

General Instructions

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

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

Purpose of Form

Form 8038-R is used by issuers of state and local bonds to request a refund of amounts paid with **Form 8038-T**, Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

Note: Form 8038-R replaces the letter procedure of Rev. Proc. 92-83, 1992-2 C.B. 487.

Payments made with Form 8038-T that may be recoverable include:

1. Yield reduction payments,
2. The arbitrage rebate to the United States,
3. A penalty in lieu of rebating arbitrage to the United States, or
4. A penalty to terminate the election to pay a penalty in lieu of rebating arbitrage.

Recovery of Overpayment

In general, an issuer may recover an overpayment of rebate for an issue of tax-exempt bonds by establishing to the Internal Revenue Service that the overpayment occurred. An overpayment is the excess of the amount paid to the United States for an issue under section 148 over the sum of the rebate amount for the issue as of the most recent computation date and all amounts that are otherwise required to be paid under section 148 as of the date the recovery is requested.

An overpayment may be recovered only to the extent that a recovery on the date that it is first requested would not result in an additional rebate amount if that date were treated as a computation date.

Except for overpayments of penalty in lieu of rebate under section 148(f)(4)(C)(vii) and Regulations section 1.148-7(k), an overpayment of less than \$5,000 may not be recovered before the final computation date. See Regulations section 1.148-3(i).

Processing the Request

Generally, the information requested on Form 8038-R will be sufficient to determine whether a refund is appropriate. However, if additional information is necessary, the IRS will contact the issuer or its representative. Processing of the request will then be suspended and the issuer will have 30 calendar days to submit the requested information. If all the requested information is not timely received, a letter will be sent explaining that the request for recovery is deficient and that its processing is terminated. This letter may also be sent instead of a request for additional information if the initial request for recovery is severely deficient.

Any proposed adverse determination may be appealed. See Rev. Proc. 99-35, 1999-2 C.B. 501, for details.

Where To File

File Form 8038-R, and any attachments, with the Internal Revenue Service Center, Ogden, UT 84201.

Signature

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

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 6. 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. Enter the name of the issue. If there is no name, please provide other identification of the issue.

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

Part II—Request for Refund

Line 11. Current Regulations sections 1.148-1 through 1.148-11 apply to issues outstanding after June 30, 1993. If the issue was outstanding prior to July 1, 1993, the 1992 regulations apply (i.e., Regulations sections 1.148-1 through 1.148-12 effective May 18, 1992 (T.D. 8418, 1992-1 C.B. 29)). However, check the box if the issue was outstanding prior to July 1, 1993, and the issuer has elected **not** to apply the 1992 regulations; the current Regulations sections 1.148-1 through 1.148-11 apply.

Line 17. Provide the computations of the overpayment paid as part of a rebate payment, penalty in lieu of rebate, or to terminate the penalty in lieu of rebate. Also, include the computations for interest (if any). If relevant, a description of the facts that led to the overpayment may also be included.

Line 18. Provide a schedule showing amounts and dates that payments were made to the United States for the issue. Do not attach copies of Form(s) 8038-T that accompanied payments to the United States; doing so may delay your request.

Part III—Other Information

Line 20. The final computation date is the date the issue is discharged. For details, see Regulations section 1.148-3(e)(2).

Line 21. Check the "Yes" box if:

| The issue is comprised of... | As described in section... |
|-------------------------------|---|
| Qualified redevelopment bonds | 144(c) |
| Qualified small issue bonds | 144(a) |
| Exempt facilities bonds | 142(a)(4) through 142(a)(11) and 142(a)(13) |

If one of the above applies, then enter the name and employer identification number (EIN) of the primary private user. A "private user" is the nongovernmental entity that meets the private business tests of section 141(b) or private loan financing test of section 141(c).

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.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 5 hr., 44 min.; **Learning about the law or the form**, 3 hr., 10 min.; **Preparing, copying, assembling, and sending the form to the IRS**, 3 hr., 24 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the form to this address. Instead, see **Where To File** above.