

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and regulations.

(Also Part 1, §§103, 148; 1.148-3, 1.148-5, 1.148-7, 1.148-10, 1.148-11, 1.148-13T.)

Rev. Proc. 2024-37

SECTION 1. PURPOSE

This revenue procedure provides guidance to issuers of tax-exempt and other tax-advantaged bonds (as defined in § 1.150-1(b) of the Income Tax Regulations¹) regarding the procedures for filing claims for recovery of overpayments (as defined in § 1.148-3(i)(1)) of amounts paid to the United States with respect to the rebate requirement under § 148(f) for excess investment earnings, the penalty in lieu of rebate provisions under § 148(f)(4)(C)(vii) and (viii), or the yield reduction payment provisions under § 1.148-5(c). This revenue procedure modifies and supersedes Rev. Proc. 2008-37, 2008-2 (Vol.1) C.B. 137, as modified by Rev. Proc. 2017-50, 2017-37 I.R.B. 234,

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Internal Revenue Code or the Income Tax Regulations (26 CFR part 1).

and supersedes Rev. Proc. 2017-50.

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 The requirements of § 148 apply to tax-exempt bonds and, generally, to other tax-advantaged bonds.

.03 Section 148(f)(1) generally provides that a bond that is part of an issue is treated as an arbitrage bond, unless the issuer pays to the United States any rebate amounts described in § 148(f)(2) (rebate) for the issue in accordance with § 148(f)(3).

.04 Section 148(f)(3) provides, in part, that, except to the extent provided by the Secretary of the Treasury or her delegate, 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 date on which the last bond of the issue is redeemed.

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

.06 Section 1.148-5(c)(1) permits issuers to pay yield reduction payments to the United States that may be taken into account in determining the yield on an investment for purposes of § 148 in the circumstances and manner described in § 1.148-5(c).

.07 Section 1.148-3(i)(1) provides that, in general, an issuer may recover an overpayment of rebate by establishing to the satisfaction of the Commissioner of Internal Revenue or his delegate (Commissioner) that the overpayment occurred. An

overpayment is the excess of the amount paid to the United States for an issue over the sum of the “rebate amount” (as defined in §§ 1.148-1(b) and 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.

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

.09 Section 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 computation date for the issue to which the overpayment relates (filing deadline). The claim must be made using the form provided by the Commissioner for this purpose.

.10 Section 1.148-3(i)(3)(ii) provides that the Commissioner may request additional information to support a claim. The issuer must file the additional information by the date specified in the Commissioner’s request, which date may be extended by the Commissioner if unusual circumstances warrant. An issuer will be given at least 21 calendar days to respond to a request for additional information.

.11 Section 1.148-3(i)(3)(iii) provides that a claim described in either § 1.148-3(i)(3)(iii)(A) or (B) that has been denied by the Commissioner may be appealed to the Independent Office of Appeals (Appeals). A claim is described in § 1.148-3(i)(3)(iii)(A) if the Commissioner asserts that the claim was filed after the filing deadline. A claim is described in § 1.148-3(i)(3)(iii)(B) if the Commissioner asserts that additional

information to support the claim was not submitted within the time specified in the request for information or in any extension of such specified time period. The procedures for an issuer of tax-advantaged bonds to request an administrative appeal to Appeals are provided in Rev. Proc. 2021-10, 2021-4 I.R.B. 503. When an appeal of a claim described in either § 1.148-3(i)(3)(iii)(A) or (B) is determined in favor of the issuer, Appeals must return the case to the office that is responsible for examinations of tax-advantaged bonds (presently the Office of Tax Exempt Bonds) for further consideration of the substance of the claim.

.12 Section 1.148-11(k)(3)(i) provides that § 1.148-3(i)(3)(i) applies to claims for recovery of overpayments arising from an issue of bonds to which § 1.148-3(i) applies and for which the final computation date is after June 24, 2008. For purposes of § 1.148-3(k)(3)(i), issues for which the actual final computation date is on or before June 24, 2008, are deemed to have a final computation date of July 1, 2008, for purposes of applying § 1.148-3(i)(3)(i).

.13 Section 1.148-11(k)(3)(ii) provides that § 1.148-3(i)(3)(ii) and (iii) apply to claims arising from an issue of bonds to which § 1.148-3(i) applies and for which the final computation date is after September 16, 2013.

.14 Section 1.148-13T of the Temporary Income Tax Regulations (1992 regulations), which was published in the *Federal Register* on May 18, 1992 (T.D. 8418, 1992-1 C.B. 29 [57 F.R. 20971]), provides rules for recovering an overpayment of rebate or penalty in lieu of rebate with respect to certain bonds issued before July 1, 1993. Under § 1.148-13T(a) and (c)(1) of the 1992 regulations, an issuer may recover an overpayment of rebate or penalty in lieu of rebate to the extent that recovery on the date

requested would not result in an additional rebate amount as of the date requested if the issuer proves to the satisfaction of the Commissioner that the overpayment occurred and was paid because of a mistake.

.15 Rev. Proc. 2008-37 sets forth procedures for filing claims for the refund of overpayments of rebate, penalty in lieu of rebate, or yield reduction payments. Rev. Proc. 2008-37 imposes the same deadline for filing such claims as the filing deadline in § 1.148-3(i)(3)(i). 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. In the interest of sound tax administration and in reliance on the authority provided under § 1.148-10(g), Rev. Proc. 2017-50 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. Rev. Proc. 2017-50 adds 60 days to the existing two-year deadline under § 1.148-3(i)(3)(i) and provides a new two-year deadline with respect to the payments made after the date that is 60 days after the final computation date.

SECTION 3. SCOPE

This revenue procedure applies to claims submitted pursuant to § 1.148-3(i) of any

overpayment of an amount paid by an issuer of tax-exempt and other tax-advantaged bonds to the United States to meet the requirements of § 148, including a payment of rebate, a payment of a penalty in lieu of rebate, and a yield reduction payment. Claims that are made under the 1992 regulations will be treated in the same manner as claims made under § 1.148-3(i).

SECTION 4. PROCEDURE FOR CLAIMS FOR RECOVERY OF OVERPAYMENT OF REBATE, PENALTY IN LIEU OF REBATE, AND YIELD REDUCTION PAYMENTS

.01 Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions. A claim must be made by completing and timely filing Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*, and any attachments thereto with the Internal Revenue Service in accordance with the Form 8038-R instructions (or the then-applicable form and instructions as may be announced by the Internal Revenue Service from time to time).

.02 Timely filing of a claim. An issuer must file a claim for 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 was made to the United States.

.03 Processing claims. The Commissioner may allow a claim, reject a claim under circumstances described in section 4.03(1) of this revenue procedure (Claim Rejection), or deny a claim in full or in part as described in section 4.03(2) of this revenue procedure (Claim Denial).

- (1) Claim Rejection. The Commissioner may reject a claim based on an issuer's (i)

failure to follow procedures or requirements for filing or supporting the claim, or (ii) submission of a claim that relies on substantive matters that were previously reviewed and resulted in a Claim Denial (without regard to whether the Claim Denial has become final or not), or a closing agreement. If a claim is rejected, the Commissioner will notify the issuer by letter explaining the reasons for the rejection.

(a) Failure to meet the requirements for processing a claim. If the issuer fails to follow procedures or requirements for filing or supporting a claim (as described in section 4.03(1)(i) of this revenue procedure), the Commissioner will notify the issuer by letter describing any requirements that have not been satisfied and will provide the issuer 45 calendar days from the date of the notification to satisfy the procedures and requirements for filing or supporting a claim before notifying the issuer by letter of the Claim Rejection (as described in section 4.03(1) of this revenue procedure).

(b) Resubmission permitted after Claim Rejection. After a Claim Rejection based on an issuer's failure to follow procedures or requirements for filing or supporting the claim, an issuer may resubmit the claim to address the basis for the rejection, provided that the resubmitted claim is filed by the filing deadline as described in section 4.02 of this revenue procedure.

(2) Claim Denial. The Commissioner will notify the issuer of a Claim Denial by letter explaining the reasons for the denial and informing the issuer of its right to request an appeal (see section 4.04 of this revenue procedure). If a Claim Denial becomes final under section 4.06 of Rev. Proc. 2021-10 (failure to make an appeals request) or because Appeals sustains the Claim Denial in full or in part, the issuer may not submit thereafter a claim for the arbitrage payment(s) with respect to claim(s) on which the

Claim Denial became final and any such claim will be rejected under section 4.03(1) of this revenue procedure.

.04 Appeals. An issuer is entitled to appeal a Claim Denial to Appeals under the procedures set forth in Rev. Proc. 2021-10. When an appeal of a claim described in either § 1.148-3(i)(3)(iii)(A) or (B) is determined in favor of the issuer, Appeals must return the case to the office that is responsible for examinations of tax-advantaged bonds (presently the Office of Tax Exempt Bonds) for further consideration of the substance of the claim.

SECTION 5. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Proc. 2008-37, as modified by Rev. Proc. 2017-50, and supersedes Rev. Proc. 2017-50 as of October 18, 2024.

SECTION 6. EFFECTIVE DATE

This revenue procedure applies to claims filed on or after October 18, 2024. An issuer that files a claim prior to October 18, 2024 may apply this revenue procedure in whole (and not in part) by affirmatively stating in the claim that it is applying Rev. Proc. 2024-37.

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in section 4 of this revenue procedure has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-0047.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Brian Choi, Office of Associate

Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, call Mr. Choi at 202-317-3154 (not a toll-free number).