

Instructions for Form 8038

(Rev. May 1989)

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.)

Changes You Should Note

- The Technical and Miscellaneous Revenue Act of 1988 adds a new type of exempt facility bond: bonds used to finance intercity high-speed rail facilities. An exception requires the owner of the facility that is not governmentally owned to make an irrevocable election not to claim depreciation or any tax credit. See section 142.
- For small issue bonds issued after November 10, 1988, the definition of manufacturing facility has become further limited with respect to related and ancillary facilities. Such facilities must be located on the same site as the manufacturing facility and not more than 25% of the net proceeds may be used to provide such facilities.
- Part II, Type of Issue, of Form 8038 has been revised to emphasize changes made by the 1986 Code. Part IX, Arbitrage Rebate, is added to this form.
- For bonds issued after October 13, 1987, the interest on private activity bonds to acquire nongovernmental output property is no longer exempt from tax if the amount of the proceeds used to acquire nongovernmental output property exceeds 5% of the proceeds or \$5,000,000. Nongovernmental output property does not include any property to be used in connection with an output facility, 95% or more of the output of which will be consumed in a "qualified service area" or a "qualified annexed area." See section 141(d).

General Instructions

Issuers of state or local bonds must comply with the information requirements for these bonds if the bond is to qualify for tax exemption. Issuers of tax-exempt bonds must report certain information about bonds issued by them during each preceding calendar quarter. If they do not comply with this information reporting requirement, the bonds do not qualify for tax exemption. For bonds other than private activity bonds, issuers should use **Form 8038-G**, Information Return for Tax-Exempt Governmental Bonds Issues, or **Form 8038-GC**, Consolidated Information Return for Small Tax-Exempt Governmental Bond Issues, to comply with this requirement. 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 and should be reported on Form 8038-G or Form 8038-GC.

For arbitrage rebate to the Federal Government, use Part IX.

Paperwork Reduction Act Notice

We ask for this 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.

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

Recordkeeping 24 hrs., 9 min.

Learning about the law or the form 4 hrs., 50 min.

Preparing the form 6 hrs., 23 min.

Copying, assembling, and sending the form to IRS 16 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 the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; or the **Office of Management and Budget**, Paperwork Reduction Project, (1545-0720) Washington, DC 20503.

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 exempt facility bonds
2. Qualified mortgage bonds
3. Qualified veterans' mortgage bonds
4. Qualified small issue bonds
5. Qualified student loan bonds
6. Qualified redevelopment bonds
7. Qualified hospital bonds
8. Qualified 501(c)(3) bonds
9. Nongovernmental output property bonds

10. Texas Veterans' Land Bonds, Oregon Small-Scale Energy Conservation and Renewable Resource Loan Bonds, and Iowa Industrial New Jobs Training Bonds
11. All other tax-exempt private activity bonds

When To File

File Form 8038 on or before the 15th day of the second calendar month after the close of the calendar quarter that 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.

Late filing.—A Form 8038 filed after the due date may be granted an extension of time to file under section 3 of Rev. Proc. 88-10, 1988-1 C.B. 635, if it is determined that the failure to file in a timely manner is not due to willful neglect. A late Form 8038 should be sent to: Internal Revenue Service, Philadelphia Service Center, Statistics of Income Unit, P:DA:Unit F-SOI, Philadelphia, PA 19255, Stop #335. Type or print at the top of the form, "This Statement Is Submitted in Accordance with Rev. Proc. 88-10. Attach to the Form 8038 a letter briefly setting forth the reasons why Form 8038 was not submitted to the IRS on time, and also indicating whether the bond issue in question is under examination by the IRS. Do not submit copies of the trust indenture or other bonds documents.

Where To File

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

Rounding Off to Whole-Dollar Amounts

You may show the money items on this return as whole-dollar amounts. To do so, drop any amount less than 50 cents and increase any amount from 50 cents through 99 cents to the next higher dollar.

Definitions

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

Generally, bonds are treated as part of the same issue if the bonds are issued by the same issuer, on the same date, and pursuant to a single transaction, or series of related transactions.

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 is also 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.

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 (11).

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), (i), and (m)(7) of section 143; (3) such issue does not meet the private business tests of sections 141(b)(1) and (2); and (4) generally for bonds issued (and nonissued bond amounts elected) after December 31, 1988, repayments of principal on financing provided by the issue (that are received more than 10 years after the date of issuance) must be used to redeem bonds which are part of the issue. The redemption requirements of (1) and (4) do not apply to amounts of less than \$250,000.

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, (2) the payment of the principal and interest is secured by the general obligation of a State, (3) which is part of an issue that meets the requirements of subsections (c), (g), (i)(1), and (l) of section 143, and (4) which is part of an issue that does not meet the private business tests of sections 141(b)(1) and (2).

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: (a) land, (b) depreciable property, or (c) to redeem a prior issue of (a) or (b). See section 144(a). The \$1 million size limit can be increased to \$10 million if an election is made to take certain capital expenditures into account. See Income Tax Regulation 1.103-10(b)(2)(vi).

A **qualified student loan bond** is an obligation issued as part of an issue if: (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 (see section 144(b)(1)(B) for additional requirements).

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 other requirements.

A **qualified hospital bond** is any qualified 501(c)(3) bond issued as part of an issue of which 95% or more of the net proceeds are to be used with respect to a hospital.

A qualified 501(c)(3) nonhospital bond is a qualified bond other than a qualified hospital bond (section 145). The aggregate authorized face amount of qualified 501(c)(3) nonhospital bonds that an organization may issue, may not exceed \$150,000,000. Restrictions have been placed on the use of qualified 501(c)(3) bonds (both hospital and nonhospital) to provide residential rental housing. See section 145(d).

A **qualified 501(c)(3) bond** is a private activity bond issued as part of an issue if: (1) no part 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 was applied using a 5% threshold.

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 already 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 already filed two Forms 8038 in the 1989 calendar year, the report number for the third Form 8038 would be 'PA1989-3.

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.

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 enter "none."

Part II.—Type of Issue

Identify the type of bonds issued by checking the appropriate box(es) and entering 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).

Line 9.—Specific instructions for certain lines follow.

Line 9(g).—After entering the issue price, check the appropriate box for the percentage that was elected by the issuer at the time of issuance of the bonds. Then, check the appropriate box to show whether an election was made for deep rent skewing.

Line 9(k).—Proceeds of an exempt bond may not be used for this type of facility where there is a nongovernmental owner of the facility unless an irrevocable election is made by the nongovernmental owner not to claim depreciation under section 167 or 168, or to claim any credit against its income tax with respect to the property financed with the proceeds of the issue.

Line 9(l).—Bonds issued to finance certain facilities may also qualify as exempt facility bonds only if (1) they were permitted as exempt facility bonds under prior law, and (2) provided that they were issued under one of the transitional rules of the Tax Reform Act of 1986. These facilities include: a sports facility, as described in former section 103(b)(4)(B); a convention or trade show facility, as described in former section 103(b)(4)(C); a parking facility, as described in former section 103(b)(4)(D); a pollution control facility, as described in former section 103(b)(4)(F); a hydroelectric facility, as described in former section 103(b)(4)(H); and an industrial park bond, as described in former section 103(b)(5). If one of the foregoing applies, then on line 9(l) **indicate the facility type**, as indicated above, and then give the **specific provision of the Act** pertaining to the facility.

Line 10 or 11.—Check the second box on the appropriate line 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 12.—Check the second box on line 12 if the bond issue is an exempt issue of \$10 million or less for which an election under section 144(a)(4) has been made by the issuer at or before the time of issuance on the bonds or in its records. See Income Tax Regulations section 1.103-10(b)(2)(vi).

Line 16.—On the space provided, enter the employer identification number (EIN) of the qualifying 501(c)(3) organization.

Line 17.—Check this box if the bonds are used to acquire nongovernmental output property, or an interest in property, held by a nongovernmental person that is used in connection with an output facility.

Line 18.—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 Small-Scale Energy Conservation and Renewable Resource Loan Bonds," or "Iowa Industrial New Jobs Training Bonds."

Part III.—Description of Bonds

Line 19.—For those bonds issued as part of the issue with the latest maturity date, enter the maturity date, the interest rate (or coupon rate) the issue price, and the stated redemption price at maturity. Interest and yield rates should be carried out to three decimal places. If the interest rate is a variable rate, enter "VR." 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 20—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 20, column (c)).

Line 20—Columns (f) and (g).—Enter the yield only if it has been computed. Yield is the yield on the issue as defined under section 148(h). It is the discount rate which, when used to compute the present value of all payments of principal and interest to be paid on the obligation, produces an amount equal to the purchase price, including accrued interest. 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 20, column (c) and the weighted average maturity from line 20, 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 21—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 23—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 24—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(h) (e.g., bond insurance premiums and certain fees for letters of credit).

Line 25—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 26—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 28—Nonrefunding proceeds of issue.—Enter 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 line 27 from line 22 and enter amount on line 28.)

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 29.—Enter the amount of the nonrefunding bond proceeds received by the issuer and used to finance real or depreciable personal property. If the amounts are not readily ascertainable at the time of issuance, make a reasonable proration between the land, the buildings, or the equipment.

Note, however, under section 147(c), that a private activity bond is not a qualified bond if 25% or more of the proceeds are allocated to the acquisition of farm land (other than an amount of proceeds not in excess of \$250,000 to be used by a first-time farmer). An exception to the foregoing general rule is for land acquired for certain environmental purposes (section 147(c)(3)). Further a bond may not be a qualified bond if the proceeds are used for the acquisition of used property (other than land), except in the case of certain rehabilitations. See section 147(d). In addition, for items that do not readily fit within categories a, b, c, or d, enter the amount of those proceeds in category e, *Other*, and briefly describe them.

Line 30.—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. SIC codes are developed by the Office of Management and Budget and are published in the **Standard Industrial Classification Manual**.

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, an investment partnership financing a manufacturing facility should use the relevant manufacturing SIC code, not the partnership's financial activities 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 31.—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 20, column (e).

Line 32.—Enter the last date on which any of the bonds being refunded will be called.

Line 33.—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 34.—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. Enter the name of the governmental unit(s) approving the issue. Enter also the date of approval by the applicable elected representatives and the date of the public hearing. In the alternative, enter the date of the voter referendum.

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 34. Also enter on line 34 the provision of section 147(f) under which the issue is excepted (e.g., "section 147(f)(2)(D)"), or if under any transitional rule, enter "Transitional rule" and "the Act" on line 34.

Line 35.—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 36.—Enter the amount of volume cap allocated to the issuer. Attach State Certification, if applicable. The appropriate state official must certify that the issue meets the requirements of section 146 (relating to volume cap on private activity bonds). See the regulations under section 149(e). The certification should also include sufficient information requested by lines 1 through 3 and 5 through 8 of this Form 8038, as well as the title of the certifying official.

Line 37.—Enter the amount of the issue subject to the unified state volume cap for private activity bonds under section 146. If, under section 141, the nonqualified amount of an issue exceeds \$15,000,000, but does not exceed the amount that would cause a bond which is part of an issue to be treated as a private activity bond, the issuer must allocate a part of its volume cap to the nonqualified amount over \$15,000,000.

Line 38.—Bonds not subject to volume cap.

Line 38a.—Enter the amount of any bond issued as part of an issue to finance exempt facilities that are not subject to the volume cap. These facilities include airports, docks, wharves, high-speed intercity rail facilities and solid waste facilities. Only 75% of any exempt facility bond for high-speed intercity rail facilities is not subject to the volume cap. The applicable solid waste facilities may have to be governmentally owned. See sections 146(h) and 142(b)(1)(B).

Line 38b.—If any part of the issue is issued pursuant to a carryforward election, enter the amount of the bonds being issued pursuant to that election. Attach a copy of the applicable **Form 8328**, Carryforward Election of Unused Private Activity Bond Volume Cap.

Line 38c.—If any part of the issue is not subject to the volume cap pursuant to a transitional rule contained in the Tax Reform Act of 1986, enter the section of the Act in which the transitional rule is contained and the amount of the bonds excepted from the volume cap pursuant to that rule.

Line 38d.—Any bond that is issued to currently refund another bond is not subject to the volume cap to the extent that the amount of such bond does not exceed the outstanding amount of the refunded bond. See section 146(i) and section 1313(a) of the Tax Reform Act of 1986. Enter amount not subject to volume cap.

Line 39a.—Enter the amount of the bonds issued as part of the issue that are qualified hospital bonds under section 145(c).

Line 39b.—Enter the amount of qualified 501(c)(3) bonds issued as part of the issue that are qualified nonhospital bonds under section 145(b)(2).

Line 39c.—Enter the amount of all other bonds issued as part of issues that are outstanding tax-exempt nonhospital bonds described under section 145(b)(2). Lines 39(b) and (c) together should generally not exceed \$150,000,000.

Line 40a.—Enter the amount of an issue of qualified veterans' mortgage bonds.

Line 40b.—Enter the amount of the state veterans' limit for the calendar year

Part IX.—Arbitrage Rebate

If arbitrage is required to be rebated to the Federal Government, then use a copy of the originally filed Form 8038 and add the

following information: On line 41 check the appropriate box indicating method of payment. On line 42 indicate the precise dollar amount being rebated. On the top of the first page of the form write, in large letters, "ARBITRAGE REBATE. If your originally filed Form 8038 does not have a CUSIP number, then at the bottom of page 2 of that Form 8038, add three lines entitled: "a) method of payment, b) amount being rebated, and c) the CUSIP number" and then provide the appropriate response.

Signature

Form 8038 and any applicable certification must be signed by an authorized representative of the issuer. Also print the name and title of the person signing Form 8038.

U.S. Government Printing Office: 1989-242-473/80121