

26 CFR 601.601: General arbitrage rebate rules.
(Also § 1.148-3)

Rev. Proc. 2017-50

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2008-37, 2008-2 (Vol.1) C.B. 137, to provide guidance to issuers of tax-exempt bonds and other tax-advantaged bonds regarding the time for filing claims for recovery of “overpayments” (as defined in § 1.148-3(i)(1) of the Income Tax Regulations) of amounts paid to the United States with respect to the arbitrage rebate requirement under § 148(f) of the Internal Revenue Code for excess investment earnings, similar payments of penalty in lieu of arbitrage rebate under § 148(f)(4)(C)(vii) and (viii), and yield reduction payments under § 1.148-5(c). In particular, section 3 of this revenue procedure extends the deadline for filing claims for recovery of such overpayments to two years after: (1) the date that is 60 days after the final computation date of the issue to which the payment relates; or (2) with respect to the portion of the overpayment paid more than 60 days after the final computation date, the date that the payment was made to the United States.

SECTION 2. BACKGROUND

.01 Under § 103(b)(2), the exclusion from gross income of interest on any State or local bond under § 103(a) does not apply to interest on an arbitrage bond within the meaning of § 148.

.02 Section 148(f)(1) generally provides that a bond that is part of an issue shall be treated as an arbitrage bond unless the issuer pays to the United States any arbitrage rebate amounts described in § 148(f)(2) (arbitrage rebate) for the issue according to the schedule provided in § 148(f)(3).

.03 Section 148(f)(3) provides, in part, that, except to the extent provided by the Secretary, the arbitrage rebate must be paid in installments that are made at least once every five years. The last installment must be made no later than 60 days after the day on which the last bond of the issue is redeemed.

.04 Section 148(f)(4)(C)(vii) and (viii) permits issuers of certain construction issues (as defined in § 148(f)(4)(C)(iv)) to elect to pay a penalty in lieu of arbitrage rebate (penalty in lieu of arbitrage rebate) in the manner and amount described in § 148(f)(4)(C)(vii) and (viii).

.05 Section 1.148-5(c)(1) permits issuers to pay yield reduction payments that may be taken into account in determining the yield on an issue for arbitrage purposes under § 148 (yield reduction payments) in the circumstances and manner described in § 1.148-5(c).

.06 Section 1.148-3(i)(1) provides that, in general, an issuer may recover an overpayment of arbitrage rebate by establishing to the satisfaction of the Commissioner that the overpayment occurred. An “overpayment” is the excess of the amount paid over the sum of the “rebate amount” (as defined in § 1.148-3(b)) as of the most recent “computation date” (as defined in § 1.148-3(e)) and all amounts that are otherwise required to be paid under § 148 as of the date the recovery is requested. Under § 1.148-3(e)(2), the final computation date generally is the date that an issue is discharged (for example, retired at maturity or redeemed earlier).

.07 In general, overpayments of the penalty in lieu of arbitrage rebate and yield reduction payments are treated in the same manner as overpayments of arbitrage rebate. See, generally, §§ 1.148-3(i)(1), 1.148-5(c)(1) and (2), and 1.148-7(k)(3) and (m).

.08 Rev. Proc. 2008-37 provides procedures for filing claims for recovery of an overpayment of arbitrage rebate, penalty in lieu of arbitrage rebate, or yield reduction payments with respect to an issue. Under section 3.02 of that revenue procedure, a refund claim for an overpayment amount must be filed by an issuer no later than the date that is two years after the final computation date for the applicable issue of bonds under § 1.148-3(e)(2).

.09 Like section 3.02 of Rev. Proc. 2008-37, § 1.148-3(i)(3)(i) provides that an issuer must request a refund of an overpayment (claim) no later than the date that is two years after the final arbitrage computation date for the issue to which the overpayment relates.

Section 1.148-3(g) provides that each arbitrage rebate payment must be paid no later than 60 days after the computation date to which the payment relates.

.10 Section 1.148-10(g) provides authority to the Commissioner to waive regulatory limitations under certain circumstances. Specifically, § 1.148-10(g) provides that, notwithstanding any specific provision in §§ 1.148-1 through 1.148-11, the Commissioner may prescribe extensions of temporary periods, larger reasonably required reserve or replacement funds, or consequences of failures or remedial action under § 148 in lieu of or in addition to other consequences of those failures, or take other action, if the Commissioner finds that good faith or other similar circumstances so warrant, consistent with the purposes of § 148.

.11 In certain circumstances involving payments to the United States made under § 148 after the final computation date, the application of the existing deadline to request a refund of overpayments under § 1.148-3(i)(3)(i) may not provide an adequate opportunity for issuers of tax-advantaged bonds to recover such overpayments.

.12 In the interest of sound tax administration and in reliance on authority under § 1.148-10(g), this revenue procedure extends the time for filing claims to recover overpayments under § 148 to ensure that issuers have a reasonable opportunity to recover overpayments made both before and after the final computation date. This revenue procedure adds 60 days to the existing 2-year deadline under § 1.148-3(i)(3)(i) and provides a new 2-year deadline for payments made after the date that is 60 days after the final computation date.

SECTION 3. EXTENDED DEADLINE FOR CLAIMS FOR RECOVERY OF OVERPAYMENTS

.01 An issuer may file a claim in accordance with this section 3 for a refund of an overpayment, with respect to an issue of bonds, no later than two years after:

(1) the date that is 60 days after the final computation date of the issue to which the payment relates; or

(2) with respect to the portion of the overpayment paid more than 60 days after the final computation date, the date that the payment is made to the United States.

.02 Except as provided in section 3.01 of this revenue procedure, a claim for a refund under this section 3 must be made in accordance with the procedures for requesting a refund under § 1.148-3(i) and section 3.01 of Rev. Proc. 2008-37 (or corresponding provisions of any successor revenue procedure).

SECTION 4. DATES OF APPLICABILITY

.01 This revenue procedure applies to claims that are pending or filed with the Internal Revenue Service on or after August 25, 2017, for recovery of overpayments of arbitrage rebate, penalty in lieu of arbitrage rebate, or yield reduction payments for an issue of bonds.

.02 For purposes of this revenue procedure, an issuer that has made a payment after the final computation date for the issue to which the overpayment relates, but prior to August 25, 2017, will be deemed to have made the payment on August 25, 2017.

SECTION 5. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies Rev. Proc. 2008-37.

SECTION 6. DRAFTING INFORMATION

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