IRM 4.82.3.3.2.
 - c. Prepare Form 4549-T computing the adjustment proposed. See Exhibit 4.82.3-1.
 - d. If no timely response, close the RCCMS case files for all Form 8038-CP returns to your group manager and request the case(s) be transferred to TEB Technical so a specialist can be assigned to issue a notice of deficiency.
 - e. If valid protest received, prepare Letter 5918, Protest Received Rebuttal Transfer to Appeals. Request closure of the exam of the information return to Appeals. See IRM 4.81.5.24.
 - f. Group manager: Close case to Appeals. Issue Letter 5918, Protest Received Rebuttal Transfer to Appeals.

4.82.3.9.4
(07-02-2021)
**One or More
Undeveloped Material
Areas of Potential
Noncompliance Remain**

- (1) Examiner: If you determine that one or more material areas of potential noncompliance remain undeveloped in the exam:
- a. Open the exam of all Form 8038-CP returns that have a period for assessment of fewer than 450 days remaining by the expected completion date of the examination. See IRM 4.82.3.3.2.
 - b. Prepare Form 4549-T computing the adjustment proposed for all open Form 8038-CP periods. See Exhibit 4.82.3-1.

- c. Prepare an explanation of items for the Identified Qualification Issue(s) and any additional potential noncompliance sufficiently developed supporting the Form 4549-T adjustments.
 - d. If no timely response, close the RCCMS case files for all Form 8038-CP returns to your group manager and request the case(s) be transferred to TEB Technical assigned to issue a notice of deficiency.
 - e. If valid protest received, prepare Letter 5918, Protest Received Rebuttal / Transfer to Appeals. Close the exam of the information return to Appeals. See IRM 4.81.5.24 , Case Closing Procedures.
 - f. Close the RCCMS case files for all open Form 8038-CP returns to your manager (See IRM 4.82.3.9.5) and request transfer to the TEB Technical manager to issue a notice of deficiency.
 - g. Continue the exam of the DPBs information return as a priority case.
- (2) Group manager: For cases in which case development continues:
- a. Indicate the developments in the case file and a projected closing date.

4.82.3.9.5
(07-02-2021)
**Case File for Notice of
Deficiency Cases**

- (1) Examiner: Prepare an electronic RCCMS exam case file for each Form 8038-CP return. Include the following:
- a. Form 3198-A indicating “DPBs Related Return – Issuer Refused Statute Extension – Statutory Notice”.
 - b. A copy of Form 8038-CP.
 - c. Form 895 (if applicable and the RCCMS statute controls are not used).
 - d. Form 4549-T with explanation of items for proposed adjustments for the periods.
 - e. A description of the Identified Qualification Issue(s) for which case controls were established per IRM 4.82.3.4.
 - f. Factual details developed during the exam for the issue(s).
 - g. A copy of Form 5464, Case Chronology Record, from the exam file of the related information return.
 - h. Copies of any correspondence or other evidence for the Issuer’s refusal to extend the period for assessment.
 - i. The TEB Statute Evaluation Form, Form 14711-B for the related bond exam. See IRM 4.82.3.2.1 (4).
 - j. A description of the current exam status including all remaining items of potential noncompliance and outstanding IDRS for the related information return exam.
- (2) If Form 4549-T includes more than one Form 8038-CP return:
- a. Include the case file items listed in (1) above in the Form 8038-CP return case file with the earliest interest payment date.
 - b. Include in all other case files for Form 8038-CP returns: Form 3198-A, a copy of Form 8038-CP, and either use the RCCMS statute tools or include the Form 895 referenced above.
 - c. Indicate on Form 3198-A: “See related case file for MM/DD/YYYY interest payment date for the exam case file.”
- (3) Examiner: Close the RCCMS case file(s) to group manager using disposal code 604 (Unagreed Without Protest).

- (4) Examiner's group manager: Update the case to status 20 and transfer the RCCMS case file(s) from group to TEB Technical (PBC/SBC/EGC = 400/25116/7214) for preparation of the Notice of Deficiency.

4.82.3.9.6
(07-02-2021)

No Protest of 30-Day Letter

- (1) Examiner: Include a copy of the file from the related information return exam and a copy of the Final Adverse Determination Letter issued for the DPBs in the case file of the Form 8038-CP return with the earliest interest payment date in exam cases in which:
- The assessment period is not in jeopardy.
 - A 30-Day Letter was issued per IRM 4.82.3.5.6.
 - A protest was not received in the time prescribed.
- (2) Include Form 3198-A indicating DPBs Related Return – No 30-Day Letter Protest – Statutory Notice in the case file
- With the earliest interest payment date.
 - Of any additional related return that cross references its examination work papers.
- (3) If the Issuer timely protests the Proposed Adverse Determination Letter, but fails to timely protest the Letter 5871-A (30-Day Letter) for the related Form 8038-CP returns, determine whether the failure was intended, or due to a mistaken understanding of the requirement to protest both the Proposed Adverse Determination Letter and Letter 5871-A (30-Day Letter). If unintended:
- Determine a reasonable extension of time to allow the Issuer to file a valid protest to the Letter 5871-A (30-Day Letter).
 - With your group manager's agreement, send Letter 686 notifying the Issuer of such additional time to protest the Letter 5871-A (30-Day Letter).

Note: Extension of time to protest the Letter 5871-A (30-Day Letter) is not required in cases in which the Issuer didn't timely file a protest to the Proposed Adverse Determination Letter.

- (4) If you don't receive a protest to the Letter 5871-A (30-Day Letter), close the RCCMS case files to your group manager who transfers to TEB Technical to issue a notice of deficiency. Use RCCMS closing code 604 (Unagreed –Without Protest). Manager will update the status code on RCCMS from 12 to 20 - Review and transfer the case to TEB Technical for preparation of the Notice of Deficiency.

4.82.3.9.7
(07-02-2021)

Notice to DPBCRC

- (1) For cases transferring from an examiner's group for issuance of a notice of deficiency where a final adverse determination is issued, examiners must follow the notification requirements in IRM 4.82.3.8.
- (2) For cases transferring from an examiner's group for issuance of a notice of deficiency where the exam of the information return remains open, the notification to DPBCRC is not required.

4.82.3.9.8
(07-02-2021)
**Preparation and
Issuance of the Notice
of Deficiency**

- (1) Examiner: Use the general procedures in IRM 4.8.9, Statutory Notices of Deficiency, to prepare, issue, suspense, and monitor a notice of deficiency as modified in this IRM.
 - a. A notice of deficiency must be issued when there is a proposed tax deficiency with which the taxpayer does not agree and:
 1. The statute of limitations is imminent and no extension can be obtained.
 2. The taxpayer does not respond to, or file a valid protest to a Letter 5871-A (30-Day Letter), or
 3. The taxpayer requests the issuance of the notice in order to petition the case to Tax Court.
- (2) TEB Technical: Prepare the notice of deficiency including the explanatory paragraph described in IRM 4.8.9.8.6.
- (3) TEB Technical: Coordinate with TEGE Division Counsel to request assignment of an attorney for the review and approval of the Notice of Deficiency.
- (4) TEB Technical: Assemble a package (Notice of Deficiency Package) to include:
 1. Notice of Deficiency (Letter 531) addressed to the Issuer.
 2. Form 4089-A, Notice of Deficiency Statement.
 3. Notice 1421, How Bankruptcy Affects Your Rights to File a Petition in Tax Court in Response to a Notice of Deficiency.
 4. Form 4089, Notice of Deficiency Waiver.
 5. Explanation of Tax Adjustment (See IRM 4.82.3.9.9).
 6. Letter 937 transmitting a copy to the POA, if applicable.
 7. Form 4549-T (from the exam case file).
 8. Form 870 or Form 3363 (from the exam case file).
 9. Copy of current IDRS command codes TXMODA and INOLES prints showing Issuer's name and address on file.
 10. Copies of any Form 2848 (from the exam case file).
 11. Copies of any statute extensions obtained for any period included in the notice of deficiency (from the exam file).
 12. A description of the Identified Qualification Issue(s) for which case controls were established under IRM 4.82.3.2.2.
- (5) TEB Technical: Perfect the Notice of Deficiency Package as described in written advice from TEGE Division Counsel.
- (6) TEB Technical: Prepare the following items:
 - a. Notice of Deficiency Package approval by Division Counsel.
 - b. Sufficient printed copies of items in the Notice of Deficiency Package (see IRM 4.82.3.9.8 (4)), including a file copy and any required copies for POAs.
 - c. Cover letters for each POA to receive copies of the notice of deficiency.
 - d. Addressed envelopes for issuance of the statutory notice of deficiency. (Address the package for the Issuer to the addressee and address from INOLES).
- (7) TEB Technical: Send the items in IRM 4.82.3.9.8 (4) above, and a copy of TEGE Division Counsel's written approval to the TEB Program Manager or designee, using next day air mail service.
- (8) TEB Program Manager or designee:

4.82 Tax Exempt Bonds Examination Guidelines

- a. Review the Notice of Deficiency Package and upon approval, sign the letters, and mail the notice of deficiency to the Issuer using certified mail with return receipt requested.
 - b. Mail a copy of the notice to authorized representatives per Form 2848.
 - c. When you receive the return receipt evidencing delivery of the notice, send a copy of the notice, evidence of mailing, and copies of POA transmittal letters to TEB Technical to include in the RCCMS case file.
- (9) TEB Technical: Update the status of each RCCMS case included in the notice of deficiency to status 24, 90-Day Letter.

4.82.3.9.9
(07-02-2021)

Explanation of Tax Adjustments

- (1) The explanation of tax changes will generally consist of a short paragraph explaining the adjustments proposed on Form 4549-T. This paragraph doesn't require the statement of facts, law, and arguments generally included with Form 5701-B or a Proposed Adverse Determination Letter, but merely an explanation of the reason for the adjustment.
- (2) **Examples** of IRC 6431 specific explanations:
 - a. We have disallowed the IRC 6431 credit for qualified bonds you claimed because **[NAME OF BOND ISSUE]** are private activity bonds and are not qualified bonds.
 - b. We have disallowed the IRC 6431 credit for qualified bonds you claimed because **[NAME OF BOND ISSUE]** are arbitrage bonds and are not qualified bonds.
 - c. We have disallowed the IRC 6431 credit for qualified bonds you claimed because **[NAME OF BOND ISSUE]** were not issued before January 1, 2011 and are not qualified bonds.
 - d. We have disallowed the IRC 6431 credit for qualified bonds you claimed because you did not make an irrevocable election to have the provisions of IRC 54AA apply to **[NAME OF BOND ISSUE]** and the bonds are not qualified bonds.
 - e. We have disallowed the IRC 6431 credit for qualified bonds you claimed because the issue price has more than a de minimis amount of premium over the stated principal amount of **[NAME OF BOND ISSUE]** and the bonds are not qualified bonds.
 - f. We have disallowed the IRC 6431 credit for qualified bonds you claimed because proceeds of **[NAME OF BOND ISSUE]** required to be used for certain qualifying purposes were not used for such purposes and the bonds are not qualified bonds.
 - g. We have disallowed the IRC 6431 credit for specified tax credit bonds you claimed because **[NAME OF BOND ISSUE]** are arbitrage bonds and are not specified tax credit bonds.
 - h. We have disallowed the IRC 6431 credit for specified tax credit bonds you claimed because you did not make an irrevocable election to have the provisions of IRC 6431(f) apply to **[NAME OF BOND ISSUE]** and the bonds are not specified tax credit bonds.
 - i. We have disallowed the IRC 6431 credit for specified tax credit bonds you claimed because the issue price has more than a de minimis amount of premium over the stated principal amount of **[NAME OF BOND ISSUE]** and the bonds are not specified tax credit bonds.
 - j. We have disallowed the IRC 6431 credit for specified tax credit bonds you claimed because proceeds of **[NAME OF BOND ISSUE]** required to be used for certain qualifying purposes, were not used for such purposes and the bonds are not specified tax credit bonds.

(3) **Example** of an IRC 6676 specific explanation:

Example: You are liable for a penalty under IRC 6676 in an amount equal to 20 percent of the excessive amount of credits you claimed pursuant to IRC 6431 because the amount of credits you claimed was excessive and you have not shown that you had a reasonable cause for claiming such excessive amount. The section 6676 Penalty described herein was calculated as follows: Line 22 of the Form 8038-CP specified a credit payment to be received of \$[Line 22 amount]. The \$[Line 22 amount] amount is subject to the section 6676 Penalty in the amount of \$ (.20 times \$[Line 22 amount]) and interest thereon.

Note: The language in the example applies where the claim for refund was filed after December 18, 2015. If a claim for refund was filed before December 18, 2015, the taxpayer must demonstrate that the excessive claim for refund had a reasonable *basis* in order to be relieved of liability for the IRC 6676 penalty.

(4) TEB Technical: For adjustments resulting from noncompliance not described in the examples above, including penalties under IRC 6662 or IRC 6663, provide an explanation which conforms to the:

- Guidance in IRM 4.8.9.8.6 on the explanation of adjustments.
- Examples in IRM 4.82.3.9.9 (2) and IRM 4.82.3.9.9 (3).
- Numerous examples in IRM 4.10.10 Exhibit 4.10.10-2.

(5) Include the following paragraphs in the notice of deficiency in cases where deficiency involves a credit under IRC 6431 that has not been paid by the IRS:

- IRC 6512(a) prohibits a refund suit by a taxpayer when the IRS has issued a notice of deficiency and the taxpayer has timely petitioned the Tax Court from that notice of deficiency.
- You may choose to treat this notice as your legal notice that we have fully disallowed your claim. To treat this notice as your legal notice of claim disallowance, you must either sign the Form 4089, Notice of Deficiency – Waiver, or fail to file a petition in the Tax Court within the 90-day period allowed by law. This will permit us to assess the deficiency, including any penalties or other additions to tax described in this notice.
- If you wish to bring suit or proceedings for the recovery of any credit under IRC 6431 for which this notice is issued, you may do so by filing suit with the United States District Court having jurisdiction, or the United States Claims Court. The law permits you to do this within two years from the mailing date of this letter. (Note: any penalties or other additions to tax that may be assessed may not be included in such suit for refund without first paying the amount, claiming a refund, and receiving a notice that we have disallowed your claim.
- If you wish to protest the denial of this claim, you may request an administrative appeal of your case to the IRS Independent Office of Appeals (Appeals). Appeals is separate and independent of the IRS office that determined that this claim should be disallowed. If you decide to request an Appeals review, you must submit your request in writing within 30 days of the date of this letter. Your request must include a detailed written response to the reason (described above) this claim

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was disallowed and include any further explanation of your position. The request for an appeal must be sent to the address in the heading of this letter.

Note: Requesting a review of our claim disallowance by Appeals doesn't extend the two year period for filing suit with the United States District Court having jurisdiction, or the United States Claims Court.

4.82.3.9.10
(07-02-2021)

Post Issuance Procedures for Notice of Deficiency Cases

(1) After issuance of the notice of deficiency, Issuers have 90 days to petition U.S. Tax Court. The IRS is barred from making an assessment before the expiration of this 90-day period, unless a waiver is received.

(2) TEB Technical: follow these procedures:

- a. Establish a 120-day follow-up (allowing 30 days past the 90-day expiration date to allow time for mailing and inputting the information) for each case placed in 90-day suspense.
- b. Review daily, the docket listing from the Director, Legal Processing Division, Procedure and Administration Office of Chief Counsel to determine if the U.S. Tax Court has been petitioned for any case in 90-Day suspense.

Note: Division Counsel must respond to a petition within 60 days, so it is important to identify cases petitioned as soon as possible.

- c. If the Issuer files a petition with the US Tax Court, close the petitioned cases on RCCMS using disposal code 603 (Unagreed – Petition to Tax Court). Ship the hard copy case file to Appeals by overnight mail to the following address:

Internal Revenue Service
Chicago Appeals Processing Office
200 West Adams Street, Suite 600
Chicago, IL 60606-5208

Note: Before shipping, confirm address by contacting the Appeals, Case & Operations Support, Account & Processing Support West Area 1, Team 2 Supervisory Tax Examining Technician.

- d. Coordinate with the Closing Unit to close the case on RCCMS.
- e. If a petition is not identified, upon expiration of the 120-day suspense period, research at www.ustaxcourt.gov (select **Docket Inquiry**) to determine if the Issuer has petitioned the Tax Court. If no petition has been filed, close the non-petitioned case on RCCMS using disposal code 604 (Unagreed – Without Protest). The hard copy case file may be destroyed to the extent all documents are included in the electronic case file.

(3) TEB Technical: If you receive a Form 870 waiver authorizing the immediate assessment and collection of tax, review the waiver. Close any case for which a valid waiver was received using disposal code 102 (Agreed Tax or Penalty Changes).

4.82.3.9.11
(10-03-2017)

Requests for Reconsideration

(1) Refer to IRM 4.8.9.23 for procedures used to respond to protests, correspondence, or other requests for reconsideration after the notice of deficiency has been issued.

4.82.3.9.12
(07-02-2021)

**Rescinding Statutory
Notices of Deficiency**

- (1) Sometimes a notice of deficiency may need to be withdrawn.

Example: Identification of an error in the notice, agreement to resolve the matter through a closing agreement, establishment of facts that resolve the matter with no assessment required, willingness to extend the assessment period, or other request by the Issuer.

- (2) IRS can't rescind a notice of deficiency until after a petition is filed to the U.S. Tax Court or the 90-day suspense period expires and may only do so if the Issuer and the IRS agree. A rescission requires you to consider a number of factors listed in IRM 4.8.9.28.

- (3) To rescind a notice of deficiency issued for TEB cases:

- a. Follow procedures in Rev. Proc. 98-54.
- b. Use Form 8626.
- c. Get the TEB Program Manager's approval.

4.82.3.10
(07-02-2021)

**Compliance Review for
Direct Pay Bonds**

- (1) Form 8038-CP generally represents a claim for credit for which no prior return or account module exists. Each Form 8038-CP return undergoes a check of compliance.

4.82.3.10.1
(07-02-2021)

**Examination Referrals
for Direct Pay Bonds
Claims**

- (1) Per IRM 4.81.12.3.1, the FAST DPB Compliance Review Function may establish a case on RCCMS ("Referral Case") to refer a Form 8038-CP to the DPBCRC.

- a. A copy of the return is posted to the Referral Case file along with an explanation of why the referral was made.
- b. As described in IRM 4.81.12, if certain conditions are met the return will be edited with a Computer Condition Code "O".
- c. FAST follows the procedures in IRM 4.81.12 to document the activity and findings in the case chronology within RCCMS. The referral will be transferred to the DPBCRC in RCCMS status 10.

- (2) The DPBCRC reviews Form 8038-CP referrals from FAST to determine if a referral for examination of the Issuer's books and records should be made. If the DPBCRC determines an examination referral:

- a. Should not be made, the DPBCRC will close the case as a **survey after assignment**.
- b. Should be made, the DPBCRC will request transfer of the case to CP&C Classification.

- (3) Prior to case closure or request for transfer, the DPBCRC updates the case file to reflect the basis for the determination made.

4.82.3.10.1.1
(07-02-2021)

**Claim Review of Debt
Service Schedule
Discrepancies**

- (1) FAST may make referrals to TEB when the claim amount doesn't agree with the debt service requirements information on the bonds.

- (2) The DPBCRC reviews the Form 8038-CP referred and the related debt service schedule for any explanation of the discrepancy.

- (3) Common causes for discrepancies include:

4.82 Tax Exempt Bonds Examination Guidelines

- Transpositions of interest or credit amounts
- Selecting the credit for the wrong IPD from the debt service schedule
- Unscheduled redemptions of bonds
- Modification to terms of the bonds
- Substantial change in rates for variable rate bonds

(4) DPBCRC: follow these procedures based on your case analysis:

| Case analysis | Action |
|--|---|
| There's no explanation of the difference between the credit amount claimed and the amount of allowable credit per the debt service schedule previously provided. | Call the designated contact person listed on Form 8038-CP, Part I, Line 5 or Part II, Line 15 officer or other person for the explanation for the difference as required per the instructions to Form 8038-CP. Note: This contact is made to process the return and doesn't constitute an exam. |
| You determine the credit amount claimed appears to be correct. | Document the RCCMS case file and close as a survey after assignment disposal code. No closing letter is required because we didn't initiate an exam |
| You determine an examination referral should be made. | Document the case file and send a referral to CP&C Classification. |
| You identify changes in future debt service on the bonds. | Update the record for the bond issue in the DPB Compliance Database. |

4.82.3.10.1.2
(07-02-2021)
**Claim Disallowance
Procedures for Returns
Barred by Statute**

- (1) During the compliance review process and/or Code & Edit function, we identify potential claims filed on Form 8038-CP with an IPD earlier than three years before the IRS received date.
- a. These returns are edited with "SOL" and we follow normal procedures for claims barred by statute due to the expiration of the period in which to file claims.
 - b. The Statute Unit at the Ogden Campus reviews the claim and if appropriate, issues the statutory notice of claim disallowance. The Statute Unit doesn't refer these cases to TEB for examination.

4.82.3.10.1.3
(07-02-2021)
**Potential Duplicate
Claim Review
Procedures**

- (1) Under IRM 4.81.12.3.7.7(1), when FAST identifies a potential duplicate claim filed on Form 8038-CP with a Part I entity EIN different than a previously filed return, but Part II is the same, FAST refers the case to TEB as a Referral Case and edits a Computer Condition Code "O" on the return.
- (2) DPBCRC: follow these procedures based on your analysis of a Referral Case.

| If you... | Then... |
|---|--|
| Determine the return does not duplicate a claim previously filed for an IPD. | <ol style="list-style-type: none"> 1. Document your basis for the determination in the RCCMS case chronology record and close the RCCMS compliance activity using expedited closing procedures described in See IRM 4.82.3.10.2. 2. Use the survey after assignment disposal code. 3. Don't issue a closing letter because an exam was not initiated. |
| Determine the return duplicates a claim previously filed for an IPD. | Request transfer of the Referral Case to CP&C Classification. |
| Determine that the first filed return was potentially not allowable. | <ol style="list-style-type: none"> 1. Determine if the refund for the return has been paid. 2. Document your actions and determination and request transfer of the cases to CP&C Classification. |
| Can't make a determination about the potential duplicate return. | Request transfer of the case to CP&C Classification. |

4.82.3.10.1.4
(07-02-2021)
Procedures for Potential Fraudulent Returns

- (1) Under IRM 4.81.12.3.6, the FAST DPB Compliance Review Function refers each return identified with potential badges of fraud including returns that appear not to be related to a qualified DPB issue.
- (2) FAST sends the original return with all attachments and envelop (if available) to the DPBCRC without establishing a case on RCCMS.
- (3) The DPBCRC reviews to determine whether the claim may be fraudulent. Don't contact the Issuer or payee during the initial claim review.
- (4) If the claim does not appear to be fraudulent, the DPBCRC sends the original return back to the FAST with Form 3210 for continued processing. Under IRM 4.81.12.2.3.1 , FAST establishes the case on RCCMS and refers to the DPBCRC. The DPBCRC documents the determination in the RCCMS case and closes it as a survey.
- (5) If the claim may be fraudulent the DPBCRC sends the original return to FAST with Form 3210. The DPBCRC includes in the transmittal:
 - a. Instructions that FAST is to establish the case on RCCMS for referral to CP& C Classification.
 - b. Documentation of the DPBCRC's claim review.
 - c. Under IRM 4.81.12.2.3.1, FAST establishes the case on RCCMS and refers to the DPBCRC. The DPBCRC transfers the referral to CP& C Classification.

Note: If the claim appears to be fraudulent or frivolous, the DPBCRC will not receive an RCCMS case, but will receive the original returns from FAST by mail or a scanned copy by e-mail. If the DPBCRC agrees that the return is frivolous, the original return is mailed (with a Form 3210) to the campus Frivolous Return Program.

4.82.3.10.2
(07-02-2021)

**Expedited Case Closing
Procedures for DPBCRC
and Examiners**

(1) The following referrals are priority:

- Form 8038-CP with a Computer Condition Code “O”.
- Potential fraudulent return.

Note: DPBCRC: Send these returns to CP&C Classification with an immediate assignment indicator for priority assignment.

(2) DPBCRC and Examiner: Expedite case closing for cases for which both:

- a. You’ve determined to allow all, or any portion, of a claim amount, and
- b. The account module for the Form 8038-CP return has a Computer Condition Code “O”.

(3) Examiner: Survey or close the RCCMS/AIMS case to the group manager to issue any closing letter within one business day of either:

- a. Deciding to survey or no-change the case.
- b. Receiving the signed Form 4549-T from the taxpayer agreeing to the proposed adjustment.

(4) Examiner: Alert the group manager by separate mail that you closed a case with expedite handling requirements on RCCMS. Indicate the date on which credit interest is to begin accruing on the return module.

Note: Credit interest generally starts accruing 45 days after the later of the return due date, the return received date, or the correspondence received date. For most fixed rate bonds, the due date is 45 days before the relevant interest payment date. See instructions for Form 8038-CP to determine the due date of the return for various types of bonds.

(5) Group manager: Process the closed RCCMS/AIMS case within two business days of receipt.

(6) Group manager: E-mail the FAST mailbox and group manager identifying the case(s) closed on RCCMS with expedite handling requirements. Include the credit interest date (the date the IRS will begin computing credit interest) in the e-mail to help the FAST prioritize the case closing.

(7) Expedited closing procedures are not required for cases in which the originally claimed refund has been paid or the claim is being totally disallowed.

4.82.3.10.3
(07-02-2021)

**Compliance Activity
Review Procedures**

(1) FAST refers Form 8038-CP returns to the DPBCRC (a “**compliance activity referral**”) for certain compliance activities as described in IRM 4.81.12.

4.82.3.10.3.1
(07-02-2021)

Associating Claims with Key Case in Exam or Appeals

- (1) DPBCRC: Upon notification from FAST that a claim is related to a case under exam or in Appeals:
- a. Determine if the key case is still open on AIMS.
 - b. For closed key cases, determine if the claim was filed consistent with the resolution of the key case.

- Close the compliance activity referred for allowable claims and update the approval status on the DPB Compliance Database to reflect the correct approval status.
- For claims filed that are inconsistent with the key case resolution, refer the case to CP&C Classification.

Note: FAST generally makes referrals before returns are processed by submissions processing. Accordingly, the TC 150 is generally not posted when the DPBCRC receives the FAST referral. DO NOT ESTABLISH AIMS before the refund (TC 846 or TC 840) posts to the account unless you have a specific reason to freeze the refund, or it will freeze the account module.

- c. For open exam cases, submit referral of case to CP&C Classification recommending transfer of the compliance activity referral to the group where the key case was worked.

(2) Examiner: If you decide:

- a. To include the return in the current exam, monitor the account module to determine when the TC 150 posts. If the refund must not be paid due to identified violations with which the Issuer agrees, establish AIMS once the TC 150 is posted. In most cases, continue to monitor the account module until the TC 846/840 posts (generally three cycles before the IPD) before establishing on AIMS.

Note: Generally, it is IRS policy to continue to pay direct pay credit claims until a final determination of the bonds' qualified status has been made.

Note: If the key case has already been forwarded to Appeals, follow the procedures in IRM 4.82.3.8.3. Continue to monitor the account module for TC 150 and 846/840 posting before establishing AIMS to avoid freezing the refund. Before AIMS establishment, you may do required activities, such as contacting the Issuer to open the exam and obtaining the request to expedite the Issuer's protest but AIMS must be established before you transfer the case to Appeals.

- b. Not to include the return in the current exam, with your manager's concurrence, close the compliance activity without establishing on AIMS.

4.82.3.10.3.2
(07-02-2021)

Initial Claim Review Procedures

(1) The DPBCRC reviews of initial claims for credit, generally involving newly issued direct pay bonds to:

- a. Identify the bond issue to which the claim relates.
- b. Evaluate whether the bonds appear to be qualified bonds.
- c. Consider the potential for fraudulent claims or claims which are not related to qualified bonds and the potential for paying fraudulent or erroneous claims.

4.82 Tax Exempt Bonds Examination Guidelines

- (2) The DPBCRC:
- a. Reviews a copy of the information return (e.g., Form 8038-TC, Information Return for Tax Credit Bonds and Specified Tax Credit Bonds) filed with the IRS for the bond issue to which the claim relates.
 - b. Reviews entity and filing history information on IDRS for the entity issuing the bonds.
 - c. Reviews the Official Statement, if available from public sources; (e.g. the Municipal Securities Rulemaking Boards' Electronic Municipal Market Access (EMMA) website), paying special attention to:
 - Representations of Issuer
 - Bond counsel or special tax counsel opinion (in other words, DPBs qualification)
 - Project description
 - Potential for nonqualified expenditures
 - Potential for impermissible private business activity
 - Security for the bonds/sinking fund requirements
 - Issue price/de minimis premium reported
 - Cost of issuance paid from bond proceeds
 - Terms of the bonds including maturity
 - d. Review Issuer's internet web pages for entity information, identification of officials, and any available project information.
 - e. Recompute debt service schedule based on the terms of the bonds and compare with the debt service schedule attached to the Form 8038-TC.
 - f. Document, in the RCCMS case file, whether evidence supports the Issuer's assertion the bonds are qualified bonds.
- (3) For cases in which the evidence available doesn't support the Issuer's assertion that the bonds are qualified, document the case file and send a referral to CP& C Classification for assignment to a TEB Exam Group.
- (4) For cases in which you determine the bonds appear to be qualified bonds, create a new DPB Compliance Database Record for the bond issue for cases in which you determine the bonds appear to be qualified bonds. Include in the record created, identifying information for the bond issue, a qualification status, and a link to the pdf file for the debt service schedule created for the bonds. Close the RCCMS compliance activity as a non-AIMS compliance activity with a survey after assignment disposal code. No closing letter is required because taxpayer contact was not made.

4.82.3.10.3.3
(07-02-2021)
**Final Claim Review
Procedures**

- (1) DPBCRC's review of final claims for credit generally involves direct pay bonds that have matured or have been redeemed prior to maturity. Determine if the return represents the final return for the qualified bonds and evaluate whether any common compliance issues are present which may require examination.
- (2) Determine if the IPD for the return is the final maturity of the bonds per the debt service schedule.
- (3) Review any attachments to Form 8038-CP explaining discrepancies, if any, between the amount claimed and the amount allowable per the initial or modified debt service schedule previously provided for the bond issue.

- (4) Review the EMMA website, if applicable, for material event notices related to the bond issue that indicate a call, redemption notice, or other event affecting the outstanding bonds.
- (5) Contact the Issuer's designated contact person listed on the return, for cases in which there's no evidence to explain the reason the final return box was checked. Ask if the box was checked in error. (This contact is made to process the return and does not constitute an exam.)
- (6) Document any determination of whether the return represents the final return for the bond issue in the RCCMS case chronology record.
- (7) Issuers redeeming bonds before their stated maturity frequently establish refunding escrows with proceeds of refunding bonds that are pledged to pay debt service of the refunded bonds. These activities may cause a reissuance that you should evaluate. If you find the bonds were reissued, document the case file and send a referral to CP&C.
- (8) Update the Compliance Database record for the bond issue to reflect the status as Final Return Filed for cases in which you determine the final Form 8038-CP has been filed for a bond issue. Insert a copy of the final return into the linked debt service schedule for the bonds. This status alerts the DPB Compliance Review Function that no additional claims must allowed for this bond issue.
- (9) For final returns that are not referred for examination, close referrals as non-AIMS compliance activities using a survey after assignment disposal code. No closing letter is required because an exam was not initiated.

4.82.3.10.4
(07-02-2021)
**Direct Pay Bonds
Compliance Database**

- (1) FAST keeps a record of each Form 8038-CP return processed, which also assigns a unique report number and helps identify potential duplicate returns. This database also contains records of each bond issue evaluated for requirements of qualified bonds, and FAST refers to those records during the compliance review process.

4.82.3.10.5
(07-02-2021)
**Claim Disallowance
Procedures for Direct
Pay Bonds**

- (1) The IRS' policy is to follow deficiency procedures for disallowed claims if the claim to be disallowed was made on an original return. For a claim made on an originally filed Form 8038-CP return that is determined to be unallowable before the claim, or any portion thereof, has been paid, the IRS follows deficiency procedures in IRM 4.82.3.9.
- (2) Referral cases are generally established on RCCMS while the Form 8038-CP is in processing. The examiner must:
 - a. Verify a TC 150 was posted on the Form 8038-CP tax module for the Referral Case.
 - b. Verify AIMS examination controls are established.
 - c. Determine the amount of credit processed.
 - d. Determine whether any refund was paid or frozen.

Note: Claim amounts are subject to sequestration and changes may be made to the claim amount during processing of the return. Therefore, consider the amount of any credit used to offset the Issuer's other obligations on the tax module as a paid refund.

4.82 Tax Exempt Bonds Examination Guidelines

- (3) Examiner: Prepare Form 4549-T reflecting the proposed adjustment to the credit amount processed on the tax module for the Form 8038-CP return per the instructions in IRM 4.82.3.5.2 as modified below.
- If IRS hasn't paid the refund reflected on a tax module, don't compute interest under IRC 6601 on the credit decrease amount on Form 4549-T.
 - Following each period reported on Form 4549-T for which IRS hasn't paid the refund pending on the tax module, label the row "Amount of Refund Pending on Tax Module".
 - For each row labeled "Amount of Refund Pending on Tax Module," enter in the column labeled "Amount Due or (Refund)" the unpaid refund amount shown on the tax module in brackets as a negative or refund amount; "(\$nn,nnn.nn)."
- Note:** By not including deficiency interest and reflecting the unpaid refund as a negative amount, the Form 4549-T reflects the actual deficiency for each period and the total amount or (refund) due for all cases included in the form.
- (4) Follow deficiency procedures in IRM 4.82.3.9 for unagreed cases. The statutory notice of deficiency, Letter 531 also serves as the statutory notice of claim disallowance. Issuers can file a petition in Tax Court, U.S. district court, or the U.S. Court of Claims to protest the disallowance of the credit. However, they must petition any penalties associated with the proposed reduction in credit in Tax Court or pay the penalty, file a claim for refund, and receive a claim disallowance in order to file a petition in U.S. district court or the U.S. Court of Claims.
- (5) Don't notify the Issuer of any full or partial claim disallowance unless the claim is barred by statute (IRM 4.82.3.10.1.2) or was filed on an amended Form 8038-CP return (see IRM 4.82.3.10.6).

4.82.3.10.6
(07-02-2021)

Claim Disallowance Procedures for Amended Form 8038-CP Returns

- Amended returns for Form 8038-CP are generally allowed only to correct information in Parts I and II or to adjust a prior return filed as a final return.
- Prior to review by the FAST DPB Compliance Review Function all Form 8038-CP returns received with the amended return box checked are routed to Accounts Management in the Ogden Campus.
- Accounts Management may:
 - Consult with the DPBCRC without formal case establishment.
 - Refer an amended claim case to the DPBCRC.
 - Determine an amended return requesting an additional refund should be allowed, denied in full, or in part.
- DPBCRC procedures:
 - If amended claim was referred by FAST after the claim was reviewed by Accounts Management, follow applicable procedures.
 - If consulting with Accounts Management without formal case establishment, and you determine there is sufficient evidence to support the full or partial claim disallowance, or that an exam is required to determine whether all or a portion, of the claim should be disallowed, notify Accounts Management:
 - If reviewing an amended return case referred by Accounts Management:

- You determine there is sufficient evidence to support the full or partial claim disallowance, or that an exam is required to determine whether all, or a portion, of the claim should be disallowed, request transfer of the case to CP&C Classification.
 - You determine that no exam is required to determine whether all, or a portion, of the claim should be disallowed, and it is not appropriate to disallow the claim, close the case as a survey after assignment
 - Notify Accounts Management of actions taken.
- (5) Examiner: If the claim case is assigned to you, open the exam and develop the facts necessary to support a determination that the claim should be allowed, partially allowed, or disallowed.
- (6) Examiner: For cases in which the additional amount claimed on the amended return is not allowed, prepare Letter 105-A to notify the Issuer of any full or partial claim disallowance. In addition:
- a. Indicate in the Letter 105-A, *Notice of Claim Disallowance*, the reason for the disallowance, the amount of credit disallowed, and that the claim disallowance may be protested.
 - b. Clearly identify in the letter the Issuer's options to file a protest or file suit in U.S. District Court or the U.S. Court of Claims. Taxpayers may file suit for refund within two years after the date on which the IRS denied their claim.
 - c. Enclose in the letter information on what is required for a valid protest: Pub 5, *Your Appeal Rights and How to Prepare a Protest If You Don't Agree*, and Pub 1, *Your Rights as a Taxpayer*.
 - d. Describe the Taxpayer Advocate's role in resolving problems and how to contact the local TAS office.
 - e. Prepare and include Form 3363, *Acceptance of Proposed Disallowance of Claim for Refund or Credit*, for acceptance of the claim disallowance and Form 2297, *Waiver of Statutory Notification of Claim Disallowance*.
 - f. Prepare Letter 937, *Transmittal for Power of Attorney*, if applicable.
- (7) Examiner: Consider whether penalties apply (See IRM 4.82.3.11).
- (8) Examiner: If you assess a penalty under IRC 6676, follow procedures in IRM 20.1.5.18, IRC 6676, Erroneous Claim for Refund or Credit Penalty, to establish a civil penalty case and prepare Letter 4143-C, 30-day Letter for IRC Section 6676 Penalty, with Form 5838-EC, Agreement to Assessment and Collection of IRC section 6676 Erroneous Claim for Refund or Credit Penalty.
- Note:** When penalties under IRC 6676 are dependent on the determination of a deficiency, as defined in IRC 6211, the penalty is subject to deficiency procedures. When the penalty relates to a claim disallowance and is not dependent on the determination of a deficiency, the penalty is not subject to deficiency procedures.
- (9) Examiner: Send Letter 105-A and all necessary attachments, Pub 5, Pub 1, Form 3363, Form 2297, Letter 937, and Letter 4143-C, as applicable, to your group manager to review and issue.
- (10) The group manager mails Letter 105-A and attachments via certified mail and gives the examiner a dated and signed copy of letters issued for the case file.

4.82.3.11
(07-02-2021)

**Assessment of Penalties
for Underpayments and
Erroneous Claims**

- (1) Penalties may apply to underpayments resulting from credits claimed on Form 8038-CP returns.
- (2) The Protecting Americans from Tax Hikes Act of 2015 changed the definition of an underpayment to which IRC 6662 and IRC 6663 apply to include credits under IRC 6431 for returns filed after December 18, 2015. Accordingly, accuracy related penalties and fraud penalties may be applicable to deficiencies determined for such returns. Additionally, the defense to the penalty imposed by IRC 6676 was changed from “reasonable basis” to “reasonable cause.”
- (3) For returns filed before December 18, 2015, consider the penalty for erroneous claims for refund or credit under IRC 6676 in all DPBs exams resulting in a proposed adjustment to tax (including adjustments to credits claimed, but not paid by the IRS).
- (4) After you consider the facts and circumstances, determine whether any penalties apply. Obtain managerial concurrence with the determination by holding a discussion with your group manager and document the discussion on Form 5464, *Case Chronology Record*. Document the basis for assertion or non-assertion in the Penalties section of the workpapers.
- (5) If you determine a penalty applies, notify the Issuer that we may assess a penalty and determine whether the Issuer had any reasonable cause, or reasonable basis, as applicable, for the underpayment of tax or for claiming the excessive amount. Issuers are liable for a penalty of 20% of the adjustment amount unless they can show they had a reasonable cause for the underpayment or claim for such excessive amount.

Note: The examiner’s initial determination to assert the penalty must be approved in writing by the examiner’s immediate supervisor, as provided in IRC 6751(b)(1). Include the written supervisory approval of the penalty in the Penalties section of the case file. Form 8278, *Assessment and Abatement of Miscellaneous Civil Penalties*, is available for use to demonstrate the proper managerial approval. Examiners must complete the appropriate penalty lead sheet and include it in the Penalties section of the case file. Any managerial involvement must also be documented on the penalty lead sheet/related workpapers.

- (6) Include any proposed assessment of penalties on Form 4549-T. For amended Form 8038-CP returns, use Form 3363 (See IRM 4.82.3.5 and IRM 4.82.3.10.6).
- (7) The period for assessment of penalties generally expires three years from the date the claim for refund or credit was filed. The ASED for assessment of a tax deficiency controls the period for assessment of the penalties so you don’t need a separate consent to extend.

4.82.3.12
(07-02-2021)

**Direct Pay Bond
Collection Procedures**

- (1) This section provides examiner collection procedures for DPBs.
- (2) This section describes the examiner’s responsibility for securing full payment. If the assessment made on a master file MFT 46 account is not paid in full at the conclusion of the exam, make a referral to the Collection Territory Manager with jurisdiction over the Issuer.

4.82.3.12.1
(07-02-2021)
**Examiner's
Responsibilities**

- (1) Examiner: Gather information to assist with determining the collectibility for assessments made under IRM 4.82.3.5.3 or IRM 4.82.3.9.1.
- (2) At the initial exam appointment, advise Issuers that we'll discuss payment options and solicit payment during the closing conference if we recommend any deficiency.
- (3) When you complete the exam and recommend an assessment, request payment of agreed deficiencies resulting from the exam.
- (4) If the Issuer is unable to make full payment, explain payment options: installment agreements and Offers-in-Compromise (doubt as to collectibility). You may use Pub 594, The IRS Collection Process.
- (5) Employees in TEB Exam Groups have the authority to accept streamlined installment agreements (See IRM 4.20.1.4.3, Streamlined Installment Agreements). If the taxpayer requests an installment agreement that does not meet TEB's authority, refer to Collection for consideration. Collection has jurisdiction for Offers-in-Compromise, including doubt as to collectibility and currently not collectible determinations. See IRM 4.18.1 through 7 for examination procedures on processing doubt as to liability offers.
- (6) Document the case file and workpapers, when applicable, on the collectibility discussion (tiered interview) as outlined in IRM 4.20.1.3.3, Form 9440, Taxpayer Levy Source and Contact Information.
 - a. If collectibility was an issue, was it considered?
 - b. Was payment received?
 - c. Was an installment agreement secured?
 - d. If the taxpayer asked for an installment agreement outside the examiner's authority, was the case referred to Collection?
 - e. If the agreed deficiency was not paid, was the case referred to Collection?

Note: The case file documentation must enable a reviewer to readily determine the above aspects. Include the requisite documentation in the payment and closing conference agenda workpaper.
- (7) Complete Form 9440, Taxpayer Levy Source and Contact Information, and include in the case file in all unpaid cases (agreed and unagreed). See IRM 4.20.1.3.3 for details.
- (8) If you don't secure full payment or an installment agreement from the Issuer (see IRM 4.20.1.4, *Installment Agreements*), referral to the Collection Territory Manager with jurisdiction over the Issuer is mandatory for assessments made on MFT 46 accounts.
- (9) The referral consists of a memo from the group manager to the Collection Territory Manager including:
 - a. A detailed description of the assessment made (most Collection employees are unfamiliar with DPBs assessments).
 - b. An explanation that a manual referral is required because the Collection Integrated Collection System (ICS) doesn't include MFT 46 accounts (Collection employees may be unaware that their inventory system doesn't accommodate MFT 46 accounts).
 - c. A description of the TEB collection efforts and Issuer response.

- d. A copy of Form 4549-T and Form 870, if applicable.
- e. A copy of Form 9440.

4.82.3.12.2
(07-02-2021)

Processing Form 9440

- (1) Include in all unpaid cases (agreed and unagreed), financial data about the taxpayer and record on Form 9440, *Taxpayer Levy Source and Contact Information*, to help future collection efforts. Use the facts developed during the exam to complete the form. See IRM 4.20.1.3.3, *Form 9440, Taxpayer Levy Source and Contact Information*, for more information on completing Form 9440.
- (2) Attach the completed Form 9440 to the referral to Collection required for all unpaid assessments on MFT 46 accounts.

Exhibit 4.82.3-1 (07-02-2021)
Form 4549-T Line Instructions

| Form 4549-T page 1 line | Instruction |
|--|--|
| Name and Address of Issuer of bonds | The name of the Issuer must agree with the Issuer's name reported on Form 8038-G, Form 8038-B, or Form 8038-TC. The address must be the Issuer's current address. |
| Employer Identification Number (EIN) | The EIN of the entity that issued the bonds |
| Return form number | Form 8038-CP (Pre-printed on form) |
| Person with whom exam adjustments were discussed | Generally, a person authorized to sign tax returns or a properly authorized representative. |
| Period | The year and month of the interest payment date for each Form 8038-CP return being adjusted (YYYYMM). |
| Payee EIN | The employer identification number of the entity identified in Part I of Form 8038-CP. |
| Report Number | The three-digit report number for the master file account on which the Form 8038-CP return was processed, or re-processed if the Issuer designated a payee to receive the payment for the period (see IRM 4.82.3.7. Form 8038-CP returns are processed on MFT 46 and use report numbers from the 800, 200, and 400 numbering series. The report number differentiates one account from other returns filed with the same EIN and the same tax period, which is based on the year and month of the IPD. This number is generated by the IRS for the Form 8038-CP. |

Exhibit 4.82.3-1 (Cont. 1) (07-02-2021)
Form 4549-T Line Instructions

| Form 4549-T page 1 line | Instruction |
|--|---|
| Credit amount per Form 8038-CP or as previously adjusted | <p>The amount of credit per the return (TC 766) or as previously adjusted. Master file accounts for Form 8038-CP returns were generally not designed to accept amended returns, however, Issuers can adjust the credit amount by increasing or decreasing the amount of credit in the subsequent return for the next scheduled interest payment date using line 21. Issuers are required to attach an explanation for these subsequent adjustments to the return in which an adjustment on line 21 is made. During exam, the IRS won't adjust:</p> <ul style="list-style-type: none"> • Line 21, as long as the adjustment was made timely and in good faith to correct an error in a prior period (we don't restate the credit per return or as previously adjusted in the period in which the error occurred or was corrected). • A credit amount that was corrected using the instructions to the Form 8038-CP. <p>Example: 1 - The credit claimed on the Form 8038-CP filed for Period 1 was \$1,000. Subsequently, the Issuer determined that the credit claimed was incorrect, believing it should've been \$900. The Issuer planned to claim a credit of \$800 for the interest payment date for Period 2. The Issuer adjusted the amount of credit claimed to reduce the amount for Period 2 from \$800 to \$700 by including the \$100 correction from Period 1 on line 21b. The amount per return for Period 1 would be \$1,000 and the amount per return for Period 2 would be \$700.</p> <p>Example: 2 - On later examination, the examiner found that the allowable Period 1 claim amount was only \$800 instead of \$900 and the allowable Period 2 claim amount was only \$750 instead of \$800. In completing the Form 4549-T, the Period 1 "credit amount per return or as previously adjusted" would be \$900, reflecting the \$1,000 claimed on the return for Period 1 and the \$100 correction relating to that claim that the Issuer showed on the return for Period 2. The Period 2 "credit amount per return or as previously adjusted" would be \$700.</p> |
| Credit as Corrected | <p>The correct amount of credit allowable as determined under IRC 6431 net of any appropriate adjustment on line 21 computed at the sequestration rate in effect at the time of the original refund. However, if there is an increase, the amount of the increase only, is computed using the current sequestration rate.</p> <p>Example: 3 - On the Form 4549-T described in the preceding instruction for Credit Amount per Form 8038-CP or as Previously Adjusted, the examiner would complete the Credit Amount as Corrected for Period 1 as \$800. The Credit Amount as Corrected for Period 2 is \$650, reflecting both the \$50 adjustment from the examination and the Issuer's \$100 adjustment to correct its Period 1 that the Issuer submitted with its Period 2 return.</p> |

Exhibit 4.82.3-1 (Cont. 2) (07-02-2021)
Form 4549-T Line Instructions

| Form 4549-T page 1 line | Instruction |
|--------------------------------|---|
| Credit Decrease (Increase) | The difference between the Credit Amount per Form 8038-CP or as Previously Adjusted and the Credit Amount as Corrected. In this column, show: <ul style="list-style-type: none"> • an additional assessment as a positive amount • an over assessment as a negative amount. |

| Form 4549-T, Page 2 line | Instruction |
|--------------------------------------|--|
| Name of Issuer of the bonds | The name of the Issuer must agree with the Issuer's name reported on Form 8038-G, Form 8038-B, or Form 8038-TC, and listed on Page 1 of the Form 4549-T. |
| Employer Identification Number (EIN) | See Page 1 instruction. |
| Period | See Page 1 instruction. |
| Payee EIN | See Page 1 instruction. |
| Report Number | See Page 1 instruction. |
| Credit Decrease (Increase) | The amount shown on page 1 for this Period as the Credit Decrease (Increase). |
| Penalty Code Section | The section number of any applicable penalties must be noted. If no penalties are proposed, leave blank. |
| Penalty Amount | Enter the amount of penalty applicable to the adjustment for each specific Form 8038-CP return included in the report. If applying the IRC 6676 penalty, the penalty is 20 percent of the "excessive amount" claimed, where the "excessive amount" is the amount claimed for refund or credit (Line 22) that exceeds the amount allowable for any taxable year. See IRM 20.1.5.18. |
| Interest (IRC 6601) Computed to ____ | Specify in the column heading the last date that interest is applied. Generally, this will be the date payment of tax, penalty, and interest is expected to be paid to the IRS. The examiner must compute interest payable on each account from the interest payment date of each Form 8038-CP return through the payment date of any additional tax, penalties, and interest. If the case is unagreed or no payment is expected at closing, the examiner must compute interest to the date of the report. The IRS will assess the interest on the account for each Form 8038-CP return and will bill the Issuer for the final tax, penalty, and interest due. |
| Amount Due or (Refund) | The sum of the Credit Decrease (Increase), Penalty Amount, and Interest (IRC 6601) Computed to _____. This reflects the balance due from the Issuer on each Form 8038-CP return. |
| Other Information | Memo field for information related to the computation of credit adjustments. If more than one Form 4549-T is used for computing the adjustment on all related Form 8038-CP returns, the continuation must be noted in this section. |

Exhibit 4.82.3-1 (Cont. 3) (07-02-2021)
Form 4549-T Line Instructions

| Form 4549-T, Page 2 line | Instruction |
|---------------------------------|---|
| Total Amount Due or (Refund) | The total of the Amount Due or (Refund) column for all Form 8038-CP returns included on the Form 4549-T report. |
| Examiner's Signature | Signature of the TEB examiner. |
| Employee ID | The examiner's employee ID number from his or her IRS issued identification badge. |
| Office | The examiner's office codes as follows where the last four digits reflect the examiner's group number; SE:T:EOGE:GE:TEB:72XX. |
| Date | The date the Form 4549-T report was discussed with, or mailed to, the Issuer of the bonds. |