

# Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate

Under Sections 143(g)(3) and 148(f)  
and sections 103(c)(6)(D) and 103A(i)(4) of the Internal Revenue Code of 1954

## Part I Reporting Authority

1 Issuer's name		2 Issuer's employer identification number	
3 Number and street (or P.O. box no. if mail is not delivered to street address)		Room/suite	4 Report number
5 City or town, state, and ZIP code		6 Date of issue	
7 Name of issue		8 CUSIP number	
9 Type of issue ▶		Issue price ▶ \$	
10 If Form 8038, Form 8038-G, or Form 8038-GC was not filed for this issue, check box <input type="checkbox"/>			
11 Date of the most recently filed Form 8038-T for this issue: Month..... Day..... Year.....			
12 Is this the final Form 8038-T for this issue? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>			

## Part II Arbitrage Rebate ▶ Check box if this part applies

13 Amount of rebate being paid with this form	▶	\$
14 Period to which payment relates ▶ From: Month..... Day..... Year..... To: Month..... Day..... Year.....		
15 Amount of rebate previously paid with respect to this issue	▶	\$

## Part III Penalty in Lieu of Arbitrage Rebate ▶ Check box if this part applies

16 Check the appropriate box ▶ 6 months <input type="checkbox"/> 12 months <input type="checkbox"/> 18 months <input type="checkbox"/> 24 months <input type="checkbox"/> Other <input type="checkbox"/>
If other, give the number of months since date of issue ▶
17 Available construction proceeds ▶ \$..... Unspent ▶ \$.....
18 If you elected to terminate the election to pay penalty in lieu of arbitrage rebate, check one of the following (see instructions): ▶ A <input type="checkbox"/> B <input type="checkbox"/> Date election was terminated ▶
19 Penalty in lieu of rebate ▶ \$..... or upon termination ▶ \$..... Total ▶ \$.....
20 Penalty for failure to pay on time (attach statement) ▶ \$.....

## Part IV Elections by the Issuer (see instructions)

Please check the "Yes" or "No" box for each question.		Yes	No
21	Did you "elect in"? (See instructions)		
22	Did you elect to treat a transitioned variable yield issue as a fixed yield issue?		
23	Did you make a bond year election?		
24	Did you elect to treat a variable yield bond that is not a tender bond as a fixed yield bond after it converted to a fixed rate?		
25	Did you elect to continue treating an issue as a variable yield issue after all the bonds in the issue converted to a fixed rate?		
26	Did you elect to recompute the yield on a transitioned fixed yield issue?		

Please sign here

Under penalties of perjury, I declare that I have examined this return, and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature of officer	Date	Type or print name and title
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## Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to collect the right amount of rebatable arbitrage and penalty in lieu of arbitrage rebate.

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

**Recordkeeping** . . . 8 hr., 37 min.  
**Learning about the law or the form** . . . 3 hr., 28 min.  
**Preparing, copying, assembling, and sending the form to the IRS** . . . 3 hr., 46 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork

Reduction Project (1545-1219), Washington, DC 20503. **DO NOT** send the form to either of these offices. Instead, see **Where To File** on page 3.

## General Instructions

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

(Section references are to the Internal Revenue Code of 1986 unless otherwise noted.)

## Purpose of Form

1. Use Form 8038-T to pay the arbitrage rebate to the United States.

Under section 148(f), interest on a state or local bond is not tax exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments.

2. Use Form 8038-T (a) to pay a penalty in lieu of rebating arbitrage to the United States, (b) to pay a penalty to terminate the election to pay a penalty in lieu of rebating arbitrage, or (c) to pay a penalty for failing to pay either penalty on time.

#### **Qualified mortgage bonds and qualified veterans' mortgage bonds.—**

Section 143(g)(3) and section 103A(i)(4) of the 1954 Code provide the arbitrage rebate rules for qualified mortgage bonds issued before July 1, 1992, and qualified veterans' mortgage bonds issued after August 15, 1986. Under these special rules, issuers may pay the rebate either to mortgagors, or if an election is made before issuance of the bond, to the United States. Use this form only if you have elected to pay the rebate to the United States.

#### **Industrial development bonds.—**

Obligations that are part of an issue of industrial development bonds issued before January 1, 1986 (other than housing obligations described in section 103(b)(4)(A) of the 1954 Code or section 11(b) of the Housing Act of 1937) are subject to the rebate requirements of section 103(c)(6)(D) of the 1954 Code. However, see line 21 and related instructions.

#### **Arbitrage Rebate**

##### **Computation of arbitrage rebate.—**

The amount of the rebatable arbitrage is (a) the excess of the amount earned on all nonpurpose investments, over the amount which would have been earned if the nonpurpose investments were invested at a rate equal to the bond yield, plus (b) any income attributable to the excess described in (a).

For rules on computing the arbitrage rebate for bonds subject to section 148(f), see Regulations sections 1.148-1 through 1.148-8. For rules on computing the arbitrage rebate for bonds subject to section 143(g)(3) or section 103A(i)(4) of the 1954 Code, see Temporary Regulations section 6a.103A-2(i)(4). For rules on computing the arbitrage rebate for bonds subject to section 103(c)(6)(D) of the 1954 Code, see Temporary Regulations section 1.103-15AT. Also, see line 21 and its instructions.

**Exceptions.—**There is no rebate requirement under section 148(f) if the exception for temporary investments under section 148(f)(4)(B) applies or the

exception for governmental units issuing \$5 million or less of bonds under section 148(f)(4)(D) applies.

Also, the rebate requirement does not apply to "available construction proceeds" of a construction issue if certain spending requirements are met; or if those spending requirements are not met, an election is made to pay a penalty in lieu of arbitrage rebate. See section 148(f)(4)(C).

The arbitrage rebate exception for a construction issue only applies to "available construction proceeds." Other proceeds of a construction issue do not qualify for this exception.

Further, the rebate requirement generally does not apply to bond proceeds that are invested in certain tax-exempt bonds, certain tax-exempt mutual funds, or certain demand deposit securities purchased directly from the United States Treasury.

#### **Penalty in Lieu of Arbitrage Rebate**

In the case of a construction issue, an exception from the rebate requirement is provided under section 148(f)(4)(C) for the available construction proceeds of the issue if certain spending requirements are met. Since this exception only applies to available construction proceeds, other proceeds of a construction issue do not qualify for this exception. Thus, rebatable arbitrage may be owed for proceeds other than available construction proceeds even if this exception is satisfied for the available construction proceeds. The issuer may have elected to pay a penalty in lieu of rebating arbitrage for the available construction proceeds if the spending requirements of section 148(f)(4)(C) are not satisfied. The penalty, if any, is payable for each applicable 6-month period after the date the bonds are issued. Detailed rules concerning these provisions are contained in Regulations section 1.148-6.

A "construction issue" is an issue of tax-exempt bonds if (a) at least 75% of the available construction proceeds of such issue are to be used for construction expenditures for property to be owned by a governmental unit or a 501(c)(3) organization, and (b) all bonds that are part of such issue are qualified 501(c)(3) bonds; bonds that are not private activity bonds; or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

Generally, the "available construction proceeds" are the issue price of the construction issue, (a) increased by earnings on the issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue, and earnings on all of the foregoing earnings, and (b) reduced by the amount of the issue price in any reasonably required reserve or replacement fund and the issuance costs financed by the issue. See section 148(f)(4)(C)(vi).

The penalty in lieu of arbitrage rebate is equal to 1½% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and Regulations section 1.148-6 for the rules for construction proceeds, available construction proceeds, and spending requirements needed to compute the penalty in lieu of arbitrage rebate.

#### **Penalty for the Termination of Election To Pay a Penalty in Lieu of Arbitrage Rebate**

You may terminate the election to pay a penalty in lieu of arbitrage rebate by paying a 3% penalty. Generally, compute the penalty for the termination election under section 148(f)(4)(C)(viii) with reference to the end of the initial temporary period. See section 148(c) and Regulations section 1.103-14(b) for definitions of a temporary period. Compute the amount of the penalty for the termination election under section 148(f)(4)(C)(ix) with reference to the date of the election. See section 148(f)(4)(C)(viii) and (ix) for the rules for terminating an election to pay a penalty in lieu of rebate.

#### **Failure To Pay Penalty on Time**

Failure to pay the proper amount of penalty on time (after an appropriate election either to pay penalty in lieu of arbitrage rebate or to pay a termination penalty) may cause the bond (or any refunding bond with respect thereto) to be treated as not being, and as never having been, tax exempt. If the failure is not due to willful neglect, the failure will be treated as not having occurred if, in addition to payment of the proper penalty, the issuer pays an additional penalty equal to the sum of (1) 50% of the amount that was not paid on time, and (2) interest (at the underpayment rate established under section 6621) on the amount that was not paid on the date required for the period beginning on such date.

## Who Must File

### Arbitrage Rebate

Issuers of tax-exempt bonds must file Form 8038-T to pay the arbitrage rebate to the United States under section 143(g)(3), section 148(f), or the corresponding provisions of the 1954 Code. Payments may be made by a person acting for the issuer for bonds subject to section 103(c)(6)(D) of the 1954 Code.

### Penalties

Issuers must also use Form 8038-T to pay **(a)** the penalty in lieu of arbitrage rebate, **(b)** the penalty to terminate the election to pay a penalty in lieu of arbitrage rebate, or **(c)** the penalty for failing to pay a penalty on time.

## When To File

### Arbitrage Rebate

File Form 8038-T when paying the arbitrage rebate to the United States. Under section 148(f), the installments are due 60 days after the end of every 5th bond year during the term of the issue. Each installment must be at least 90% of the rebatable arbitrage as of the computation date (i.e., the end of the 5-year period). The final installment is due 60 days after the date the last bond of the issue is discharged. The final installment must include all of the rebatable arbitrage as of the last computation date, plus any income attributable to the rebatable arbitrage.

**Special rules.**—For a tax and revenue anticipation bond, you need not make the last installment of arbitrage rebate until at least 8 months after the bond issue date. See also section 143(g)(3) and section 103A(i)(4) of the 1954 Code for rules concerning qualified mortgage bonds and qualified veterans' mortgage bonds. See Temporary Regulations section 1.103-15AT(e) for rules concerning industrial development bonds.

### Penalties

File Form 8038-T **(a)** to pay a penalty in lieu of arbitrage rebate to the United States, **(b)** to pay a penalty to terminate the issuer's obligation to pay a penalty in lieu of arbitrage rebate, or **(c)** to pay a penalty for failure to pay a penalty on time.

Under section 148(f)(4)(C), the payment of a penalty in lieu of arbitrage rebate must be made no later than 90 days after the end of each 6-month period relating to the penalty.

Payment of the 3% penalty to terminate the penalty in lieu of arbitrage rebate must be made to the United States no later than 90 days after **(a)** the

end of the initial temporary period if the termination election was made under section 148(f)(4)(C)(viii), or **(b)** the date of the termination election if it was made under section 148(f)(4)(C)(ix).

See the instructions for line 20 for paying a penalty for failure to pay on time.

## Where To File

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

## Signature

Form 8038-T must be signed by an authorized representative of the issuer. Also type or print the name and title of the person signing Form 8038-T.

## Specific Instructions

### Part I—Reporting Authority

**Line 1.**—Enter the name of the governmental entity that issued the bonds, not the name of the entity receiving the benefit of the financing.

**Line 4—Report number.**—Enter the report number from **Form 8038**, Information Return for Tax-Exempt Private Activity Bond Issues, or **Form 8038-G**, Information Return for Tax-Exempt Governmental Obligations, on which you reported this issue. If you reported this issue on **Form 8038-GC**, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales, enter "GC" followed by the calendar year for which Form 8038-GC was filed (e.g., GC1992).

**Note:** *If you did not file a Form 8038, 8038-G, or 8038-GC, leave this line blank and check the box on line 10.*

**Line 6—Date of issue.**—Enter the date of issue. This is generally the first date on which there is a physical exchange of the bonds for the purchase price.

**Line 7—Name of issue.**—Enter the name of the issue. If there is no name, please provide other identification of the issue.

**Line 8—CUSIP number.**—Enter the CUSIP (Committee on Uniform Securities Identification Procedures) number of the bond with the latest maturity. If the issue does not have a CUSIP number, enter "None."

**Line 9—Type of issue.**—Enter the type of issue as was checked for this issue on Form 8038 or Form 8038-G. For bonds previously reported on Form 8038-GC, enter "Small Governmental Bond." Also enter the total issue price that was listed on Form 8038, 8038-G, or 8038-GC filed for this issue.

**Line 11.**—Enter the date of the most recently filed Form 8038-T for this issue.

**Line 12.**—In case of a rebate of arbitrage, check the box marked "Yes" only if the issue has been discharged (redeemed, called, etc.). In the case of the payment of a penalty in lieu of arbitrage rebate, check the box marked "Yes" only if the spending provisions of section 148(f)(4)(C) have been fully complied with or if a termination penalty payment is made with this form. In all other cases, check the box marked "No."

## Parts II and III—In General

Complete Part II, Arbitrage Rebate, if you are paying arbitrage rebate, and complete Part III if you are paying penalty in lieu of arbitrage rebate. Under limited circumstances, you may be rebating arbitrage **and** paying a penalty in lieu of rebating arbitrage.

Check the box for each part being completed. If you check the box marked "Penalty in Lieu of Arbitrage Rebate," you are stating that the issuer timely made an election under section 148(f)(4)(C)(vii).

### Part II—Arbitrage Rebate

**Line 13.**—Attach a check or money order for this amount made payable to the Internal Revenue Service.

**Line 14.**—Enter the period of time relating to this rebate payment. For any installment other than the final installment, the period of time should reflect the bond years selected.

**Line 15.**—Enter the total of all previous rebate payments made with respect to this issue.

### Part III—Penalty in Lieu of Arbitrage Rebate

**Line 16.**—The expenditure requirements for available construction proceeds change at the end of each 6-month period following the date the bonds are issued. Check the appropriate box for the number of months between the date that the bonds were issued and the end of the reporting period for which this Form 8038-T is being filed. If the period is over 24 months (2 years), or is other than that given for the labeled boxes, check the box marked "Other" and give the number of months since the date of issue.

**Line 17.**—Indicate the available construction proceeds and the unspent available construction proceeds as of the end of the 6-month period for which this Form 8038-T is filed.

**Line 18.**—

#### (1) Check box A if:

- The election to terminate the 1½% penalty in lieu of arbitrage rebate was made no later than 90 days after the

earlier of the end of the initial temporary period or the date the construction is substantially completed, and

- The issuer pays with this Form 8038-T an amount equal to 3% of the available construction proceeds of the issue that have not been spent for the governmental purpose of the issue as of the close of the initial temporary period multiplied by the number of years (including fractions thereof) in the initial temporary period.

**(2) Check box B if:**

- The election to terminate the 1½% penalty in lieu of arbitrage rebate was made before the end of the initial temporary period, and not later than 90 days after the date the construction was substantially completed,
- The construction financed by the construction issue has been substantially completed before the end of the initial temporary period,
- The issuer has identified on its records an amount of available construction proceeds that will not be spent for the governmental purposes of the issue, and
- The issuer pays with this Form 8038-T an amount equal to 3% of the available construction proceeds of the issue that have not been spent for the governmental purpose of the issue as of the close of the temporary period (shortened as if the temporary period ended as of the date the election was made), multiplied by the number of years (including fractions thereof) in the initial temporary period.

Enter the date on which the issuer made the election to terminate the 1½% penalty in lieu of arbitrage rebate.

**Line 19.**—Indicate the amount of penalty being paid. If the payment is for a penalty in lieu of arbitrage rebate or if the payment is for a termination penalty, enter the dollar amount. If the payment represents payments for both, enter the total of the penalty payments.

**Line 20.**—If the issuer failed to file a Form 8038-T on time and to make the appropriate penalty payment with the form, see **Failure To Pay Penalty on Time** in the General Instructions. Compute the penalty for failure to pay on time by adding one-half of the amount on line 19 to the interest (at the underpayment rate established under section 6621) on the amount that was not paid on the date required for the period beginning on such date. Enter the total on line 20 and attach a separate check for that amount.

In addition, attach a statement to this Form 8038-T explaining why there was no willful neglect in the issuer's failure to file the Form 8038-T timely and pay the penalty due. Submit the statement according to the format and procedures of Section 3 of Revenue Procedure 88-10, 1988-1 C.B. 635.

## Part IV—Elections

This part applies only if the bonds are subject to the requirements of Regulations sections 1.148-1 through 1.148-8.

Any election with respect to an issue must be in writing and must be made on or before the later of: **(a)** the date of issue; and **(b)** if the issue is issued on or before November 15, 1989, the first date after June 14, 1989, that any amount with respect to the issue is paid or required to be paid to the United States. Generally, an election, once made, is irrevocable. See Regulations section 1.148-8(h).

**Line 21.**—This election applies to a bond to which section 103(c)(6)(D) of the 1954 Code applies. You may elect to apply the rules in Regulations sections 1.148-1 through 1.148-8 to determine if the bond complies with section 103(c)(6)(D) of the 1954 Code. Unless you make this election, the rules in Temporary Regulations section 1.103-15AT will apply. See Regulations section 1.148-0(b)(2)(ii)(C).

**Line 22.**—You may elect to treat any variable yield issue sold on or before May 15, 1989, and issued on or before June 14, 1989, as a fixed yield issue. If you make this election, the yield on the issue is computed over the term of the issue rather than period-by-period. See Regulations section 1.148-3(b)(1)(ii).

**Line 23.**—You may elect to treat the last day of any bond year on a variable yield issue as a computation date. If you make this election, the yield on the issue may be computed for periods shorter than 5 years. This election is revocable under certain conditions. See Regulations section 1.148-3(b)(2)(ii)(B).

**Line 24.**—If you make this election, a variable yield bond that is not a tender bond is treated as a fixed yield bond after the close of business on the first day the bond would be a fixed yield bond if issued immediately after the close of business on that day. See Regulations section 1.148-3(b)(3)(i).

**Line 25.**—If you make this election, a variable yield issue that has been converted to a fixed yield issue will continue to be treated as a variable yield issue. See Regulations section 1.148-3(b)(3)(ii).

**Line 26.**—You may elect to recompute the yield on certain fixed yield issues sold on or before May 15, 1989, and issued on or before June 14, 1989. Otherwise, you must use the yield computed as of the issue date for such purposes. See Regulations section 1.148-3(c)(5).