

Instructions for Form 8038

(Rev. December 1986)

Information Return for Tax-Exempt Private Activity Bond Issues

A separate Form 8038 must be used for each issue.

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

General Instructions Changes You Should Note

- All issuers of tax-exempt bonds must report certain information about bonds issued by them during each preceding calendar quarter. For bonds other than private activity bonds, issuers should use **Form 8038-G**, Information Return for Tax-Exempt Governmental Bond Issues, or **Form 8038-GC**, Consolidated Information Return for Small Tax-Exempt Governmental Bond Issues, to comply with this requirement.
- For bonds issued after August 15, 1986, the interest on private activity bonds (PABs) to provide the following types of facilities is no longer exempt from tax: sport facilities, convention or trade show facilities, airport hotel facilities, parking facilities, certain hydroelectric generating facilities, industrial park facilities, and air or water pollution control facilities.
- Ninety-five percent of the net proceeds of an issue of PABs issued after August 15, 1986, are required to be used for the activity qualifying the interest on those bonds for treatment as tax-exempt bonds.
- Bonds issued after August 15, 1986, to provide hazardous waste treatment facilities may qualify as exempt facility PABs and the interest on these bonds will be tax exempt.
- The trade-in rate for mortgage credit certificates has been increased from 20% to 25% for bond authority exchanged after August 15, 1986.
- The interest on bonds issued after August 15, 1986, for organizations described in section 501(c)(3) is not exempt from tax if any portion of the proceeds of the issue of which the bonds are a part is used to provide property unless that property is owned by a section 501(c)(3) organization or a governmental unit.

Paperwork Reduction Act Notice

The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you have to give it to us. We ask for the information to carry out the Internal Revenue laws of the United States. We need it to ensure that you are complying with these laws. You are required to give us this information.

Purpose of Form

Form 8038 is to be used by the issuers of tax-exempt private activity bonds to provide

IRS with the information required by section 149 and to monitor the requirements of sections 141 through 150.

Who Must File

Form 8038 must be filed by all issuers of the following tax-exempt private activity bonds issued after December 31, 1986:

1. Qualified hospital bonds
2. Qualified section 501(c)(3) bonds
3. Qualified student loan bonds
4. Qualified mortgage bonds
5. Qualified veterans' mortgage bonds
6. Qualified redevelopment bonds
7. Qualified small issue bonds
8. Qualified exempt facility bonds
9. Texas Veterans' Land Bonds, Oregon Renewable Energy Property Bonds, and Iowa Industrial New Jobs Training Bonds
10. All other tax-exempt private activity bonds

Note: Bonds described in section 1312(c)(2) of the Tax Reform Act of 1986 to which the transitional rules in section 1312 or 1313 apply are not private activity bonds for purposes of information reporting. They should be reported on Form 8038-G or Form 8038-GC.

Definitions

A **tax-exempt bond** is an obligation on which the interest is exempt from tax under the Internal Revenue Code.

A **private activity bond** is generally a bond issued as part of an issue of which: (1) more than 10% of the proceeds are to be used for any private business use; and (2) more than 10% of the payment of the principal or interest is either secured by an interest in property to be used for a private business use (or payments in respect of such property), or is to be derived from payments in respect of property (or borrowed money) used for a private business use. A bond will also be considered a private activity bond if the amount of the proceeds to be used to make or finance loans (other than loans described in section 141(c)(2)) to certain persons exceeds the lesser of 5% of the proceeds, or \$5,000,000.

A **qualified section 501(c)(3) bond** is a private activity bond issued as part of an issue if: (1) no portion of the net proceeds of the issue is to be used to provide property owned by any person other than a governmental unit or an organization described in section 501(c)(3); and (2) the

bond would not be a private activity bond if section 501(c)(3) organizations were treated as governmental units and the private activity bond definition were applied using a 5% threshold.

A **qualified student loan bond** is an obligation issued as part of an issue: (1) 90% or more of the net proceeds of which are to be used to make or finance student loans under a program of general application to which the Higher Education Act of 1965 applies (see section 144(b)(1)(A) for additional requirements); or (2) 95% or more of the net proceeds of which are to be used to make or finance student loans under a program of general application approved by the state to which Part B of Title IV of the Higher Education Act does not apply (see section 144(b)(1)(B) for additional requirements).

An **exempt facility bond** is an obligation issued as part of an issue 95% or more of the net proceeds of which are to be used to provide an exempt facility listed in section 142(a)(1) through (10).

A **qualified mortgage bond** is a bond issued as part of an issue in which: (1) all proceeds of the issue (exclusive of issuance costs and reasonably required reserves) are to be used to finance owner-occupied residences; (2) the issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), and (i) of section 143; and (3) no bond meets the private business use tests of section 141(b)(1) and (2).

A **qualified veterans' mortgage bond** is a bond issued as part of an issue where: (1) 95% or more of the net proceeds are to be used to provide residences for veterans, and (2) the payment of the principal and interest is secured by the general obligation of the state, and is part of an issue which meets the requirements of subsections (c), (g), (i)(1), and (l) of section 143.

A **qualified redevelopment bond** is generally a bond issued as part of an issue of which 95% or more of the net proceeds are to be used to finance certain specified land acquisition and redevelopment in blighted areas. See section 144(c) for additional requirements.

A **qualified small issue bond** is a bond issued as part of an issue not exceeding \$1 million, and 95% or more of the net proceeds are to be used to finance land or any depreciable property. The \$1 million size limitation can be increased to \$10 million if an election is made to take certain capital expenditures into account.

When To File

File Form 8038 on or before the 15th day of the second calendar month after the close of the calendar quarter which contains the issue date. Form 8038 may not be filed before the issue date and must be completed based on the facts as of the issue date.

Where To File

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

Specific Instructions

Part I.—Reporting Authority

Amended Return.—If you are filing an amended Form 8038, check the amended return box and complete Part I and only those parts of Form 8038 you are amending by entering the correct information. Use the same report number (line 4) that was used on the original report. Do not amend the estimated amounts previously reported once the actual amounts are determined.

Line 1.—The issuer's name is the name of the entity issuing the bonds, not the name of the entity receiving the benefit of the financing.

Line 2—Issuer's employer identification number (EIN).—If the issuer does not have an employer identification number, enter "none" and attach a completed **Form SS-4**, Application for Employer Identification Number, to Form 8038. If, however, the issuer has previously applied for such a number, attach a statement giving the date of the application and the office where it was submitted.

Line 4—Report number.—Number reports consecutively based on the filing date (not the issue date). For example, if the issuer previously filed two Forms 8038 in the 1987 calendar year, the report number for the third Form 8038 would be "PA1987-3."

Line 6—Date of issue.—Enter the date of issue. This is generally the date on which the issuer physically exchanges the bonds for the underwriter's (or other purchaser's) funds.

Part II.—Type of Issue

Identify the type of bonds issued by checking the appropriate box(es) and enter the corresponding issue price of the bonds issued. The issue price does not include interest from the dated date to the date of issue (if payable at regular intervals of one year or less).

Lines 10 and 11.—Check the first box if the issue is for a qualified mortgage bond or a qualified veterans' mortgage bond. Check the second box if the issuer has elected, in the bond indenture or related document, to pay to the United States the amount described in section 143(g)(3)(D).

Line 13.—Check the second box on line 13 if the bond issue is an exempt issue of \$10 million or less for which an election under section 144(a)(4) is made.

Line 14.—Check the box(es) a–o that applies and enter the issue price of the bonds to be used for each facility. For this purpose, insignificant amounts of proceeds also should be allocated to the exempt facility.

Note: *The facilities listed on lines 14k–o are described in Code sections that were repealed by the Tax Reform Act of 1986 (Act). Bonds issued to finance these facilities qualify as exempt facility bonds only if they are issued under one of the transitional rules of the Act.*

Line 14k.—Check this line if the bonds are used to finance a sports facility as described in former section 103(b)(4)(B).

Line 14l.—Check this line if the bonds are used to finance a convention or trade show facility as described in former section 103(b)(4)(C).

Line 14m.—Check this line if the bonds are used to finance a pollution control facility as described in former section 103(b)(4)(F).

Line 14n.—Check this line if the bonds are used to finance a hydroelectric generating facility as described in former section 103(b)(4)(H).

Line 14o.—Check this line if the bonds are used to finance a parking facility as described in former section 103(b)(4)(D).

Line 15.—Check this line if the bonds are industrial park bonds (as described in former section 103(b)(5)) issued under one of the transitional rules of the Act.

Line 16.—Check this box only if none of the other boxes apply. On the space provided, enter a description of the bonds, for example, "Texas Veterans' Land Bonds," "Oregon Renewable Energy Property Bonds," or "Iowa Industrial New Jobs Training Bonds."

Part III.—Description of Bonds

Line 17.—For those bonds issued as part of the issue with the latest maturity date, enter the maturity date, the interest rate (if the interest rate is a variable rate, enter "VR"), the issue price, and the stated redemption price at maturity. If the bonds are reoffered to the public, the issue price should be determined based on the reasonably expected reoffering price. The issue price does not include interest from the dated date to the date of issue (if payable at regular intervals of one year or less). The stated redemption price at maturity is the amount payable (without regard to optional redemption) at maturity (excluding interest payable at regular intervals of 1 year or less).

Line 18—Columns (c), (d), and (e).—Enter the issue price, stated redemption price at maturity, and weighted average maturity in years (e.g., 8.7 years). The stated redemption price at maturity of the entire issue is the sum of the stated redemption prices at maturity of each bond issued as part of the issue. The weighted average maturity is the sum of the products of the issue price of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory redemptions), divided by the issue price of the entire issue (from line 18, column (c)).

Line 18—Columns (f) and (g).—Enter the yield only if the yield has been computed. Yield means the yield on the issue for purposes of section 148. If the issue is a variable rate issue, enter "VR" as the yield of the issue. In addition, enter the net interest cost (NIC) in column (g). The NIC for an issue may be determined by dividing the total interest payments for the issue

(reduced by any premium or accrued interest and increased by any discount) by the product of the issue price from line 18, column (c) and the weighted average maturity from line 18, column (e). If it is a variable rate issue, enter "VR" as the NIC of the issue.

Part IV.—Uses of Original Proceeds of Issue

Line 19—Proceeds used for accrued interest.—Enter the amount of original proceeds that will be used to pay interest from the dated date of the bonds to the date of issue.

Line 20—Proceeds used for bond issuance costs.—Enter the amount of the original proceeds that will be used to pay bond issuance costs, including fees for trustees and bond counsel.

Line 21—Proceeds used for credit enhancement.—Enter the amount of the original proceeds that will be used to pay fees for credit enhancement that are taken into account in determining the yield on the issue for purposes of section 148 (e.g., bond insurance premiums and certain fees for letters of credit).

Line 22—Proceeds allocated to reasonably required reserve or replacement fund.—Enter the amount of the original proceeds that will be allocated to such a fund.

Line 23—Proceeds used to refund prior issues.—Enter the amount of the original proceeds that will be used to pay principal or interest on any other issue of bonds.

Line 24—Nonrefunding proceeds of issue.—Enter here the amount received by the issuer net of any issuance costs and credit enhancement fees, and net of proceeds allocated to a reasonably required reserve or replacement fund and proceeds used for refunding prior issues (including advance refunding). (Subtract lines 20, 21, 22, and 23 from line 18, column (c).)

Part V.—Description of Property Financed by Nonrefunding Proceeds

Do not complete this part for qualified student loan bonds, qualified mortgage bonds, or qualified veterans' mortgage bonds.

Line 26.—Enter the four-digit Standard Industrial Classification (SIC) code and corresponding face amount of each project to be financed by the issue. If there are more than four projects to be financed by the issue, attach a separate sheet of paper stating the SIC codes and face amount of each project. For abbreviated lists of these codes, see the instructions to **Form 1120**, U.S. Corporation Income Tax Return, or **Form 990-T**, Exempt Organization Business Income Tax Return.

For the purpose of determining SIC codes where the project fits into more than one category, the ultimate use of the facility determines the SIC code number. For example, a real estate partnership financing of a shopping center should use the relevant retail shopping SIC code number, not the real estate number.

Part VI.—Description of Refunded Bonds

Complete this part only if the bonds are to be used to refund a prior issue of tax-exempt private activity bonds.

Line 27.—Enter the remaining weighted average maturity of the bonds being refunded. Determine the remaining weighted average maturity without regard to the refunding. The weighted average maturity is determined in the same manner as on line 18, column (e).

Line 28.—Enter the last date on which any of the bonds being refunded will be called.

Line 29.—Enter the date of issue of the bonds being refunded. If more than a single issue of bonds will be refunded, enter the dates of issue of each of the issues.

Part VII.—Miscellaneous

Line 30.—Under the rules of section 147(f), private activity bonds are not tax exempt unless they receive public approval by certain officials or voter referendums.

If, under the rules of section 147(f), no approval is needed because the issue meets an exception to the public approval requirement, enter "no approval needed" on line 30. Also enter on line 30 the provision of section 147(f) under which the issue is excepted (e.g., "section 147(f)(2)(D)"). If the issue is excepted from the public approval requirement under the transitional rule of section 215(c)(1) of Public Law 97-248 (Tax Equity and Fiscal Responsibility Act of 1982) or another transition rule, enter "Transitional rule" on line 30.

Line 31a.—Check this box if you expect the 6-month temporary investment exception to the arbitrage rebate requirement to apply. See section 148(f)(4)(B).

Line 31b.—Check this box if you expect to earn and rebate arbitrage profits to the United States pursuant to section 148(f). Do not check this box if you do not expect to earn arbitrage profits.

Line 32.—If any portion of the issue will qualify for the small issuer exception to section 265 contained in section 265(b)(3), enter the amount of the bonds that will qualify for the exception.

Part VIII.—Volume Cap

Line 33.—Check this box if the bonds are qualified veterans' mortgage bonds and enter the state veterans' limit for the calendar year.

Line 34.—Check this box if any part of the issue is subject to the unified state volume cap for private activity bonds under section 146.

Line 35.—Enter the amount of volume cap allocated to the issue.

Line 36a.—If any portion of the issue is issued pursuant to a carryforward election, enter the date on which the election was made and the amount of the bonds being issued pursuant to that election.

Line 36b.—If any portion of the issue is used to finance a governmentally owned solid waste facility, airport, dock, or wharf, enter the amount of the bonds issued for that purpose and excepted from the volume cap.

Line 36c.—Enter the amount of the bonds issued as part of the issue that are qualified section 501(c)(3) bonds.

Line 36e.—If any portion of the issue is excepted from the volume cap pursuant to a transition rule contained in the Tax Reform Act of 1986, enter the section of the Act in which the transition rule is contained and the amount of the bonds excepted from the volume cap pursuant to that rule.

State Certification.—A copy of the state certification must be attached to the Form 8038 for any issue for which it is necessary that a portion of the issuer's volume limitation be assigned to the issue.

Signature

Form 8038 must be signed by an authorized representative of the issuer.