



Wednesday, October 22
11:00 am-12:30 pm

905 Tax-Exempt Bond Financing

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Raymond S. Sczudlo

Vice President and Chief Legal Officer
Children's National Medical Center

Faculty Biographies

Amy S. Dosik

Amy S. Dosik serves as the southeast area leader for Ernst & Young's National Exempt Organizations Tax Practice. She serves as the tax services coordinator for tax services for the area's exempt healthcare, higher education, charitable, and other tax-exempt clients. Ms. Dosik represents tax exempt organizations in a variety of transactions and matters including public-private joint ventures; tax-exempt bond issuances; mergers and business combinations; for-profit to not-for-profit conversions; corporate sponsorship arrangements; investments in hedge funds, private equity and other alternative investments; and licensing and technology transfer activities. Ms. Dosik also represents taxpayers before the Internal Revenue Service in applications for tax exemption, changes in exempt status, private letter and other rulings and agreements, responses to proposed requests for technical advice, and appeals and litigation. She regularly advises exempt organizations on a variety of federal and state tax compliance issues. Ms. Dosik's practice encompasses a wide variety of exempt organizations, including hospitals and health systems, charitable organizations, private and family foundations, supporting organizations, agricultural organizations, trade associations, social clubs, state-chartered credit unions, title holding organizations, and public welfare organizations.

Ms. Dosik is a member of the exempt organizations and pro bono committees of the tax section of the ABA and the American Health Lawyers Association.

Ms. Dosik graduated cum laude from the University of Pennsylvania with a BA. Ms. Dosik received her JD from Emory University School of Law, from which she graduated with honors.

Rondy Jennings

Rondy Jennings, managing director, Goldman Sachs & Co., is a member of the public sector and infrastructure department and is responsible for investment banking relationships with large not-for-profit healthcare organizations. He has executed both financing and advisory transactions with healthcare clients for over 20 years.

Prior to joining the firm, Mr. Jennings was a managing director and co-head of the municipal healthcare group at UBS Securities LLC. Mr. Jennings began his career at JP Morgan & Co., where he began its not-for-profit healthcare practice.

He serves on the board of directors for Access Group, Inc.

Mr. Jennings earned a BA from Swarthmore College and an MBA from Stanford University.

Margaret H. Purcell

Margaret H. Purcell is an executive director in Ernst & Young's exempt organization tax services practice based in Jacksonville, Florida. As the national leader for Ernst & Young of the private activity compliance services practice, Ms. Purcell is responsible for reviews of the reports generated by our team of professionals nationwide.

She has more than 30 years experience in tax-exempt finance and the health science industries and has additionally provided services to health care organizations, academic medical centers, states, cities, counties, universities, school districts, transportation, and utility authorities as well as housing authority issuers of debt. Previously at Arbitrage Rebate Services, she served as arbitrage rebate services provider for several thousands of bond issues; served as location director in Jacksonville for over nineteen years; and served as client representative in obtaining significant refunds from the Internal Revenue Service in situations with inadvertent overpayments of arbitrage rebate liability. Prior to that, she assisted multiple health care organizations establish monitoring systems to proactively address regulatory requirements. She has also represented clients in closing agreements through the VCAP program.

Ms. Purcell has also taught multiple firm sponsored day-long seminars focusing on the specific compliance requirements of the private activity code and regulations, including a national web-cast. Additionally, she is member of the National Association of Bond Lawyers and a member of the Florida Government Finance Association.

Ms. Purcell earned her BA from American University.

Raymond S. Sczudlo

Raymond S. Sczudlo joined Children's National Medical Center (CNMC) as vice president and chief legal officer. Mr. Sczudlo is responsible for all aspects of the legal affairs, compliance, executive compensation and governance of the institution, and serves on its leadership council.

Prior to joining Children's National Medical Center, Mr. Sczudlo was senior vice president and general counsel of EYECAST Corporation. Prior to that, Mr. Sczudlo was a partner in the international law firm of Weil, Gotshal & Manges LLP, where he practiced in the areas of corporate, business, finance, technology, and international transactions.

Mr. Sczudlo served as an adjunct professor at the George Washington University Law Center, where he taught banking and finance. He has authored numerous articles on banking, technology, investment, capital markets, regulatory and policy issues, and has been a frequent lecturer on such topics. As part of his outside activities while in private practice, Mr. Sczudlo served on the board of directors of the Children's National Medical Center in Washington, DC and its various affiliates, including service as chairman of the board of CNMC. He also served as chairman of the board of the Children's Hospital Foundation, and chairman of the board of Safe Kids Worldwide. He has served on, and

chaired, a number of committees for CNMC and its affiliates, including finance, professional affairs, audit, investment, legal affairs, and executive compensation.

Mr. Sczudlo received a bachelor's degree from the University of Detroit, and a JD from Georgetown University Law Center.



Topics Covered by This Presentation

- IRS Requirements
- State Law Issues
- Certificate of Needs Process
- Bond Application Process
- Choosing Your Professionals
- Accounting and Auditing Issues
- Corporate and Regulatory Issues



IRS Requirements: Pre-Issuance

- Volume Cap Requirement
- Public Approval Requirement
- Registration Requirement
- Initial Information Return: Form 8038

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Outline

- Introduction to the Issues and the Players
- Investment Banking: Financial and Market Considerations
- Pre-Issuance Planning Considerations
- Post-Issuance Compliance Requirements

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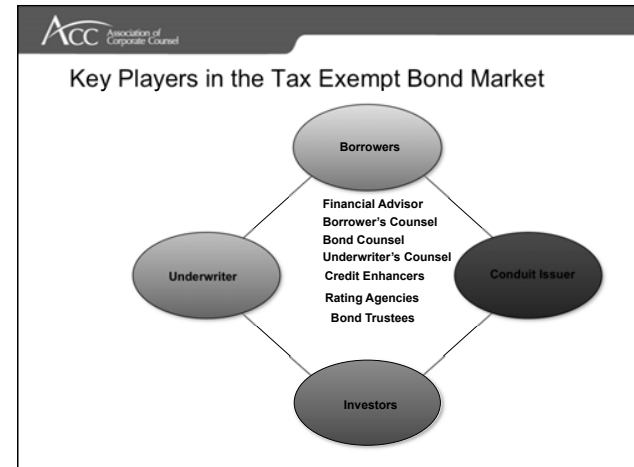
What is Tax Exempt Bond Financing

- Tax-exempt bonds are valid debt obligations of state and local governments ("issuers")—the interest on which is tax exempt.
 - Bonds can be "General Obligation Bonds" backed by the taxing authority of the state or local government, or
 - "Revenue Bonds" backed only by a specified source of revenue
- Qualified 501(c)(3) bonds are tax-exempt qualified private activity bonds issued by a state or local government, the proceeds of which are used by a 501(c)(3) charitable organization in furtherance of its tax exempt purpose.
 - See IRS Publication 4077 (<http://www.irs.gov/pub/irs-pdf/p4077.pdf>)

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Introduction to the Issues and the Players

- What is Tax Exempt Bond Financing
- Who can use this Financing
- Who are the Players and what do they do



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What do they do?

- In a lead role—
 - “Conduit Issuer”
 - This is the state or local authority who technically is the issuer of the bonds. Referred to as a conduit because the authority is NOT obligated to repay, only the borrower.

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- In a supporting role—
 - “Financial Advisor”
 - An independent financial expert retained by the Borrower, without a direct stake in the success of a bond issue, who advises the Borrower on the structure of the deal, how it fits within the overall financial structure of the borrower and the fairness of the pricing of the bonds
 - “Borrower’s Counsel”
 - The one looking out for the Borrower in negotiating the terms of the deal, who issues an opinion regarding tax exempt status of Borrower, etc.

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- “Borrower”
 - The 501(c)(3) entity that enters into a loan agreement with the Issuer regarding the use and repayment of the money
- “Underwriter”
 - The organization that assists the Borrower /Issuer to structure and sell the bonds to Investors for an underwriting fee
- “Investor”
 - The individual or fund or organization that purchases the bonds [ie, the source of the money].

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- “Bond Counsel”
 - Retained by the Conduit Issuer (but paid by the Borrower) who ensures that the technical requirements for a valid obligation of a state or local government are met, and who opines that the interest paid is exempt from federal taxation
- “Underwriter’s Counsel”
 - Retained by the Underwriter (but paid by the Borrower) to oversee drafting of the disclosure document, and perform due diligence on the Borrower.
- “Credit Enhancer”
 - A bank or bond insurer who overlays its credit (and credit rating) on the bonds to lower borrowing costs.

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- "Ratings Agencies"
 - Moody's, Standard & Poors, and Fitch, who are independent organizations that analyze the ability of the Borrower (and the Credit Enhancer) to meet the Bond obligations.
 - Insured bonds would have a rating based on the Credit Enhancers rating with an "underlying" rating based on the Borrower's ability to repay.
- "Bond Trustees"
 - Typically a bank with trust powers who holds the bond proceeds and related funds created (such as the construction fund, the debt service reserve fund, etc.), and administers these funds in strict accordance with the Trust Indenture.

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Table of Contents

- Introduction to Tax-Exempt Bonds
- Market Update
- Financing Options
- Lessons Learned

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Investment Banker's Perspective

Rondy Jennings
Goldman Sachs

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In the United States, municipal securities are "tax-advantaged" investments.

Comparison of Equivalent After-Tax Returns to Investors^(a)

Taxable XYZ Company Debentures	Tax-Exempt General Obligation Bonds
5.00%	3.25%
6.00%	3.90%
7.00%	4.55%
8.00%	5.20%
9.00%	5.85%
10.00%	6.50%

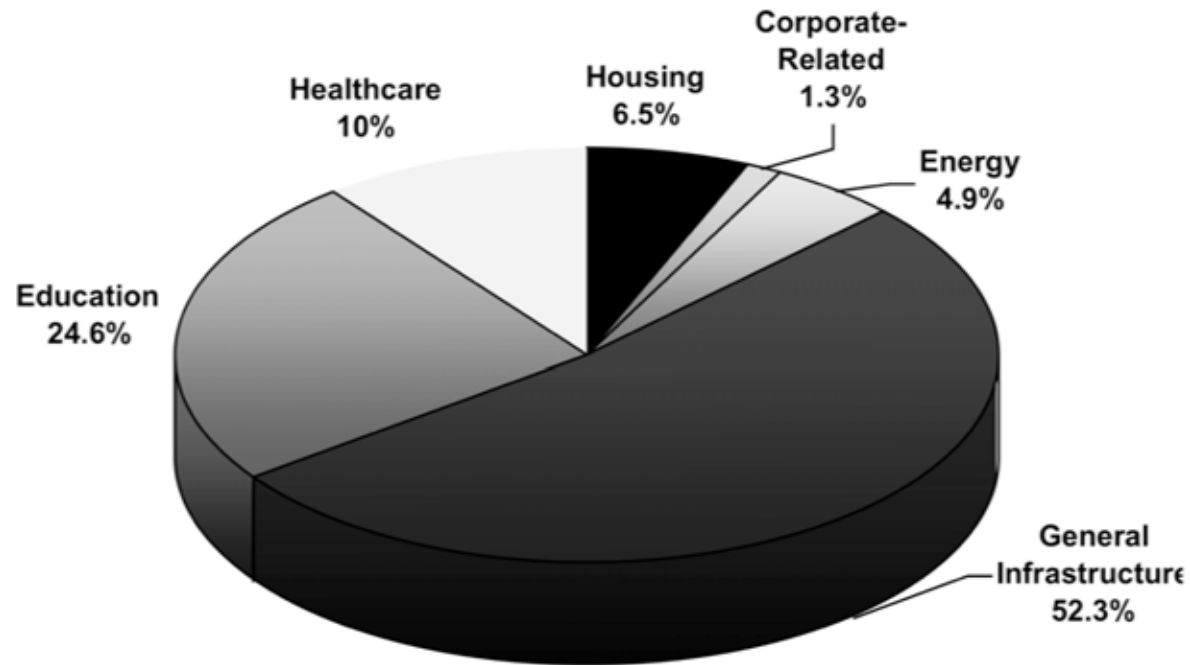
- The 16th Amendment to the U.S. Constitution created our modern federal income tax system. Section 103 of the Internal Revenue Code exempts municipal interest earned from federal income taxation.

(a) Assumes the investor is in the highest marginal tax bracket.



The Municipal Bond Market is comprised of many different sectors.

2007 Municipal Market Composition



Debt Volume: \$487.9 Billion



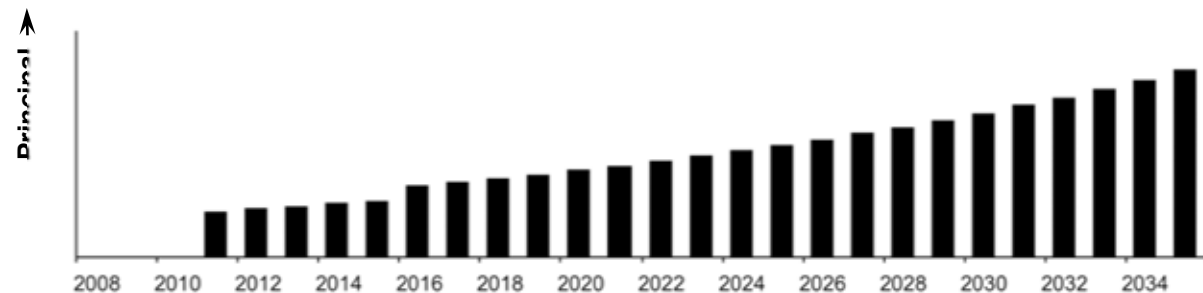
The composition of municipal bond investors varies at different points along the yield curve.

Active Investors in the Municipal Market

Maximizing demand among all investor sectors is the key to lowering interest costs.

Maturities Purchased	1-10 years	11-20 years	21-35 years
Most Active Investors In Today's Market	Retail Trust Departments Corporations Intermediate Funds	Insurance Companies & Investment Advisors	Bond Funds/Crossover Buyers
		AIG Allstate Black Rock Chubb CNA/Loews ERC Farmers General Electric General Reinsurance	JP Morgan Nationwide Saint Paul Fire Salomon Sanford Bernstein Scudder State Farm Travelers
Investor Concerns	<ul style="list-style-type: none"> ■ Principal protection ■ Tax-exemption ■ AAA ratings 	<ul style="list-style-type: none"> ■ Credit ■ Current coupon ■ No insurance 	<ul style="list-style-type: none"> ■ Cash Flow ■ Credit Direction ■ Ratios

Proposed Bond Principal Amortization





The most aggressive healthcare investors have significant buying capacity for future bond issuances.

Management Company	Municipal Assets Under Management (\$Bn)	
Eaton Vance Management	13	
Blackrock		60
Putnam Investment Management		13
Franklin		60
Nuveen Asset Management		50
MFS Investment Management		7
Van Kampen Investments		12
Vanguard Group, Inc.	55	
Dreyfus		15
Western Asset Management Co.		38
Fidelity		19
Prudential Fixed Income	2	
T. Rowe Price		2
Total		\$346



Market Update

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A Brief Review of the Subprime Crisis

- In the summer of 2007, widespread defaults of subprime residential mortgages began to surface, setting off rampant dislocations in the capital markets.
- The Subprime Crisis was “The Perfect Storm” combining:
 - A false sense of strength in the housing market; and
 - Lax credit standards associated with Collateralized Debt Obligations (CDOs) that appeared to offload risk.
- The CDO market allowed mortgage underwriters to become very lax in their credit standards since they could repackage and monetize risky mortgages.
- As the housing bubble burst:
 - Mortgage defaults escalated, causing the intrinsic value of CDOs to drop; and
 - The holders of CDOs (major financial institutions, including investment banks and hedge funds) were left with heavily devalued securities that they either had to carry with a negative mark, or write off entirely.
- Monoline insurer exposure to CDOs and the consequent lack of capital has caused rapid deterioration in credit quality and investor confidence.
 - This resulted in a complete dislocation of the tax-exempt auction rate securities market.



The Subprime Crisis has had a staggering impact on the economy and credit markets.

- The housing market has temporarily collapsed.
- Unemployment is rising.
- Consumer spending has weakened.
- Corporations are scaling back operations, cutting payrolls and reducing capital spending programs.
- Credit markets have deteriorated, including the municipal market.
 - A general repricing of risk across all market sectors has pushed credit spreads higher.
 - Systemic failure of the auction rate securities market, credit concerns and lack of liquidity has caused some investors to exit the municipal market.
 - Deterioration of the bond insurers has forced investors to focus on underlying credit ratings.



Financial Market Update: Insurers

Negative Watch
 Negative Outlook
 Stable or Positive

	Moody's Investors Service	Standard & Poor's	Fitch Ratings
CIFG	Ba2/Under Review	A-/Credit Watch	CCC/Rating Watch
XL Capital	B2/Under Review	BBB-/Credit Watch	CCC/Rating Watch
FGIC	B1/Under Review	BB/Credit Watch	CCC/Rating Watch
MBIA	A2/Negative	AA/Credit Watch	Ratings Withdrawn
Ambac	Aa3/Negative	AA/Credit Watch	Ratings Withdrawn
Assured Guaranty	Aaa/Under Review	AAA/Stable	AAA/Stable
FSA	Aaa/Under Review	AAA/Stable	AAA/Stable

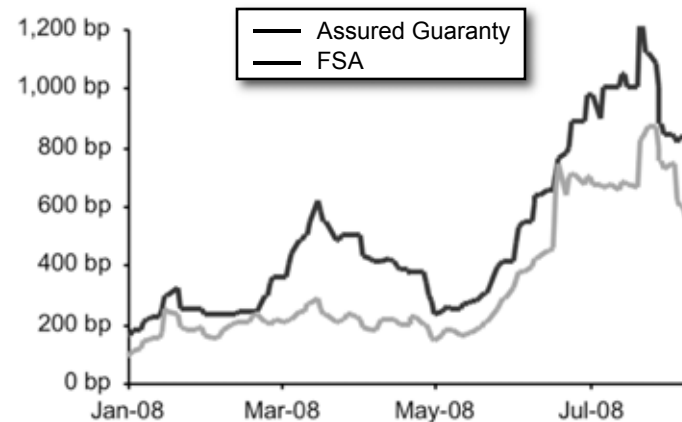
Current Fixed Rate Pricing Levels

Unenhanced (A+/A1): + 100-110 bp to MMD

Assured: + 85-95 bp to MMD

FSA: + 85-95 bp to MMD

FSA and Assured Credit Default Swap Spreads, Year-to-Date



Note: Insurer ratings and market data as of August 11, 2008.



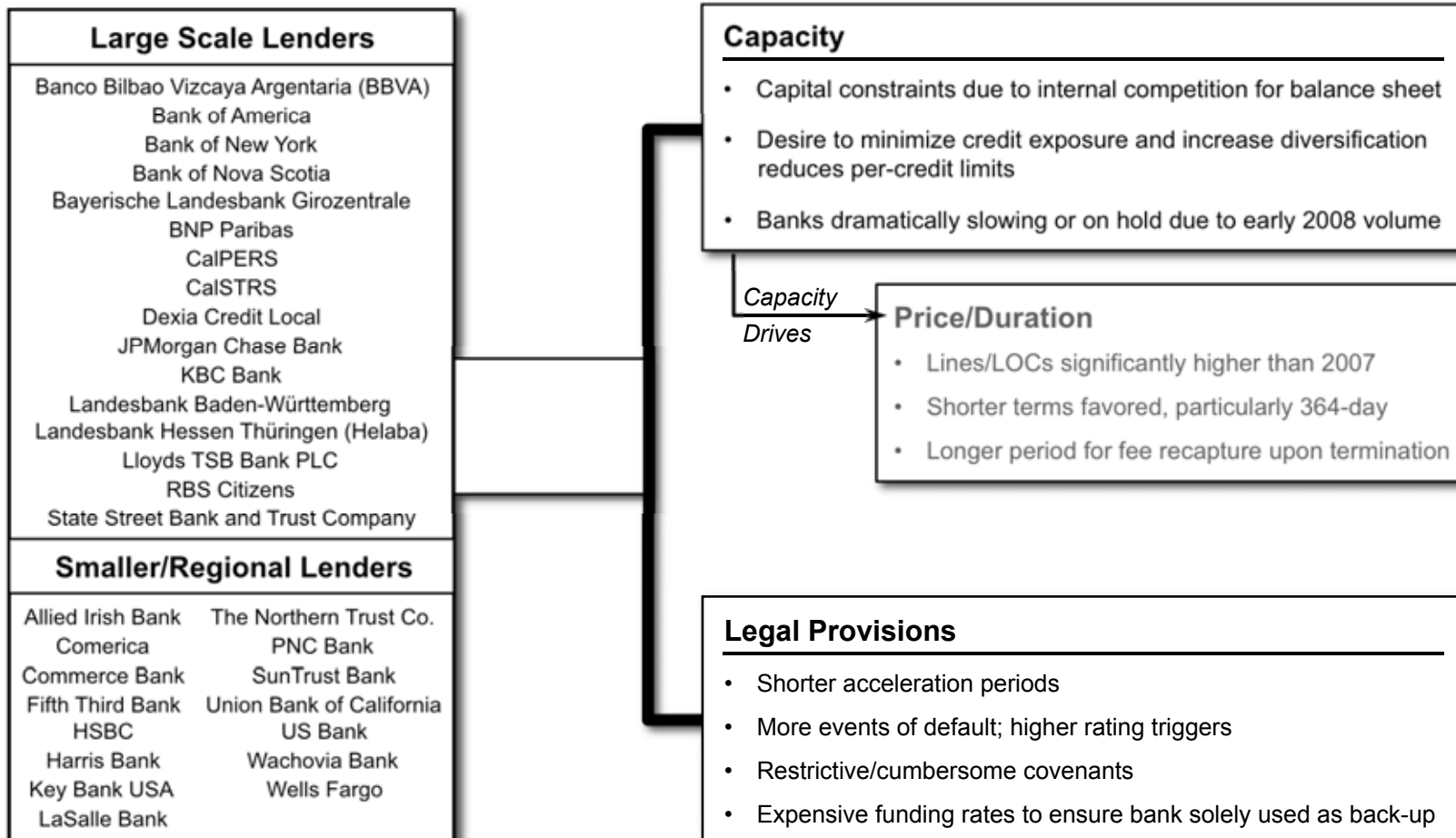
The tax-exempt auction market was severely impacted by the Subprime Crisis.

- The auction rate securities market has essentially collapsed due to a number of factors, including:
 - Rating downgrades and negative market perception of the monoline bond insurers;
 - A decline in taxable short term interest rates following the Federal Reserve's rate cuts created bidding constraints;
 - A decline in corporate buyer participation partially due to the failed taxable mortgage-backed CDO auctions in August 2007; and
 - A substantial decline in the marketability of taxable student loan products, substantially contributing to very large broker-dealer inventories.
- Initially, Broker Dealers, especially Goldman Sachs, supported the auction rate market in a very volatile and stressed environment, and in that process accumulated sizable inventory positions.
- However, selling pressure accelerated as retail investors became more aware of the link between monoline insurers and municipal ARS.
 - At the same time, new investors were not materializing to take their place.
- On Tuesday, February 12, the substantial selling pressure exceeded the ability of the market to find sufficient clearing bids and resulted in a significant number of failures.

While the selling pressure had been largely focused on the auction market, it is increasingly affecting trading levels in the insured VRDB market.



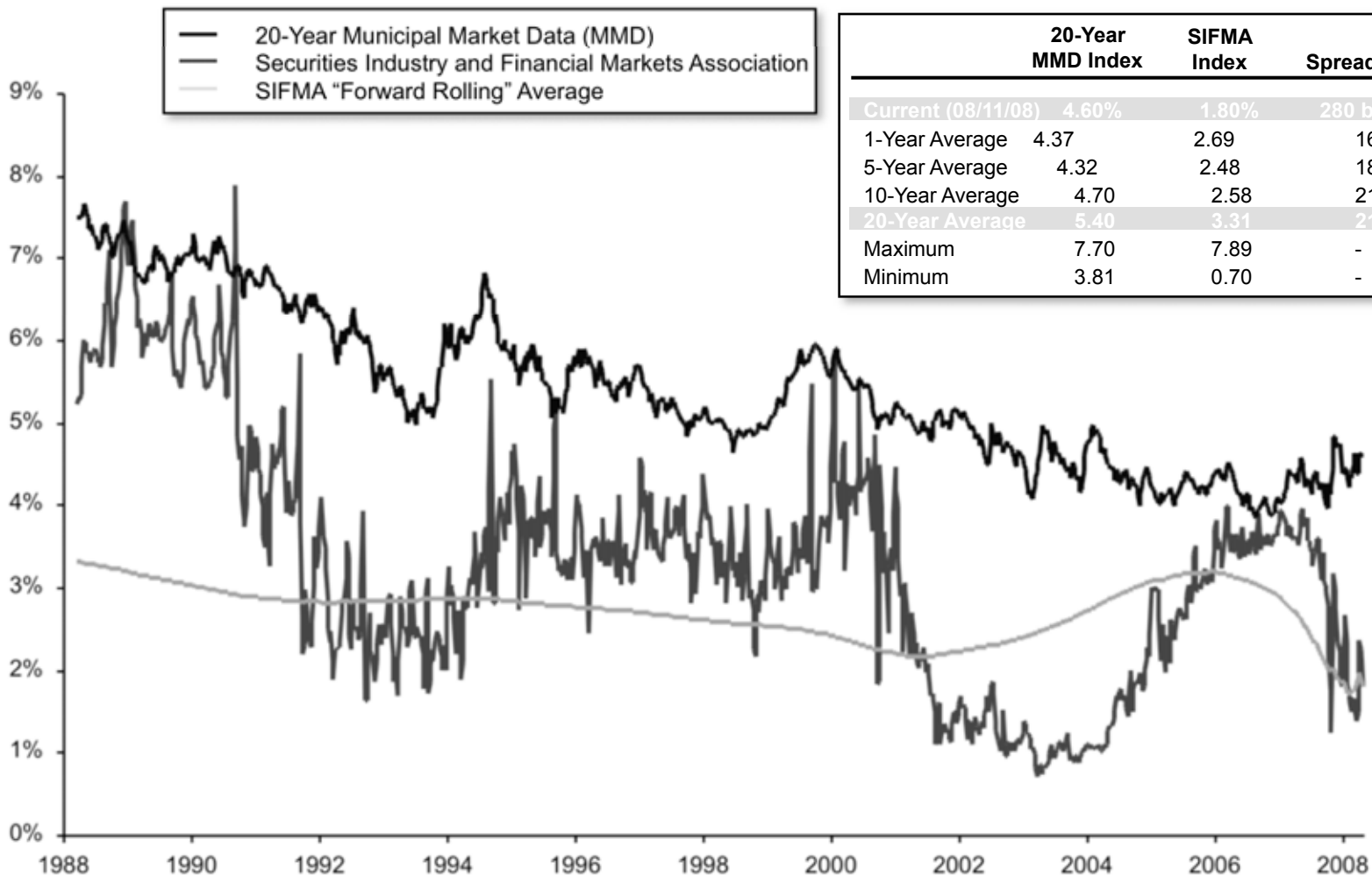
Bank liquidity will be challenging for borrowers for the remainder of 2008.





Variable rate debt consistently results in the lowest cost of capital, while the cost of fixed rate debt remains attractive.

The SIFMA forward rolling average represents an average of all SIFMA Index rates from each date through the present. It represents a borrower's average rate as if the borrower had issued variable debt at each point in time along the forward average line.



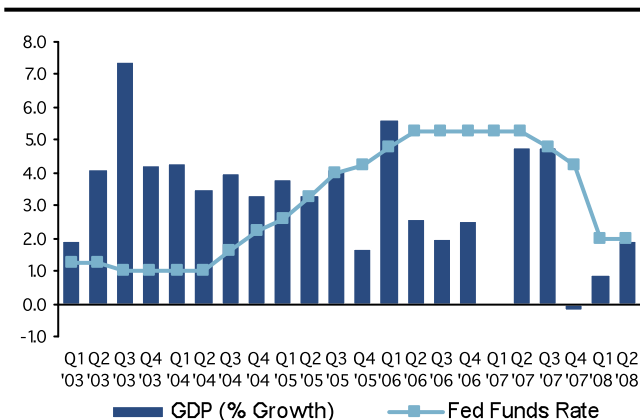
Note: Market data as of August 11,2008.



US Economic and Interest Rate Update

As of August 11, 2008

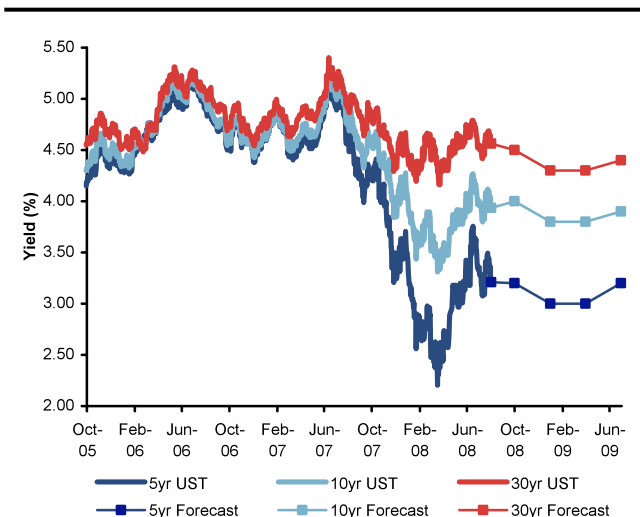
Key Numbers in the Business Outlook^(a)



Weekly Economic Review and Outlook^(c)

- The FOMC kept its target Fed Funds Rate unchanged, indicating concern over future growth (only Dallas Fed president Fisher dissented). The inflation language recognizes elevated readings on inflation and some measures of inflation expectations but then reiterates the committee's expectation that inflation will moderate
- Jobless claims appear to have taken a turn for the worse; last week saw the second increase in a row, with 455k new claims (vs. consensus of 425k). Continuing claims increased to 3.3m
- ICSC chain store sales grew by 2.6% year-on-year in June (vs. expectations of 3.4%)
- Nonfarm productivity and labor costs were both lower than expected
- Both the PCE core and total numbers increased more than expected

Treasury Yields^(b)



Economic and Interest Rate Forecast^(c)

Economic Indicators	1Q08A	2Q08A	3Q08E	2008E	2009E
Real GDP (% chg, qoq)	0.9	1.9	2.00	1.70	0.9
Core CPI (%)	2.40	2.30	2.30	2.40	2.30
Short-Term Interest Rates	Current	2Q08A	3Q08E	4Q08E	1Q09E
Targeted Federal Funds (%)	2.00	2.00	2.00	2.00	2.00
3 Month LIBOR (%)	2.80	2.78	2.80	2.80	2.60
Long-Term Interest Rates	Current	2Q08A	3Q08E	4Q08E	1Q09E
2-Yr U.S. Treasury Note (%)	2.47	2.77	2.50	2.30	2.10
10-Yr U.S. Treasury Note (%)	3.93	4.10	4.00	3.80	3.80
30-Yr U.S. Treasury Bond (%)	4.54	4.70	4.50	4.30	4.30
	Current	3-month	6-month	12-month	
EUR/\$	1.50	1.56	1.60	1.45	
GBP/\$	1.92	1.93	1.98	1.86	
\$/JPY	109.81	106.01	102.0		
\$/CAD	1.07	1.02	1.00	1.10	

(a) Source: Goldman Sachs Global Economics. Annualized percentage changes. Fed Funds and 10-year yields are marked at the end of the period

(b) Source: Bloomberg and Goldman Sachs Global Economic Forecast

(c) Source: Goldman Sachs Global Economics. Forecasted rates reflect the average of the last month of each quarter. CPI forecasts year-to-year changes



Financing Options

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Borrowers should manage their capital structures to combine strategic, long-term goals with tactical decisions.

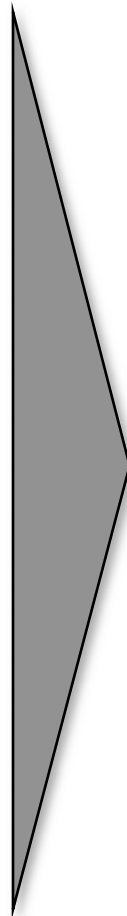
Strategic Goals

Obtain Low Cost of Capital

Retain Maximum Flexibility and Diversify Risks

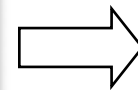
Fund Strategic Capital Needs

Optimize Credit Ratings

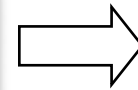


Balance Sheet Management
&
Long-term Capital Structure Targets

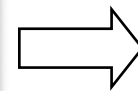
Tactical Decisions



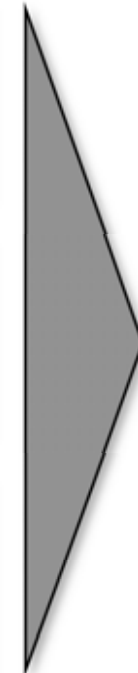
Take Advantage of Unique Market Conditions



Utilize Credit Enhancement Strategically



Consider Tolerance for Financial Risk



Optimal Capital Structure



A Borrower's system's cost of capital will be directly correlated to the risks it assumes.

Lowest Cost
Highest Risk

Highest Cost
Lowest Risk

	Self-Liquidity VRDB	VRDB Line of Credit / LOC	Synthetic Variable	Synthetic Fixed % LIBOR	Synthetic Fixed SIFMA	Traditional Fixed
Interest Risk	✓	✓	✓	–	–	–
Tax Risk	✓	✓	✓	✓	–	–
Credit/Put Risk	✓	✓	–	✓	✓	–
Bank Risk	–	✓	–	✓	✓	–
Basis Risk	–	–	–	✓	✓	–
Swap Risk	–	–	✓	✓	✓	–

Definitions

- Interest Risk: The risk that general interest rates increase.
- Tax Risk: The risk that changes in tax laws or tax rates reduce the relative value of tax-exemption.
- Credit Risk: A decline in Issuer's credit could require collateral to be posted.
- Put Risk: The risk that bondholders will redeem the bonds prior to maturity.
- Bank Risk: The risk that a there will no longer be a liquidity provider upon expiration.
- Basis Risk: Risk of mismatch between floating rate received and floating rate paid.
- Swap Risk: Includes counterparty, accounting, collateral posting, and other swap-related risks.



Borrowers have significant access to the capital markets to fund new projects or to fund recapitalizations.

	Benefits	Considerations
Traditional Fixed Rate Bonds	<ul style="list-style-type: none"> + Fixed rates are near historical lows + Cost of capital is known All risks are transferred to bondholders + Can achieve a lower cost of capital with derivatives 	<ul style="list-style-type: none"> - Highest cost of financing - Less flexible structure as bonds are typically non-callable for 10 years and greater call flexibility (optionality) can be expensive
Synthetic Fixed Rate Bonds	<ul style="list-style-type: none"> + Eliminate interest rate risk + Lock-in attractive cost of capital in today's market relative to traditional fixed rate bonds + Retain capital structure flexibility 	<ul style="list-style-type: none"> - Similar considerations as VRDBs, which likely serve as the underlying bonds - Basis risk, if rate on variable rate debt and swap receipt do not match - Mark-to-market and accounting considerations - Counterparty risk
Synthetic Variable Rate Bonds	<ul style="list-style-type: none"> + Achieves floating rate exposure with fully committed underlying capital + No acceleration of principal + No bank or credit enhancement required 	<ul style="list-style-type: none"> - Swap is callable at market only - Mark-to-market and accounting considerations - Counterparty risk
VRDBs Supported by SBPA	<ul style="list-style-type: none"> + Attractive cost of capital + Broad investor base 	<ul style="list-style-type: none"> - Bank risks including bank credit, renewal, and pricing introduced - Several banks have saturated the market with SBPAs - Liquidity and principal acceleration risk introduced



Lessons Learned

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There are some important lessons learned from the recent market turmoil.

- **A base of committed capital is the foundation for capital structure stability.**
 - The definition of committed capital has to be redefined.
 - Historically, fixed rate bonds and insured Auction Rate Securities were considered to be committed capital.
 - Given the recent problems with the monoline bond insurers, insured Auction Rate Securities can no longer be considered committed capital.
 - As a result, only traditional fixed rate debt will be considered committed capital.
 - Traditional fixed rate debt transfers all risk away from the issuer and is not subject to principal acceleration.
- **Unanticipated events can happen, with significant consequences.**
 - Diversification reduces the severity of the impact of a market downturn or other unanticipated events.
 - Fixed vs. variable mix
 - Fixed rate mix (traditional vs. synthetic)
 - Variable rate mix (i.e., VRDBs, ARS, X-Tenders, etc.)
 - Interest rate modes (i.e., daily, weekly, monthly, annual)



There are some important lessons learned from the recent market turmoil (cont'd).

- **A higher rating has more value during a crisis than during a period of general stability.**
 - Stronger credits with higher ratings have:
 - Maximum access to the capital markets in all market conditions.
 - Access to liquidity in a difficult market environment.
 - Substantial cash reserves and access to bank facilities provide flexibility in navigating difficult market conditions.
 - Greater structuring flexibility (i.e., non-traditional financial products, derivative instruments, etc.).
- **Access to liquidity is of paramount importance.**
 - Liquidity, in the form of cash or access to bank facilities, results in greater flexibility during a crisis or performance downturn, and provides a cushion when the capital markets experience dislocations.
 - Monetization of non-acute and other non-core assets should be considered as a means of building liquidity.
 - Authorizing a taxable commercial paper program that can be tapped for any purpose is another vehicle to provide liquidity.



There are some important lessons learned from the recent market turmoil (cont'd).

- **Never underestimate the value of relationships.**
 - During the ARS market dislocation, strong relationships with commercial banks, investment banks, and other services firms enabled many health systems to react quickly.
 - Speedy access to lines of credit and bank facilities to refinance ARS.
 - Ability to access the capital markets rapidly with permanent restructurings utilizing traditional fixed rate debt or VRDBs.
 - Dual banking relationships for both commercial and investment banking activities proved to be helpful in a time of distress and will provide value going forward.
- **A thorough assessment of financial risk should be a constant, ongoing activity.**
 - A key component of risk management is understanding practical implications and quantifying the prospective downside of risks that could become reality.
 - Once understood, thoughtful contingency planning will enable health systems to be nimble, reacting swiftly to mitigate against major, unforeseen events.
 - Backup lines of credit
 - Taxable CP programs
 - Alternative sources of capital



There are some important lessons learned from the recent market turmoil (cont'd).

- **Successful Board education is necessary for effective capital structure management.**
 - An active and engaged Board that fully understands financial products can help facilitate financial decision-making and enable a health system to be more nimble.
 - A subset of Board members that focuses on complex financial issues (including the risks inherent in various financial products) can serve as the primary driver.
 - The Board plays an important role in creating an overarching culture of active risk management.
- **Proactive investor communications have heightened in importance.**
 - Investors are now diligently analyzing the underlying credit quality of all issuers.
 - Regular disclosure practices and active investor outreach will help educate investors about underlying credit quality and support greater investor confidence.
 - Events such as an investor conference would provide an efficient forum to make presentations and meet with investors.
 - Investors are very interested in meeting with both larger AA-rated health systems and smaller, non-AA rated health systems to learn more about their unique credit stories.



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Life of Issue: Matters to Consider

- Secondary market disclosures
- Trust indenture and covenant issues
- Bond insurance/rating agencies
- Arbitrage compliance
- Private use compliance
- Economic life
- Marketplace challenges



Post-Issuance Compliance

- Yield restriction requirements
- Arbitrage rebate requirements
 - Spending exceptions
 - Filing requirements
- Private activity restrictions
- Record retention rules
- SEC 15c2-12 secondary market disclosure



Life of Issue: Compliance Challenges

- Changes in use of bond-financed assets
- Disposal of bond-financed assets
- Record-keeping for Schedule K of 2008 IRS Form 990
- Coordination with unrelated business income tax reporting



Yield Restrictions

- General rule: no investment in “materially higher” yielding investment
- Exceptions:
 - Temporary periods
 - Reasonably required reserve or replacement fund
 - Minor portion
- Reasonable expectations & intentional acts



Arbitrage Rebate

- General rule: excess earnings on non-purpose investments must be rebated to U.S. Treasury
- Spending exceptions:
 - 6 month
 - 18 month
 - 2 year
- Election to pay penalty in lieu of arbitrage rebate
- Arbitrage rebate filings: Form 8038-T & Form 8038-R



Private Loan Test

- The lesser of \$5 Million or 5% of the proceeds may be used directly or indirectly to make or finance loans to non-governmental entities.



Private Activity Bond Tests

- Private Business Use Test
 - No more than 10% of proceeds can be used for private purposes
 - For 501(c)(3) organizations: 5% limit applies (less costs of issuance)
- Private Security Test
 - No more than 10% of principal and interest may be secured directly or indirectly by property or payments from private business use.



Use of Bond-Financed Facilities or Equipment

- Ownership by, lease to or other use by a private company – even without income or profit – is private use.
- Vacant space owned by or leased to a private company is private use.



Who are Private Business Users?

- Federal government and its agencies (e.g., NIH, U.S. Postal Service)
- Other 501(c) organizations with a different purpose, and designation (e.g., credit unions, PACs)
- Any person conducting a business



Management or Service Contracts

- Test is based on facts and circumstances
- Test applies by bond issue; correlation of contract to asset is essential
- Test applies to a contractor providing services involving all, or any portion of, a bond-financed facility
- Revenue Procedure 97-13 provides safe harbors



Private Use Compliance Triggers

- Management agreements or other service contracts
- Research agreements
- Joint ventures or partnerships
- Shared services
- Unrelated business activities
- Leases or short-term rentals
- Naming rights
- Undocumented arrangements



Research Agreements: Revenue Procedure 2007-47

- Provides safe harbors for sponsored and cooperative research agreements
- Applies to “basic research” only
- Key issue: Does the sponsor have preferential rights to the results of the research?
- Documented policy to prove Bayh-Dole compliance essential

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Penalties for Non-Compliance

- Penalties based on percentage of bond interest:
Multiple years non-compliance x significant bond liabilities = material disclosure on financial statements!!
- Several options for pro-active solutions:
 - Alternative use of facility
 - Alternative use of proceeds
 - Defeasance or redemption
- IRS wants issuers to address non-compliance internally and pro-actively if possible.

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Monitoring Process

Compliance
Record Retention
Monitoring

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Record Retention

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Final Thoughts: Hidden Costs of Tax-Exempt Financing

- Meeting IRS and SEC reporting requirements
- Developing and implementing compliance policies and procedures
- Developing a private use monitoring process
- Hiring and training staff to monitor compliance
- Retaining appropriate documentation
- Preparation of Schedule K to IRS Form 990
- Developing a framework for future expansion and market driven decisions

SCHEDULE K (Form 990) **Supplemental Information on Tax Exempt Bonds** OMB No. 1545-0047

Department of the Treasury Internal Revenue Service

To be completed by organizations that answered "Yes" to Form 990, Part IV, line 24a. Provide descriptions, explanations, and any additional information in Schedule O.

2008 **Open to Public Inspection**

Name of the organization _____ Employer identification number _____

Part I Bond Issues (Required for 2008)

	(a) Issuer Name	(b) Issuer EIN	(c) CUSIP #	(d) Date Issued	(e) Issue Price	(f) Description of Purpose	(g) Defeased		(h) On Behalf of Issuer	
							Yes	No	Yes	No
A										
B										
C										
D										
E										

Part II Proceeds (Optional for 2008)

	A	B	C	D	E
1 Total Proceeds of Issue					
2 Gross Proceeds in Reserve Funds					
3 Proceeds in Refunding or Defeasance Escrows					
4 Other Unspent Proceeds					
5 Insurance Costs from Proceeds					
6 Working Capital Expenditures from Proceeds					
7 Capital Expenditures from Proceeds					
8 Year of Substantial Completion					
9 Were the bonds issued as part of a current refunding issue?	Yes	No	Yes	No	Yes
10 Were the bonds issued as part of an advance refunding issue?					
11 Has the final allocation of proceeds been made?					
12 Does the organization maintain adequate books and records to support the final allocation of proceeds?					

Part III Private Business Use (Optional for 2008)

	A		B		C		D		E	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1 Was the organization a partner in a partnership, or a member of an LLC, which owned property financed by tax-exempt bonds?										
2 Are there any lease arrangements with respect to the financed property which may result in private business use?										

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Schedule K (Form 990) 2008 Page **2**

Part III Private Business Use (Continued)

	A		B		C		D		E	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
3a Are there any management or service contracts with respect to the financed property which may result in private business use?										
3b Are there any research agreements with respect to the financed property which may result in private business use?										
3c Does the organization routinely engage bond counsel or other outside counsel to review any management or service contracts or research agreements relating to the financed property?										
4 Enter the percentage of financed property used in a private business use by entities other than a 501(c)(3) organization or a state or local government										
5 Enter the percentage of financed property used in a private business use as a result of unrelated trade or business activity carried on by your organization, another 501(c)(3) organization, or a state or local government										
6 Total of lines 4 and 5										
7 Has the organization adopted management practices and procedures to ensure the post-issuance compliance of its tax-exempt bond liabilities?										

Part IV Arbitrage (Optional for 2008)

	A		B		C		D		E	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1 Has a Form 8038-T been filed with respect to the bond issue?										
2 Is the bond issue a variable rate issue?										
3a Has the organization or the governmental issuer identified a hedge with respect to the bond issue on its books and records?										
b Name of provider										
c Term of hedge										
4a Were gross proceeds invested in a GIC?										
b Name of provider										
c Term of GIC										
d Was the regulatory safe harbor for establishing the fair market value of the GIC satisfied?										
5 Were any gross proceeds invested beyond an available temporary period?										
6 Did the bond issue qualify for an exception to rebate?										

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April 7, 2008

Highlights

Part I is required for 2008 and later tax years, Parts II through IV are optional for 2008 tax years, but required for 2009 and later tax years.

Refundings after 2002 of pre-2003 issues must be treated as post-2002 issues and reported on the Schedule K.

Instructions provide flexible "reporting years" for each bond issue required to be reported on the Schedule (see Period Covered instructions).

Instructions contain definitions of most key terms rather than refer to regulations or separate glossary of terms.

Instructions provide that supplemental information may be reported on Schedule O.

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2008 Schedule K (Form 990) Instructions Supplemental Information on Tax Exempt Bonds

General Instructions

Purpose of Schedule

Schedule K (Form 990) is used by an organization that files Form 990 to provide certain information on their outstanding liabilities associated with tax exempt bond issues.

Use Schedule O to provide additional information or comments relating to the information provided on this schedule.

Who Must File

Any organization that answered "Yes" to any of questions 24a through 24d of Form 990, Part IV, *Checklist of Required Schedules*, or reported an amount on either Form 990, Part VIII, *Statement of Revenue*, line 4 or Form 990, Part X, *Balance Sheet*, line 20, must complete and attach Schedule K to Form 990 for each outstanding tax-exempt liability which both had an outstanding principal amount in excess of \$100,000 as of the last day of the tax year and was issued after December 31, 2002. Up to five separate outstanding tax-exempt liabilities can be reported on each Schedule K. Use additional Schedule Ks if necessary to report more than five liabilities.

If the organization is not required to file Form 990, it is not required to file Schedule K.

Period Covered

The filing organization may complete Schedule K (Form 990) with respect to any tax-exempt liability using the same period as the Form 990 with which it is filed. In the alternative, the filing organization may use any other 12-month period or periods selected by the organization and used consistently for an obligation for purposes of Schedule K and computations in accordance with the requirements under sections 141-150. Under this alternative, the organization may use a different 12-month period with respect to each liability or obligation reported on a Schedule K, provided such alternative 12-month periods are sufficiently described in Schedule O.

Specific Instructions

Definitions

Tax-exempt bond. This is an obligation issued by or on behalf of a governmental issuer on which the interest paid is excluded from the holder's gross income under section 103. For this purpose, a bond can be in any form of indebtedness under federal tax law, including a bond, note, loan or lease-purchase agreement.

Qualified 501(c)(3) bond. This is a tax-exempt bond the proceeds of which are used by a 501(c)(3) organization in furtherance of its charitable purpose. Requirements applicable to a qualified 501(c)(3) bond under section 145 include: (1) all property financed by the bond issue is to be owned by a 501(c)(3) organization or a governmental unit; and (2) at least 95% of the net proceeds of the bond issue are used by either a

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governmental unit or a 501(c)(3) organization in activities which do not constitute unrelated trade or businesses (determined by applying section 513).

Bond issue. This is an issue of two or more bonds which are: (1) sold at substantially the same time; (2) sold pursuant to the same plan of financing; and (3) payable from the same source of funds. See Regulations section 1.150-1(c).

Governmental issuer. A State or local governmental unit which issues a tax-exempt bond.

On behalf of issuer. A corporation organized under the general nonprofit corporation law of a state whose obligations are considered obligations of a State or local governmental unit. See Rev. Proc. 82-26, 1982-1 C.B. 476, for a description of the circumstances under which the Service will ordinarily issue an advance ruling that the obligations of a nonprofit corporation were issued on behalf of a State or local governmental unit. See also: Rev. Rul. 63-20, 1963-1 C.B. 24; Rev. Rul. 59-41, 1959-1 C.B. 13; and Rev. Rul. 54-296, 1954-2 C.B. 59. An "on behalf of issuer" also includes a constituted authority organized by a State or local governmental unit specifically to issue tax-exempt bonds in order to further public purposes. See Rev. Rul. 57-187, 1957-1 C.B. 65.

Gross Proceeds. The term "gross proceeds" generally means any sale proceeds, investment proceeds, transferred proceeds, and replacement proceeds of an issue. See Regulations section 1.148-1(b),(c).

Proceeds. The term "proceeds" generally means the sale proceeds of an issue (other than those sale proceeds used to retire bonds of the issue that are not deposited in a reasonably required reserve or replacement fund). Proceeds also include any investment proceeds from investments that accrue during the project period (net of rebate amounts attributable to the project period). See Regulations section 1.141-1(b).

Defeasance escrow. A defeasance escrow is an irrevocable escrow established to redeem the bonds on their earliest call date in an amount that, together with investment earnings, is sufficient to pay all the principal of, and interest and call premiums on, bonds from the date the escrow is established to the earliest call date. See Regulations section 1.141-12(d)(5).

Refunding escrow. A refunding escrow means one or more funds established as part of a single transaction or a series of related transactions, containing proceeds of a refunding issue and any other amounts to provide for payment of principal or interest on one or more prior issues. See Regulations section 1.148-1(b).

Refunding issue. A refunding issue is an issue of obligations the proceeds of which are used to pay principal, interest, or redemption price on another issue (a prior issue), including the issuance costs, accrued interest, capitalized interest on the refunding issue, a reserve or replacement fund, or similar costs, if any, properly allocable to that refunding issue. A *current refunding issue* is a refunding issue that is issued not more than 90 days before the last expenditure of any proceeds of the refunding issue for the payment of principal or interest on the prior issue. An *advance refunding issue* is a refunding issue that is not a current refunding issue. See Regulations sections 1.150-1(d)(1), (3), and (4).

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Private Business Use. Private business use means use by your organization or another 501(c)(3) organization in an unrelated trade or business as defined by section 513. Private business use also means any use by a nongovernmental person other than a 501(c)(3) organization.

Part I Bond Issues (Required for 2008)

In Part I, provide the requested information for each outstanding tax-exempt bond issue which both had an outstanding principal amount in excess of \$100,000 as of the last day of the tax year and was issued after December 31, 2002. Use one row for each issue, and use the Part I row designation for a particular issue (e.g., "A" or "B") consistently throughout Parts I through IV of Schedule K. The information provided in columns (a) through (e) should be consistent with the corresponding information included on the Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues*, filed by the governmental issuer upon the issuance of the bond issue. Complete multiple Schedule Ks if necessary to account for all outstanding tax-exempt bond issues.

Columns (a) and (b): Provide the name and EIN of the issuer of the bond issue. The issuer's name is the name of the entity which issued the bond issue (typically a state or local governmental unit). The issuer's name and EIN should be identical to the name and EIN listed on the Form 8038, Part I, lines 1 and 2 filed with respect to the bond issue.

Column (c): Enter the CUSIP (Committee on Uniform Securities Identification Procedures) number on the bond with the latest maturity. The CUSIP number should be identical to the CUSIP number listed on the Form 8038, Part I, line 8 filed with respect to the bond issue. If the bond issue was not publicly offered and there is no assigned CUSIP number, then write "None."

Column (d): Enter the issue date of the obligation. The issue date should be identical to the issue date listed on the Form 8038, Part I, line 6 filed with respect to the bond issue. The issue date generally is the date on which the issuer receives the purchase price in exchange for delivery of the evidence of indebtedness (e.g. a bond). In no event is the issue date earlier than the first day on which interest begins to accrue on the bond for Federal income tax purposes. See Regulations section 1.150-1(b).

Column (e): Enter the issue price of the obligation. The issue price should be identical to the issue price listed on the Form 8038, Part III, line 21(b) filed with respect to the bond issue. The issue price is generally determined under Treasury Regulations section 1.148-1(b). When issued for cash, the issue price is the price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property other than cash, see sections 1273 and 1274 and related regulations. The issue price does not include "accrued interest" from the date the bonds are dated to the date of the issue.

Column (f): Describe the purpose of the bond issue, such as to construct a hospital or provide funds to refund a prior issue. If any of the bond proceeds were used to refund a prior issue, enter the date of issue for each of the refunded issues. If the issue has multiple purposes, state each purpose. If the issue financed various projects or activities corresponding to a related purpose, only state the purpose once. For example, if proceeds are used to acquire various items of office equipment, the amount of such

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expenditures should be aggregated and identified with the stated purpose of "office equipment." Use Schedule O if additional space is needed for this purpose.

Column (g): Indicate whether a defeasance or refunding escrow has been established to irrevocably defease the bond issue.

Column (h): Answer "yes" if the organizations acted as an "on behalf of issuer" in issuing the bond issue. Answer "no" if the organization only acted as the borrower of the bond proceeds pursuant to a conduit loan with the governmental unit issuing the bond issue.

Part II Proceeds (Optional for 2008)

Complete for each bond issue listed in rows A through E of Part I.

Line 1: Enter the total amount of proceeds of the bond issue as of the end of the 12-month period used in completing this Schedule.

Line 2: Enter the amount of gross proceeds of the bond issue deposited into a reasonably required reserve or replacement fund, sinking fund, or pledged fund.

Line 3: Enter the amount of proceeds of the bond issue deposited into either a refunding or defeasance escrow. For this purpose, proceeds deposited into a refunding escrow are irrevocably pledged to refund a prior bond issue (the refunded issue). Unless the amount of proceeds of the bond issue used to currently or advance refund a prior issue exceeds the amount reported on Form 8038, Part IV, lines 27, and 28 filed with respect to the bond issue, the aggregate amount listed on those lines may be entered here.

Line 4: Enter the amount of unspent proceeds of the bond issue other than those amounts identified in Part II, lines 2 and 3.

Line 5: Enter the amount of proceeds of the bond issue used to pay bond issuance costs, including (but not limited to) fees for trustees and bond counsel. Issuance costs are costs incurred in connection with, and allocable to, the issuance of a bond issue. See Regulations section 1.150-1(b) for an example list of issuance costs.

Line 6: Enter the amount of proceeds of the bond issue used to finance working capital expenditures. A working capital expenditure is any cost that is not a capital expenditure (e.g. current operating expenses). See Regulations section 1.150-1(b).

Line 7: Enter the amount of proceeds of the bond issue used to finance capital expenditures. Capital expenditures include costs incurred to acquire, construct, or improve land, buildings, and equipment. See Regulations section 1.150-1(b).

Line 8: Provide the year in which construction, acquisition or rehabilitation of the financed project was substantially completed. A project may be treated as substantially completed when, based upon all the facts and circumstances, the project has reached a degree of completion which would permit its operation at substantially its design level and it is, in fact, in operation at such level. See Regulations section 1.150-2(c). If the bond issue financed multiple projects, provide the latest year in which construction, acquisition or rehabilitation of each of the financed projects was substantially completed.

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If the bond issue financed working capital expenditures, provide the latest year in which the proceeds of the issue were allocated to those expenditures.

Line 9: Indicate whether the bond issue is a current refunding issue.

Line 10: Indicate whether the bond issue is an advance refunding issue.

Line 11: Indicate whether the final allocation of proceeds of the bond issue has been made. Proceeds of a bond issue must be accounted for using any reasonable, consistently applied accounting method. See Treasury Regulation section 1.148-6.

Line 12: Indicate whether the organization maintains adequate books and records to support the final allocation of proceeds. Answer this question only with respect to the tax year applicable to this Schedule.

Part III Private Business Use (Optional for 2008)

Complete for each bond issue listed in rows A through E of Part I.

Line 1: Indicate whether the organization was at any time during the year a general partner in a partnership, a managing member of a limited liability company, or held more than a 50% profits or capital interest in a partnership or limited liability company, that owned property that was financed by the bond issue.

Line 2: Indicate whether there are any lease arrangements with respect to the property financed by the bond issue which may result in private business use. The lease of financed property to a nongovernmental person other than a 501(c)(3) organization is generally private business use. See Regulations section 1.141-3(b)(3).

Line 3a: Indicate whether the organization has entered into any management or service contracts with respect to property financed by the bond issue which may result in private business use. A management or service contract with respect to financed property may result in private business use of the property, based on all of the facts and circumstances. A management or service contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility. See Regulations section 1.141-3(b)(4). See Rev. Proc. 97-13, 1997-1 C.B. 632, for applicable safe harbors under which a management or service contract will not result in private business use.

Line 3b: Indicate whether the organization has entered into any research agreements with respect to property financed by the bond issue which may result in private business use. An agreement by a nongovernmental person to sponsor research performed by the organization may result in private business use of the property used for the research, based on all the facts and circumstances. A research agreement with respect to financed property will generally result in private business use of that property if the sponsor is treated as the lessee or owner of financed property for federal income tax purposes. See Regulations section 1.141-3(b)(6). See Rev. Proc. 2007-47, 2007-29 I.R.B. 108, for applicable safe harbors under which a research agreement will not result in private business use.

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Line 3c: Indicate whether the organization requires bond counsel or other outside counsel to review any management or service contracts or research agreements relating to the financed property. If there are no such agreements, enter "None." Answer this question only with respect to the tax year applicable to this Schedule.

Line 4: Report the highest percentage during the year of the property financed by the bond issue that was used in a private business use by a nongovernmental person other than a 501(c)(3) organization. Report the highest percentage to the nearest tenth of a percentage point (for example, 8.9%).

Line 5: Report the highest percentage during the year of the property financed by the bond issue that was used in an unrelated trade or business activity (a private business use) by your organization, another 501(c)(3) organization, or a state or local government. Report the highest percentage to the nearest tenth of a percentage point (for example 8.9%).

Line 7: Indicate whether the organization has adopted management practices and procedures to ensure the post-issuance compliance of its tax-exempt bond liabilities. Answer this question only with respect to the tax year applicable to this Schedule.

Part IV Arbitrage (Optional for 2008)

Complete for each bond issue listed in rows A through E of Part I.

Line 1: Indicate whether a Form 8038-T, *Arbitrage Rebate, Yield Restriction and Penalty in Lieu of Arbitrage Rebate*, has been filed with respect to the bond issue.

Line 2: Indicate whether the bond issue is a variable rate issue. A variable rate issue is an issue that contains a bond that has a yield that is not fixed and determinable on the issue date.

Lines 3a, 3b and 3c: In general, payments made or received by a governmental issuer or borrower of bond proceeds under a qualified hedge are taken into account to determine the yield on the bond issue. A hedge may be entered into before, at the same time as, or after the date of issue. See Regulations section 1.148-4(h). Indicate whether the organization or the governmental issuer has entered into a qualified hedge and identified it on the entity's books and records. If the answer to line 3a is "yes," enter the name of the provider of the hedge and the term of the hedge to the nearest tenth of a year (for example, 2.4 years) on lines 3b and 3c.

Lines 4a, 4b and 4c: Indicate whether any gross proceeds of the bond issue were invested in a guaranteed investment contract ("GIC"). A GIC includes any nonpurpose investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply investments on two or more dates (for example, a forward supply contract). If the answer in line 4a is "yes," enter the name of the provider of the GIC on line 4b, the term of the GIC to the nearest tenth of a year on line 4c, and indicate whether the regulatory safe harbor for establishing fair market value provided in Regulations section 1.148-5(d)(6)(iii) was satisfied on line 4d. If

Line 5: Indicate if any gross proceeds were invested beyond a temporary period. For example, the 3-year temporary period applicable to proceeds spent on expenditures for

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capital projects or the 13-month temporary period applicable to proceeds spent on working capital expenditures. See Treasury Regulations section 1.148-2(e).

Line 6: Indicate if the bond issue qualified for an exception to rebate set forth in Regulations sections 1.148-7 or 1.148-8. For example, the 2-year spending exception described under section 1.148-7(e).

DRAFT

Internal Revenue Service

Tax Exempt and Government Entities

Tax-Exempt Private Activity Bonds

Compliance Guide

from the office of
Tax Exempt Bonds

Know the federal tax rules and filing requirements applicable to qualified private activity bonds

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The office of Tax Exempt Bonds (TEB), of the Internal Revenue Service (IRS), Tax Exempt and Government Entities division, offers specialized information and services to the municipal finance community. Municipal bonds provide tax-exempt financing for the furtherance of governmental and qualified purposes including the construction of airports, hospitals, recreational and cultural facilities, schools, water infrastructure, road improvements, as well as facilities and equipment used in providing police, fire and rescue services.

This IRS Publication 4078, *Tax-Exempt Private Activity Bonds*, provides an overview for state and local government issuers and borrowers of bond proceeds of the general post-issuance rules under the federal tax law that apply to municipal financing arrangements commonly known as qualified private activity bonds. Certain exceptions or additional requirements to these rules, which are beyond the scope of this publication, may apply to different financing arrangements. All applicable federal tax law requirements must be met to ensure that interest earned by bondholders is not taxable under section 103 of the Internal Revenue Code (the "Code").

For information regarding the general rules applicable to governmental bonds or qualified 501(c)(3) bonds, see IRS Publications 4079, *Tax-Exempt Governmental Bonds*, and 4077, *Tax-Exempt Bonds for 501(c)(3) Charitable Organizations*, respectively. TEB also provides detailed information on specific provisions of the tax law through IRS publications (available online) and through outreach efforts as noted on the TEB Web site at www.irs.gov/bonds.

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Background

Tax-exempt bonds are valid debt obligations of state and local governments, commonly referred to as "issuers" — the interest on which is tax-exempt. This means that the interest paid to bondholders is not includable in their gross income for federal income tax purposes. This tax-exempt status remains throughout the life of the bonds provided that all applicable federal tax laws are satisfied. Various requirements apply under the Code and Income Tax Regulations (the "Treasury regulations") including, but not limited to, information filing and other requirements related to issuance, the proper and timely use of bond-financed property, and arbitrage yield restriction and rebate requirements. The benefits of tax-exempt bond financing can apply to the many different types of municipal debt financing arrangements through which government issuers obligate themselves, including notes, loans, lease purchase contracts, lines of credit, and commercial paper.

Access **FREE**
online information and services
at the
Tax Exempt Bonds
Web site at
www.irs.gov/bonds

2

CALL TEB'S CUSTOMER ACCOUNT SERVICES WITH YOUR INQUIRIES AT (877) 829-5500. M–F, 8:00 A.M.–6:30 P.M. EST.

Tax-Exempt Private Activity Bonds

Qualified private activity bonds are tax-exempt bonds issued by a state or local government, the proceeds of which are used for a defined qualified purpose by an entity other than the government issuing the bonds (the "conduit borrower"). For a private activity bond to be tax-exempt, 95% or more of the net bond proceeds must be used for one of the several qualified purposes described in sections 142 through 145, and 1394 of the Code. The general rules covered in this publication apply to the qualified purposes listed below. In addition, the general rules applicable to qualified private activity bonds financing 501(c)(3) exempt purposes (section 145) are covered in IRS Publication 4077, *Tax-Exempt Bonds for 501(c)(3) Charitable Organizations*. Publication 4077 can be downloaded from the TEB Web site at www.irs.gov/bonds.

Internal Revenue Code Sections and Corresponding Qualified Purposes:

- Section 142 – exempt facilities such as: airports, docks and wharves, mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, qualified residential rental projects, facilities for the furnishing of local electric energy or gas, local district heating or cooling facilities, qualified hazardous waste facilities, high-speed intercity rail facilities, environmental enhancements of hydro-electric generating facilities, and qualified public educational facilities

- Section 143 – qualified mortgages and qualified veterans' mortgages
- Section 144 – qualified small issue manufacturing facilities, qualified small issue farm property, qualified student loans, and qualified redevelopment projects
- Section 1394 – qualified enterprise zone and empowerment zone facilities

While the bonds issued to finance these qualified purposes must comply with unique requirements applicable to each individually, the post-issuance federal tax rules covered in this publication are applicable to qualified private activity bonds generally. These rules fall into two basic categories: use of proceeds and financed property requirements; and arbitrage yield restriction and rebate requirements.

In order to comply with these and any other applicable requirements, issuers and conduit borrowers must ensure that the rules are met both at the time that the bonds are issued and throughout the term of the bonds. The IRS encourages issuers and beneficiaries of tax-exempt bonds to implement procedures that will enable them to adequately safeguard against post-issuance violations that result in a loss of the tax-exempt status of their bonds.

Requirements Related to Issuance

The following is an overview of several general rules related to the issuance of qualified private activity bonds.

Volume Cap Limit

The volume cap limit for certain qualified private activity bonds, as set forth in section 146 of the Code, limits an issuing authority to a maximum amount of tax-exempt bonds that can be issued to finance a particular qualified purpose during a calendar year. If, during a given year, an issuing authority issues qualified private activity bonds in excess of its applicable volume cap limit, the tax-exempt status of those bonds is jeopardized. The following types of qualified private activity bonds are either subject to or not subject to volume cap:

Qualified Private Activity Bonds Subject to Volume Cap

- exempt facility bonds [mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, qualified residential rental projects, facilities for the local furnishing of electric energy or gas, local district heating or cooling facilities, qualified hazardous waste facilities, privately owned high-speed intercity rail facilities (only 25% of the bond proceeds), qualified enterprise zone and empowerment zone facilities]
- qualified mortgage revenue bonds
- qualified small issue bonds
- qualified student loan bonds
- qualified redevelopment bonds

Qualified Private Activity Bonds Not Subject to Volume Cap

- exempt facility bonds [airports, docks and wharves, environmental enhancements of hydro-electric generating facilities, qualified public educational facilities, governmentally owned solid waste disposal facilities, governmentally owned high-speed intercity rail facilities, privately owned high-speed intercity rail facilities (only 75% of the bond proceeds)]
- qualified veterans' mortgage revenue bonds
- qualified 501(c)(3) bonds

The amount of volume cap allocated to an issuing authority for qualified mortgage revenue bonds is reduced when that authority establishes a mortgage credit certificate program under section 25 of the Code.

Carryforward of Unused Volume Cap – An issuing authority may elect to carry any unused volume cap of a calendar year forward for three years. This election can be made for each of the qualified private activity bond purposes subject to volume cap except for the purpose of issuing qualified small issue bonds. This election is made by filing IRS Form 8328, *Carryforward Election of Unused Private Activity Bond Volume Cap*, by the earlier of February 15th following the year in which the unused amount arises or the date of issue of bonds pursuant to the carryforward election. Once Form 8328 is filed, the issuer may not revoke the carryforward election or amend the carryforward amounts shown on the form.

Public Approval Requirement

Generally, prior to issuance, qualified private activity bonds must be approved by the governmental entity issuing the bonds and, in some cases, each governmental entity having jurisdiction over the area in which the bond-financed facility is to be located. Public approval can be accomplished by either voter referendum or by an applicable elected representative of the governmental entity after a public hearing following reasonable notice to the public. Section 147(f) of the Code and section 5f.103-2 of the Treasury regulations define the specific rules for this requirement.

Section 1.147-2 of the Treasury regulations provides that issuers can use the remedial action rules under section 1.142-2 of the Treasury regulations (available to correct nonqualified uses of proceeds) to cure noncompliance with the public approval requirement (covered under **Qualified Use of Proceeds and Financed Property Requirements**, page 6).

Registration Requirement

Section 149(a) of the Code provides that any tax-exempt bond, including qualified private activity bonds, must be issued in registered form if the bonds are of a type offered publicly or issued, at the date of issue, with a maturity exceeding one year. For these purposes, "in registered form" is defined as follows:

In Registered Form – Section 5f.103-1(c) of the Treasury regulations provides that an obligation issued after January 20, 1987, pursuant to a binding contract entered into after January 20, 1987, is in registered form if:

- the obligation is registered as to both principal and any stated interest with the issuer (or its agent) *and* that the transfer of the obligation to a new holder may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder; or
- the right to the principal of, and stated interest on, the obligation may be transferred only through a book-entry system maintained by the issuer (or its agent); or

- the obligation is registered as to both principal and any stated interest with the issuer (or its agent) *and* may be transferred through both previous methods.

Information Return for Tax-Exempt Private Activity Bond Issues – Form 8038

At the time of issuance, issuers of qualified private activity bonds must comply with certain information filing requirements under section 149(e) of the Code by filing IRS Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues*.

Filing Requirements for Issuers of Qualified Private Activity Bonds

Information Return	Form 8038, <i>Information Return for Tax-Exempt Private Activity Bond Issues</i> . This form is included in this publication on page 15, and can also be downloaded from the Internet at www.irs.gov/bonds .
Due Date	Form 8038 is required to be filed by the 15th day of the second calendar month following the quarter in which the bonds were issued. For example, the due date of the return for bonds issued on February 15th is May 15th.
Where to File	Form 8038 must be filed with the IRS at the following address: Internal Revenue Service, Ogden Submission Processing Center, Ogden UT 84201-0027.
Requesting an Extension of Time to File	An issuer may request an extension of time to file Form 8038 so long as the failure to file the return on time was not due to willful neglect. To request an extension, the issuer must follow the procedures outlined in Revenue Procedure 2002-48, 2002-37 I.R.B. 531, published September 16, 2002. These procedures generally require that the issuer: 1) attach a letter to Form 8038 briefly explaining when the return was required to be filed, why the return was not timely submitted, and whether or not the bond issue is under examination; 2) enter on top of the letter "This Statement is Submitted in Accordance With Revenue Procedure 2002-48"; and 3) file this letter and the return with the IRS at the Ogden Submission Processing Center.

Qualified Use of Proceeds and Financed Property Requirements

Section 141 of the Code sets forth private activity bond tests for the purpose of limiting the volume of tax-exempt bonds that finance the activities of persons other than state and local governments. However, under section 141(e), tax-exempt qualified private activity bonds are distinguished from taxable private activity bonds based largely upon the bond proceeds being used, or allocated, for one of several listed qualified purposes. An overview of the basic rules applicable to all qualified private activity bonds that relate to the qualified use of proceeds and bond-financed property follows. In each instance, additional requirements or exceptions will apply that relate to the particular qualified use for which the bonds were issued to finance. These additional use requirements are beyond the scope of this publication.

Applicable Ninety-Five Percent Use Tests

As a general rule, qualified private activity bonds must satisfy a use test whereby 95% or more of the net proceeds of the bond issue must be used to finance the qualified purpose for which the bonds were issued. If the 95% use test applicable to a particular qualified purpose (as described under sections 142 through 145, and 1394 of the Code) is not satisfied, the result is a loss of the tax-exempt qualified status of the bond issue. Hence, the bonds become taxable private activity bonds. In applying these tests, the term "net bond proceeds" means the proceeds of a bond issue reduced by amounts allocated to a reasonably required reserve or replacement fund. Where bond proceeds are used to finance property, the use of such property is treated as a use of the bond proceeds.

With each qualified purpose, the law requires that 95% or more of the net bond proceeds must be used to finance that purpose. Each qualified purpose has a unique compliance regime required under its respective section of the Code. For information about these unique requirements, visit TEB's Web site at www.irs.gov/bonds.

Costs Related to the Issuance of Bonds

Under section 147(g) of the Code, any amount of bond proceeds that may be applied to finance the costs associated with the issuance of qualified private activity bonds (both before and after the issue date) is limited to 2% of the proceeds of the bond issue. Issuance costs include: underwriters' discount, counsel fees, financial advisory fees, rating agency fees, trustee fees, paying agent fees (bond registrar, certification, and authentication fees), accounting fees, printing costs for bonds and offering documents, public approval process costs, engineering and feasibility study costs, and guarantee fees other than for qualified guarantees.

In the case of an issue of qualified mortgage revenue bonds or qualified veterans' mortgage revenue bonds, where the proceeds of the issue do not exceed \$20M, the issuance costs limitation is 3.5% of the proceeds of the issue. Qualified mortgage revenue bonds and qualified veterans' mortgage revenue bonds are types of qualified private activity bonds issued to finance certain homeownership assistance programs.

Issuance costs financed with bond proceeds are treated as nonqualified use when applying the applicable 95% use test. Issuers can always finance issuance costs with funds other than the proceeds of the bond issue.

Failure to Properly Use Proceeds

A qualified private activity bond issue can lose its tax-exempt status if a failure to properly use proceeds occurs subsequent to the issue date, which results in sufficient nonqualified use to cause the issue to fail any of the applicable use requirements. Hence, the issue becomes a taxable private activity bond issue. Generally, a failure to properly use proceeds occurs when an action is taken which results in the bonds not being allocated to the qualified purpose for which they were issued. However, with respect to unspent proceeds, a failure to properly use those proceeds may occur as early as the date on which either the issuer or conduit borrower reasonably determines that the bonds will not be expended on the qualified purpose for which they were issued.

Remedial Actions for Nonqualified Use

Treasury regulations provide that certain prescribed remedial actions can be taken to cure nonqualified uses of proceeds that would otherwise cause qualified private activity bonds to lose their tax-exempt status. Such remedial actions can include the redemption or defeasance of bonds and, when the disposition of bond-financed property is exclusively for cash, the alternative use of such disposition proceeds to acquire replacement property within 6 months of the disposition date.

The following sections of the Treasury regulations provide remedial actions available for certain qualified private activity bonds. These Treasury regulations can be accessed through the Internet at <http://www.access.gpo.gov/nara/cfr-table-search.html>.

Sections of Treasury Regulations and Corresponding Qualified Private Activity Bonds

- Section 1.142-2 – exempt facility bonds
- Section 1.144-2 – qualified small issue bonds and qualified redevelopment bonds
- Section 1.145-2 – qualified 501(c)(3) bonds
- Section 1.1394-1(m)(4) – qualified enterprise zone facility bonds, qualified empowerment zone facility bonds, and District of Columbia enterprise zone facility bonds

Issuers and conduit borrowers may also be able to enter into a closing agreement under the TEB Voluntary Closing Agreement Program (VCAP) described in Notice 2001-60, 2001-40 I.R.B. 304. See VCAP under **TEB Information and Services**, page 14, in this publication.

Limitations on Acquisition of Land or Other Property

Under section 147(c) of the Code, a qualified private activity bond will lose its tax-exempt status if 25% or more of the net bond proceeds are used directly or indirectly to acquire real property or if any amount of the proceeds are used directly or indirectly to acquire real property for farming purposes. However, certain exceptions to this rule are available for first-time farming and environmental purposes. This rule does not apply to qualified mortgage revenue bonds, qualified veterans' mortgage revenue bonds, qualified public educational facility bonds, or qualified 501(c)(3) bonds.

Generally, a qualified private activity bond will not be tax-exempt if any amount of the net proceeds is used for the acquisition of existing property unless the purpose of the acquisition is the first such use of that property. However, section 147(d) of the Code provides an exception to this prohibition for certain rehabilitation expenditures. This rule does not apply to qualified mortgage revenue bonds, qualified veterans' mortgage revenue bonds, or qualified 501(c)(3) bonds.

Section 1.147-2 of the Treasury regulations provides that issuers can use the remedial action rules under section 1.142-2 of the Treasury regulations to cure noncompliance with respect to the exceptions noted above for rehabilitation expenditures and acquiring property for environmental purposes. Section 1.142-2 is referenced under **Remedial Actions for Nonqualified Use**, page 7, in this publication.

Allocation of Proceeds

The conduit borrower of the proceeds of a qualified private activity bond issue must allocate those proceeds among the various project expenditures in a manner demonstrating compliance with the qualified use requirements. These allocations must generally be consistent with the allocations made for determining compliance with the arbitrage yield restriction and rebate requirements as well as other federal tax filings. See **Arbitrage Yield Restriction and Rebate Requirements**, this page, for an overview of these rules.

Arbitrage Yield Restriction and Rebate Requirements

Tax-exempt bonds, including qualified private activity bonds, lose their tax-exempt status if they are arbitrage bonds under section 148 of the Code. In general, arbitrage is earned when the gross proceeds of an issue are used to acquire investments that earn a yield materially higher than the yield on the bonds of the issue. The earning of arbitrage does not, however, necessarily mean that the bonds are arbitrage bonds. Two general sets of requirements under the Code must be applied in order to determine whether qualified private activity bonds are arbitrage bonds: yield restriction requirements of section 148(a); and rebate requirements of section 148(f).

An issue may meet the rules of one of the above regimes yet fail the other. Even though interconnected, both sets of rules have their own distinct requirements and may result in the need for a payment to the U.S. Department of the Treasury in order to remain compliant. The following is an overview of the basic requirements of these two general rules. Additional requirements or exceptions, beyond the scope of this publication, may apply in certain instances.

Yield Restriction Requirements

The yield restriction rules of section 148(a) of the Code generally provide that the direct or indirect investment of the gross proceeds of an issue in investments earning a yield materially higher than the yield of the bond issue causes the bonds of that issue to be arbitrage bonds. While certain exceptions to these rules may be available, the term "materially higher" is generally applied to certain types of investments as follows:

Types of Investments	Materially Higher
general rule for purpose and nonpurpose investments	1/8 of one percentage point
investments in a refunding escrow	1/1000 of one percentage point
investments allocable to replacement proceeds	1/1000 of one percentage point
program investments	one and one-half percentage points
student loans	two percentage points
general rule for investments in tax-exempt bonds	no yield limitation
mortgage loans	must meet the requirements of section 143(g) of the Code

However, the investment of proceeds in materially higher yielding investments does not cause the bonds of an issue to be arbitrage bonds in the following three instances: 1) during a temporary period (i.e., generally,

3-year temporary period for capital projects and 13 months for restricted working capital expenditures); 2) as part of a reasonably required reserve or replacement fund; and 3) as part of a minor portion (an amount not exceeding the lesser of 5% of the sale proceeds of the issue or \$100,000).

In many instances, issuers are allowed to make "yield reduction payments" to the U.S. Department of the Treasury to reduce the yield on yield-restricted investments when the yield on those earnings is materially higher than the yield of the bond issue. See subsequent section on **Arbitrage Rebate/Yield Reduction Filing Requirements – Form 8038-T**, page 11, for information on how to file IRS Form 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate*, to make yield reduction payments.

Reasonable Expectations – Typically, the determination of whether an issue consists of arbitrage bonds under section 148(a) of the Code is based on the issuer's reasonable expectations as of the issue date regarding the amount and use of the gross proceeds of the issue.

Intentional Acts – A deliberate, intentional action to earn arbitrage taken by the issuer, the nongovernmental entity borrowing the bond proceeds, or any person acting on either the issuer or borrower's behalf, after the issue date, will cause the bonds of an issue to be arbitrage bonds *if* that action, had it been reasonably expected on the issue date, would have caused the bonds to be arbitrage bonds. Intent to violate the requirements of section 148 of the Code is not necessary for an action to be intentional.

Rebate Requirements

The rebate requirements of section 148(f) of the Code generally provide that, unless certain earnings on nonpurpose investments allocable to the gross proceeds of an issue are paid to the U.S. Department of the Treasury, the bonds in the issue will be arbitrage bonds. The arbitrage that must be rebated is based on the excess (if any) of the amount actually earned on nonpurpose investments over the amount that would have been earned if those investments had a yield equal to the yield on the issue, plus any income attributable to such excess. Under section 1.148-3(b) of the

Treasury regulations, the future values (as of the computation date) of all earnings received and payments made with respect to nonpurpose investments are included in determining the amount of rebate due. There are, however, certain spending exceptions to the rebate requirements available for qualified private activity bonds.

Spending Exceptions – There are three spending exceptions to the rebate requirements as follows:

Spending Exceptions

Spending Period	Spending Exception
6-month spending exception	Section 1.148-7(c) of the Treasury regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes that are incurred within 6 months after the date of issuance.
18-month spending exception	Section 1.148-7(d) of the Treasury regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes that are incurred within the following schedule: 1) 15% within 6 months after the date of issuance; 2) 60% within 12 months after the date of issuance; and 3) 100% within 18 months after the date of issuance.
2-year spending exception	Section 1.148-7(e) of the Treasury regulations provides that an exception to rebate is available with respect to construction issues financing property to be owned by a governmental entity or 501(c)(3) organization when certain available construction proceeds are allocated to construction expenditures within the following schedule: 1) 10% within 6 months after the date of issuance; 2) 45% within 12 months after the date of issuance; 3) 75% within 18 months after the date of issuance; and 4) 100% within 24 months after the date of issuance.

Note: Issuers may still owe rebate on amounts earned on nonpurpose investments allocable to proceeds not covered by one of the spending exceptions, which may include earnings in a reasonably required reserve or replacement fund.

Arbitrage Rebate/Yield Reduction Filing Requirements – Form 8038-T

Issuers of tax-exempt bonds file IRS Form 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate*, to make the following types of arbitrage payments: 1) yield reduction payments; 2) arbitrage rebate payments; 3) penalty in lieu of rebate payments; 4) the termination of the election to pay a penalty in lieu of arbitrage rebate; and 5) penalty for failure to pay arbitrage rebate on time. This form is included in this publication on page 21, and can also be downloaded from the Internet at www.irs.gov/bonds.

A yield reduction payment and/or arbitrage rebate installment payment is required to be paid no later than 60 days after the end of every 5th bond year throughout the term of a bond issue. The payment must be equal to at least 90% of the amount due as of the end of that 5th bond year. Upon redemption of a bond issue, a payment of 100% of the amount due must be paid no later than 60 days after the discharge date.

A failure to timely pay arbitrage rebate will be treated as not having occurred *if* the failure is not due to willful neglect and the issuer submits a Form 8038-T with a payment of the rebate amount owed, plus penalty and interest. The penalty may be waived under certain circumstances. For more information, see section 1.148-3(h)(3) of the Treasury regulations.

Request For Recovery of Overpayment of Arbitrage Rebate – Form 8038-R

In general, a request for recovery of overpayment of arbitrage rebate can be made when the issuer can establish that an overpayment occurred. An overpayment is the excess of the amount paid to the U.S.

Department of the Treasury for an issue under section 148 of the Code 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. The request can be made by completing and filing IRS Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*, with the IRS. This form is included in this publication on page 27, and can also be downloaded from the Internet at www.irs.gov/bonds.

Substantial User Prohibition

Section 147(a) of the Code provides that no person who is a substantial user of a facility financed with qualified private activity bonds, or any person related to such a user, can receive tax-exempt interest income as a holder of those bonds. Generally, a substantial user regularly uses a part of the bond-financed property in its trade or business. A complete definition of "substantial user" is set forth in section 1.103-11(b) of the Treasury regulations. This prohibition does not apply to qualified mortgage revenue bonds, qualified veterans' mortgage revenue bonds, or qualified 501(c)(3) bonds.

Maturity Limitation

The average maturity of qualified private activity bonds may not exceed 120% of the average reasonably expected economic life of the financed facilities as determined under section 147(b) of the Code.

Prohibition Against Federal Guarantees

Section 149(b) of the Code provides that any tax-exempt bond, including a qualified private activity bond, will not be treated as tax-exempt if the payment of principal or interest is directly or indirectly guaranteed by the federal government or any instrumentality of the federal government. Exceptions to this general rule include guarantees by certain quasi-governmental entities administering federal insurance programs for home mortgages and student loans. Additional exceptions apply for the investment of bond proceeds in U.S. Treasury securities or investments in a bona fide debt service fund, a reasonably required reserve or replacement fund, or during a permitted initial temporary period.

Treatment of Hedge Bonds

Section 149(g) of the Code provides that bonds meeting the definition of hedge bonds will not be tax-exempt unless certain requirements are satisfied. A "hedge bond" is any part of a bond issue that meets the following two elements:

- The issuer reasonably expects that less than 85% of the net proceeds of the issue will be used to finance its qualified purpose within 3 years of the date the bonds are issued; and
- Over 50% of the proceeds of the issue are invested in nonpurpose investments having a substantially guaranteed yield for 4 or more years.

Section 149(g)(3)(B) provides an exception to the general definition of a hedge bond if at least 95% of the net proceeds of the issue are invested in tax-exempt bonds that are not subject to the alternative minimum tax. For this purpose, amounts held in either a bona fide debt service fund or for 30 days or less pending either reinvestment of the proceeds or bond redemption are treated as invested in tax-exempt bonds not subject to the alternative minimum tax. Additionally, a refunding bond issue does not generally consist of hedge bonds if the prior issue met the requirements for tax-exempt status and issuance of the refunding bonds furthers a significant governmental purpose (e.g. realize debt service savings, but not to otherwise hedge against future increases in interest rates).

Even if an issue consists of hedge bonds, it will generally still be tax-exempt if two requirements are satisfied. First, at least 95% of the reasonably expected legal and underwriting costs associated with issuing the bonds must be paid within 180 days after the issue

date, and the payment of such costs must not be contingent upon the disbursement of the bond proceeds. Second, the issuer must reasonably expect that the net proceeds of the issue will be allocated to expenditures for governmental or qualified purposes within the following schedule:

- 10% within 1 year after the date of issuance;
- 30% within 2 years after the date of issuance;
- 60% within 3 years after the date of issuance; and
- 85% within 5 years after the date of issuance.

Refunding of Qualified Private Activity Bonds

Under section 1.150-1(d)(1) of the Treasury regulations, a refunding bond issue is an issue the proceeds of which are used to pay principal, interest, or redemption price on the refunded issue (a prior issue), as well as the issuance cost, accrued interest, capitalized interest on the refunding issue, a reserve or replacement fund, or similar cost, if any, properly allocable to that refunding issue.

Current and advance refunding issues are distinguished as follows:

Current Refunding Issue	A refunding issue that is issued <i>not more than 90 days before the final payment of principal or interest (redemption) on the prior issue.</i>
Advance Refunding Issue	A refunding issue that is issued <i>more than 90 days before the final payment of principal or interest (redemption) on the prior issue.</i>

Qualified private activity bonds can be current refunded. However, with the exception of qualified 501(c)(3) bonds, section 149(d) of the Code disallows the advance refunding of qualified private activity bonds. Thus, with respect to the refunding of tax-exempt bond issues, governmental bonds and qualified private activity bonds are distinguished as follows:

	Current Refunding	Advance Refunding
Governmental Bonds	yes	yes
Qualified Private Activity Bonds, generally	yes	no
Qualified 501(c)(3) Bonds	yes	yes

Refunding bond issues derive their tax-exempt status from the original new money issues that they refund. As such, a refunding issue will generally not be tax-exempt if the refunded issue was not in full compliance with all applicable federal tax law requirements.

Record Retention Requirements

Section 6001 of the Code and section 1.6001-1(a) of the Treasury regulations generally provide that any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return. Answers to *Frequently Asked Questions* regarding record retention requirements

applicable to tax-exempt bonds are available on our Web site at www.irs.gov/bonds.

Abusive Tax Transactions

The IRS, including TEB, is engaged in extensive efforts to curb abusive tax shelter schemes and transactions. Information about abusive tax-exempt bond transactions, including a listing of emerging issues identified by TEB, is available on our Web site at www.irs.gov/bonds.

TEB Information and Services

The office of Tax Exempt Bonds (TEB) offers information and services through its voluntary compliance programs (including the Voluntary Closing Agreement Program) and its education and outreach programs. You can learn about these programs through our Web site at www.irs.gov/bonds.

Voluntary Closing Agreement Program (VCAP)

In Notice 2001-60, 2001-40 I.R.B. 304, published October 1, 2001, the IRS announced the TEB Voluntary Closing Agreement Program (TEB VCAP). This program provides remedies for issuers who voluntarily come forward to resolve a violation. Closing agreement terms and amounts may vary according to the degree of violation as well as the facts and circumstances surrounding the violation.

Requests for TEB VCAP closing agreements are administered by the TEB Outreach, Planning and Review staff. To encourage issuers and other parties to voluntarily come to the IRS to resolve problems,

TEB VCAP permits an issuer or its representative to initiate preliminary discussions of a closing agreement anonymously. For more information about this program or to submit a voluntary closing agreement request, contact Clifford Gannett, Manager of Tax Exempt Bonds, Outreach, Planning and Review, in Washington, DC, at (202) 283-9798. Notice 2001-60 is available through our Web site at www.irs.gov/bonds.

Customer Education and Outreach

TEB has reading materials about the tax laws applicable to municipal financing arrangements, tax forms and instructions, revenue procedures and notices, and TEB publications available on our Web site at www.irs.gov/bonds. For personal assistance, you can contact TEB directly at (202) 283-2999, or call our Customer Account Services toll-free at (877) 829-5500, Monday through Friday, 8:00 a.m. - 6:30 p.m. EST.

Telephone Information:

The Voluntary Closing Agreement Program (VCAP):
(202) 283-9798

The Office of Tax Exempt Bonds:
(202) 283-2999

Customer Account Services, Toll Free:
(877) 829-5500

Form **8038**
(Rev. January 2002)
Department of the Treasury
Internal Revenue Service

**Information Return for Tax-Exempt
Private Activity Bond Issues**
(Under Internal Revenue Code section 149(e))
▶ See separate instructions.

OMB No. 1545-0720

Part I Reporting Authority

Check if **Amended Return**

1 Issuer's name		2 Issuer's employer identification number	
3 Number and street (or P.O. box if mail is not delivered to street address) Room/suite		4 Report number 1	
5 City, town, or post office, state, and ZIP code		6 Date of issue	
7 Name of issue		8 CUSIP number	
9 Name and title of officer or legal representative whom the IRS may call for more information		10 Telephone number of officer or legal representative ()	

Part II Type of Issue (check the applicable box(es) and enter the issue price for each)

Type of Issue	Issue Price
11 Exempt facility bond:	
a <input type="checkbox"/> Airport (sections 142(a)(1) and 142(c))	11a
b <input type="checkbox"/> Docks and wharves (sections 142(a)(2) and 142(c))	11b
c <input type="checkbox"/> Water furnishing facilities (sections 142(a)(4) and 142(e))	11c
d <input type="checkbox"/> Sewage facilities (section 142(a)(5))	11d
e <input type="checkbox"/> Solid waste disposal facilities (section 142(a)(6))	11e
f <input type="checkbox"/> Qualified residential rental projects (sections 142(a)(7) and 142(d)), as follows:	11f
Meeting 20-50 test (section 142(d)(1)(A)) <input type="checkbox"/>	
Meeting 40-60 test (section 142(d)(1)(B)) <input type="checkbox"/>	
Meeting 25-60 test (NYC only) (section 142(d)(6)) <input type="checkbox"/>	
Has an election been made for deep rent skewing (section 142(d)(4)(B))? <input type="checkbox"/> Yes <input type="checkbox"/> No	
g <input type="checkbox"/> Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))	11g
h <input type="checkbox"/> Facilities allowed under a transitional rule of the Tax Reform Act of 1986 (see instructions)	11h
Facility type.....	
1986 Act section.....	
i <input type="checkbox"/> Qualified enterprise zone facility bonds (section 1394) (see instructions)	11i
j <input type="checkbox"/> Qualified empowerment zone facility bonds (section 1394(f)) (see instructions)	11j
k <input type="checkbox"/> District of Columbia Enterprise Zone facility bonds (section 1400A) (see instructions)	11k
l <input type="checkbox"/> Qualified public educational facility bonds (sections 142(a)(13) and 142(k))	11l
m <input type="checkbox"/> Other. Describe (see instructions) ▶	11m
12 <input type="checkbox"/> Qualified mortgage bond (section 143(a))	12
13 <input type="checkbox"/> Qualified veterans' mortgage bond (section 143(b))	13
Check the box if you elect to rebate arbitrage profits to the United States <input type="checkbox"/>	
14 <input type="checkbox"/> Qualified small issue bond (section 144(a)) (see instructions)	14
Check the box for \$10 million small issue exemption <input type="checkbox"/>	
15 <input type="checkbox"/> Qualified student loan bond (section 144(b))	15
16 <input type="checkbox"/> Qualified redevelopment bond (section 144(c))	16
17 <input type="checkbox"/> Qualified hospital bond (section 145(c)) (attach schedule—see instructions)	17
18 <input type="checkbox"/> Qualified 501(c)(3) nonhospital bond (section 145(b)) (attach schedule—see instructions)	18
Check box if 95% or more of net proceeds will be used only for capital expenditures ▶ <input type="checkbox"/>	
19 <input type="checkbox"/> Nongovernmental output property bond (treated as private activity bond) (section 141(d))	19
20 <input type="checkbox"/> Other. Describe (see instructions) ▶	20

Part III Description of Bonds (Complete for the entire issue for which this form is being filed.)

(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	\$	\$	years	%

For Paperwork Reduction Act Notice, see page 4 of the separate instructions.

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Page **2**

Part IV Uses of Proceeds of Issue (including underwriters' discount)		Amount
22 Proceeds used for accrued interest		22
23 Issue price of entire issue (enter amount from line 21, column (b))		23
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	
25 Proceeds used for credit enhancement	25	
26 Proceeds allocated to reasonably required reserve or replacement fund	26	
27 Proceeds used to currently refund prior issue (complete Part VI)	27	
28 Proceeds used to advance refund prior issue (complete Part VI)	28	
29 Add lines 24 through 28		29
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)		30

Part V Description of Property Financed by Nonrefunding Proceeds

Caution: The total of lines 31a through e below must equal line 30 above. Do not complete for qualified student loan bonds, qualified mortgage bonds, or qualified veterans' mortgage bonds.

31 Type of Property Financed by Nonrefunding Proceeds:		Amount
a Land		31a
b Buildings and structures		31b
c Equipment with recovery period of more than 5 years		31c
d Equipment with recovery period of 5 years or less		31d
e Other (describe)		31e

32 North American Industry Classification System (NAICS) of the projects financed by nonrefunding proceeds.			
NAICS Code	Amount of nonrefunding proceeds	NAICS Code	Amount of nonrefunding proceeds
a	\$	c	\$
b	\$	d	\$

Part VI Description of Refunded Bonds (Complete this part only for refunding bonds.)

33 Enter the remaining weighted average maturity of the bonds to be currently refunded	▶	years
34 Enter the remaining weighted average maturity of the bonds to be advance refunded	▶	years
35 Enter the last date on which the refunded bonds will be called	▶	
36 Enter the date(s) the refunded bonds were issued	▶	

Part VII Miscellaneous

37 Name of governmental unit(s) approving issue (see the instructions) ▶

38 Check the box if you have designated any issue under section 265(b)(3)(B)(i)(III)

39 Check the box if you have elected to pay a penalty in lieu of arbitrage rebate

40 Check the box if you have identified a hedge (see instructions)

41 Check the box if the issue is comprised of qualified redevelopment, qualified small issue, or exempt facilities bonds and provide name and EIN of the primary private user

Name ▶ EIN ▶

Part VIII Volume Caps

Part VIII Volume Caps		Amount
42 Amount of state volume cap allocated to the issuer. Attach copy of state certification		42
43 Amount of issue subject to the unified state volume cap		43
44 Amount of issue not subject to the unified state volume cap or other volume limitations:		44
a Of bonds for governmentally owned solid waste facilities, airports, docks, wharves, environmental enhancements of hydroelectric generating facilities, or high-speed intercity rail facilities		44a
b Under a carryforward election. Attach a copy of Form 8328 to this return		44b
c Under transitional rules of the Tax Reform Act of 1986. Enter Act section ▶		44c
d Under the exception for current refunding (section 146(i) and section 1313(a) of the Tax Reform Act of 1986)		44d
45a Amount of issue of qualified veterans' mortgage bonds		45a
b Enter the state limit on qualified veterans' mortgage bonds		45b
46a Amount of section 1394(f) volume cap allocated to issuer. Attach copy of local government certification		46a
b Name of empowerment zone ▶		
47 Amount of section 142(k)(5) volume cap allocated to issuer. Attach copy of state certification.		47

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.

Sign Here

Signature of officer

Date

Name of above officer (type or print)

Title of officer (type or print)



Form **8038** (Rev. 1-2002)

Instructions for Form 8038

(Rev. January 2002)

Information Return for Tax-Exempt Private Activity Bond Issues

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



Department of the Treasury
Internal Revenue Service

A Change To Note

Recent legislation added new section 142(a)(13), qualified public educational facilities, to the list of exempt facility bonds, effective for obligations issued after December 31, 2001. See **Qualified public educational facilities** on this page.

General Instructions

Purpose of Form

Form 8038 is used by the issuers of tax-exempt private activity bonds to provide the IRS with the information required by section 149 and to monitor the requirements of sections 141 through 150.

Who Must File

Issuers must file a **separate** Form 8038 for each issue of the following tax-exempt private activity bonds issued after 1986:

- Exempt facility bonds
- Qualified mortgage bonds
- Qualified veterans' mortgage bonds
- Qualified small issue bonds
- Qualified student loan bonds
- Qualified redevelopment bonds
- Qualified hospital bonds
- Qualified 501(c)(3) bonds
- Nongovernmental output property bonds
- Texas Veterans' Land Bonds, Oregon Small-Scale Energy Conservation and Renewable Resource Loan Bonds, and Iowa Industrial New Jobs Training Bonds
- All other tax-exempt private activity bonds

When To File

File Form 8038 by the 15th day of the 2nd calendar month after the close of the calendar quarter in which the bond was issued. 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. An issuer may be granted an extension of time to file Form 8038 under Section 3 of Rev. Proc. 88-10, 1988-1 C.B. 635, if it is determined that the failure to file timely is not due to willful neglect. 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 explaining why Form 8038 was not filed on time. Also indicate whether the bond issue in question is under examination by the IRS. Do not submit copies of the trust indenture or other bond documents. See **Where To File** next.

Where To File

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

Signature

An authorized representative of the issuer must sign Form 8038 and any applicable certification. Also print the name and title of the person signing Form 8038.

Other Forms That May Be Required

For bonds other than private activity bonds, use **Form 8038-G**, Information Return for Tax-Exempt Governmental Obligations, or **Form 8038-GC**, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales, to comply with these requirements.

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. Report them on Form 8038-G or Form 8038-GC.

For rebating arbitrage or paying a penalty in lieu of arbitrage rebate to the Federal government, use **Form 8038-T**, Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

Rounding Off to Whole Dollars

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 to 99 cents to the next higher dollar.

Definitions

Tax-exempt bond. This is any obligation on which the interest is excluded from gross income under section 103 of the Internal Revenue Code.

Private activity bond. This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private business use, and
- More than 10% of the payment of principal or interest of the issue is **either** (a) secured by an interest in property to be used for a private business use (or payments for such property), or (b) to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which (a) are to be used (directly or indirectly) to make or finance loans (other than loans described in section 141(c)(2)) to

persons other than governmental units and (b) exceeds the lesser of 5% of the proceeds or \$5 million.

Exempt facility bond. This is part of an issue of which 95% or more of the net proceeds are to be used to finance an exempt facility listed in section 142(a)(1) through (13). Exempt facility bonds include qualified enterprise zone facility bonds for use in empowerment zones and enterprise communities.

Qualified public educational facilities. The private activities for which tax-exempt bonds may be issued include elementary and secondary public school facilities that:

- Are owned by a private, for-profit corporation,
 - Have a public-private partnership agreement with a state or local educational agency, and
 - Are operated by a public educational agency as part of a public school system.
- The term **school facility** includes school buildings and other facilities that are related such as stadiums, athletic facilities used for school events, and depreciable personal property used in connection with the school facility.

A public-private partnership is defined as an arrangement in which the for-profit corporation constructs, rehabilitates, refurbishes, or equips a school for the public school agency. The agreement must provide that, at the end of the contract term, ownership of the bond-financed property is transferred to the public school agency at no additional consideration.

The requirements for section 147(c) on land acquisitions do not apply to qualified public educational facilities bonds. Also, separate state volume cap limits and carryforward rules apply; see section 142(k) for details.

Qualified mortgage bond. This is part of an issue:

1. Of which all proceeds (except issuance costs and reasonably required reserves) are to be used to finance owner-occupied residences,
2. That meets the requirements of subsections (c) through (i) and (m)(7) of section 143,
3. That does not meet the private business tests of sections 141(b)(1) and (2), and
4. For which repayments of principal on financing provided by the issue (that are received more than 10 years after the date of issuance) are used to redeem bonds that are part of the issue. Amounts of less than \$250,000 need not be used to redeem bonds under this requirement.

Qualified veterans' mortgage bond. This is part of an issue:

1. Of which 95% or more of the net proceeds are to be used to provide residences for veterans,
2. For which the payment of the principal and interest is secured by the general obligation of a state,
3. That meets the requirements of subsections (c), (g), (i)(1), and (l) of section 143, and
4. That does not meet the private business tests of sections 141(b)(1) and (2).

Qualified small issue bond. This is part of an issue not exceeding \$1 million of which 95% or more of the net proceeds are to be used to finance (a) land, (b) depreciable property, or (c) a redemption of a prior issue of (a) or (b). See section 144(a). The \$1 million limit can be increased to \$10 million if an election is made to take certain capital expenditures into account. See Regulations section 1.103-10(b)(2)(vi).

Qualified student loan bond. This is part of an issue of which:

1. 90% or more of the net proceeds 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 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).

Qualified redevelopment bond. This is generally part of an issue of which 95% or more of the net proceeds are to be used to finance certain specified real property acquisition and redevelopment in blighted areas. See section 144(c) for other requirements.

Qualified 501(c)(3) bond. This is any private activity bond that meets the following conditions:

1. All property financed by the net proceeds of the bond issue is to be owned by a 501(c)(3) organization or a governmental unit, and
2. The bond would not be a private activity bond if (a) section 501(c)(3) organizations were treated as governmental units with respect to their activities that do not constitute unrelated trades or businesses (determined by applying section 513), and (b) the private activity bond definition was applied using a 5% threshold (instead of 10%) for the private use, security, and/or payment tests, and the activities that constitute unrelated trades or businesses are aggregated with any other private use, security, or payment.

A qualified 501(c)(3) bond includes a:

- Qualified hospital bond, i.e., part of an issue of which 95% or more of the net proceeds are to be used for a hospital.
- Qualified nonhospital bond, i.e., other than a qualified hospital bond. In general, an organization cannot have more than \$150 million of qualified 501(c)(3) nonhospital bonds; see section 145(b). However, the

limit does not apply to bonds issued after August 5, 1997, if 95% or more of the net proceeds of the issue are to be used solely for capital expenditures incurred after that date.

Restrictions apply to the use of qualified 501(c)(3) bonds (both hospital and nonhospital) to provide residential rental housing. See section 145(d).

Issue price. The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

Note: *The issue price does not include interest from the date the bonds are dated to the date of issue.*

Issue. Generally, bonds are treated as part of the same issue, on the same date, and in a single transaction, or series of related transactions.

Arbitrage rebate. Generally, 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. See section 148(f).

Construction issue. This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, and
2. All the bonds that are part of the 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.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1½% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

Specific Instructions

Part I—Reporting Authority

Amended return. If you are filing an amended Form 8038, check the amended return box. Complete Part I and only those parts of Form 8038 you are amending. Use the same report number (line 4) that was used on the original report. **Do not** amend 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. An issuer that does not have an employer identification number (EIN) should apply for one on **Form SS-4**, Application for Employer Identification Number. You can get this form on the IRS Web Site at www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676). You may receive an EIN by telephone by following the instructions for Form SS-4.

Line 4. After the preprinted 1, enter two self-designated numbers. Number reports consecutively during any calendar year (e.g., 134, 135, etc.).

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

Line 7. If there is no name of the issue, 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. If the issue does not have a CUSIP number, write "None."

Part II—Type of Issue

Caution: *Elections referred to in Part II are made on the original bond documents, not on this form.*

You must identify the type of bonds issued by checking the appropriate box(es) and entering the corresponding issue price (see **Issue price under Definitions**).

Line 11f. After entering the issue price, check the appropriate box for the percentage test 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. See Rev. Rul. 94-57, 1994-2 C.B. 5, for guidance on computing the income limits applicable to these bonds.

Line 11h. Bonds issued to finance certain facilities may also qualify as exempt facility bonds if they were (a) permitted as exempt facility bonds under prior law and (b) issued under one of the transitional rules of the Tax Reform Act of 1986 (the 1986 Act).

These facilities include...	As described in former section...
A sports facility	103(b)(4)(B)
A convention or trade show facility	103(b)(4)(C)
A parking facility	103(b)(4)(D)
A pollution control facility	103(b)(4)(F)
A hydroelectric facility	103(b)(4)(H)
An industrial park	103(b)(5)

If one of the above applies, **indicate the facility type** and then give the **specific provision of the 1986 Act** pertaining to the facility on line 11h.

Line 11i. Check the box if the bonds are part of any issue 95% or more of the net proceeds of which are to be used to provide

any enterprise zone facility in an empowerment zone or enterprise community. See section 1394.

Note: Check the box on line 11j for empowerment zone facility bonds or line 11k for District of Columbia Enterprise Zone facility bonds.

Line 11j. Check the box if the bonds are: (a) issued after August 5, 1997, and (b) part of any issue 95% or more of the net proceeds of which are to be used to provide any empowerment zone facility. See section 1394(f).

The updated information on the designated urban empowerment zones is available at www.hud.gov; for the designated rural empowerment zones, go to www.ezec.gov.

Line 11k. Check the box if the bonds are: (a) issued after December 31, 1997, and (b) part of any issue 95% or more of the net proceeds of which are to be used to provide a District of Columbia Enterprise Zone facility. See section 1400A for other requirements.

Line 11l. Check the box for bonds that are: (a) issued after December 31, 2001, and (b) part of any issue 95% or more of the net proceeds of which are used to provide a qualified public educational facility. See section 142(k) for other requirements.

Line 11m. Check this box only if none of the other boxes apply. On the space provided, enter the facility type.

Facility types include...	As described in section...
Mass commuting facilities	142(a)(3) and 142(c)
Local district heating or cooling facilities	142(a)(9) and 142(g)
Environmental enhancements of hydroelectric generating facilities	142(a)(12) and 142(j)
High-speed intercity rail facilities*	142(a)(11), 142(c), and 142(i)

***Note:** Proceeds of an exempt bond may not be used for this type of facility if there is a nongovernmental owner of the facility unless that owner makes an irrevocable election not to claim (1) depreciation under section 167 or 168, or (2) any credit against its income tax with respect to the property financed with the net proceeds of the issue.

Line 13. Check the box on line 13 if the issuer has elected, in the bond indenture or related document, to pay to the United States the amount described in section 1.143(g)(3)(D).

Line 14. Check the box on line 14 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 Regulations section 1.103-10(b)(2)(vi).

Line 17. Attach a schedule listing the name and EIN for each 501(c)(3) organization

benefiting from these qualified hospital bonds.

Line 18. Enter the total amount of qualified nonhospital bonds described in section 145(b)(2) that are a part of this issue. For each 501(c)(3) organization benefiting from these qualified nonhospital bonds, attach a schedule listing:

- The name of the organization,
- Its EIN,
- The amount of this issue of bonds benefiting the organization, and, if the box for line 18 is **not** checked,
- The amount of all other nonhospital bonds outstanding as of the date of this issue that benefit the organization.

Note: The amount in item 4 above plus line 18 cannot exceed \$150 million with respect to bonds issued: (a) prior to August 6, 1997, and (b) after August 5, 1997, if used for noncapital expenditures. The \$150 million limit does not apply to bonds issued after August 5, 1997, if 95% or more of the net proceeds are used solely for capital expenditures incurred after that date.

Line 19. Check the box if the bonds are used to acquire nongovernmental output property, which is property used by a nongovernmental person in connection with an output facility (such as an electric or gas power project).

Line 20. Check the box only if none of the other boxes apply. In 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 21

For column (a), the final maturity date is the last date the issuer must redeem the entire issue.

For column (b), see **Issue price** under **Definitions** on page 2.

For column (c), 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.

For column (d), 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 21, column(b)).

For column (e), the yield, as defined in section 148(h), is the discount rate that, 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. See Regulations section 1.148-4 for specific rules to compute the yield on an issue. If the issue is a variable rate issue, write "VR" as the yield of the issue. For other than variable rate issues, carry the yield out to four decimal places (e.g., 5.3125%).

Part IV—Uses of Proceeds of Issue

Line 22. Enter the amount of proceeds that will be used to pay interest from the date the bonds are dated to the date of issue.

Line 24. Enter the amount of the proceeds that will be used to pay bond issuance costs, including fees for trustees and bond counsel.

Line 25. Enter the amount of the 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 26. Enter the amount of the proceeds that will be allocated to such a fund.

Lines 27 and 28. Enter the amount of the proceeds that will be used to pay principal or interest on any other issue of bonds.

Part V—Description of Property Financed by Nonrefunding Proceeds

Line 31. 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 available at the time of issuance, make a reasonable proration between the land, buildings, and equipment.

Note: Under section 147(c), a private activity bond is not a qualified bond if 25% or more of the proceeds are used for the acquisition of land or if any of the proceeds are used to acquire 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 this general rule is for land acquired for certain environmental purposes. See section 147(c)(3). Also, a bond is not 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).

For items that do not readily fit within categories 31a, b, c, or d, enter the amount of those proceeds in category 31e, *Other*, and briefly describe them on the line.

Line 32. For each project to be financed by the issue, enter the corresponding:

- Six-digit North American Industry Classification System (NAICS) code that best describes the project, and
- Face amount of the project.

If there are more than four projects to be financed by the issue, attach a separate sheet of paper stating the NAICS codes and face amount of each project.

For the purpose of determining NAICS codes where the project fits into more than one category, the ultimate use of the facility determines the NAICS code number. For example, an investment partnership financing a manufacturing facility should use the relevant manufacturing NAICS code, not the partnership's financial activities code.

The NAICS codes are available on the U.S. Census Bureau Web Site at www.census.gov/naics.

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.

Lines 33 and 34. The remaining weighted average maturity is determined without regard to the refunding. The weighted average maturity is determined in the same manner as for line 21, column (d).

Line 35. Enter the last date on which any of the bonds being refunded will be called.

Line 36. If more than a single issue of bonds will be refunded, enter the date of issue of each of the issues.

Part VII—Miscellaneous

Line 37. 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, write "No approval needed" on line 37. Also enter on line 37 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 write "Transitional rule" and the applicable Act (e.g., "Tax Reform Act of 1986") and section.

Line 39. Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of arbitrage rebate with this form. See Rev. Proc. 92-22, 1992-1 C.B. 736 for rules regarding the "election document."

Line 40. Check this box if the issuer has identified a hedge on its books and records in accordance with Regulation sections 1.148-4(h)(2)(viii) and 1.148-4(h)(5) that permit an issuer of tax-exempt bonds to identify a hedge for it to be included in yield calculations for computing arbitrage.

Line 41. Check this 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 EIN of the primary private user. A "primary 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).

Part VIII—Volume Cap

Line 42. Enter the amount of volume cap allocated to the issuer. Attach a copy of the 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 must also include the information requested by lines 1 through 3 and 5 through 8 on page 1 of Form 8038, as well as the title of the certifying official.

Line 43. 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 million, 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 million.

Line 44a. 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.
- Environmental enhancements of hydroelectric generating facilities.
- Solid waste facilities. **Note:** These facilities may have to be governmentally owned. See section 146(h).
- High-speed intercity rail facilities. **Note:** Only 75% of any exempt facility bond for these facilities is not subject to the volume cap; however, no volume cap applies if all the bond-financed property is governmentally owned. See sections 146(g) and 142(b)(1)(B).

Line 44b. If any part of the issue is issued under a carryforward election, enter the amount of the bonds being issued under that election. Attach a copy of the applicable Form 8328, Carryforward Election of Unused Private Activity Bond Volume Cap.

Line 44c. If any part of the issue is not subject to the volume cap under a transitional rule of the Tax Reform Act of 1986, enter the appropriate section of the Act and then the amount of the bonds excepted from the volume cap by that rule.

Line 44d. 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 the amount not subject to the volume cap.

Line 45b. Enter the state limit on qualified veterans' mortgage bonds for the calendar year under section 143(l)(3).

Line 46a. Enter the amount of volume cap allocated to the issuer. Attach a copy of the local government's certification, if applicable. The official must certify that the issue meets the requirements and the applicable volume cap under section 1394(f). The certification must also include the information requested by lines 1 through 3 and 5 through 8 on page 1 of Form 8038, as well as the title of the certifying official.

Line 46b. Enter the name of the empowerment zone. See the instructions for line 11j for where to get the names of the empowerment zones.

Line 47. Enter the amount of volume cap allocated to the issuer. Attach a copy of the state certification, if applicable. The appropriate state official must certify that the issue meets the volume cap requirements of section 142(k)(5). The certification must also include the information requested by lines 1 through 3 and 5 through 8 on page 1 of Form 8038, as well as the title of the certifying official.

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:

- Learning about the law or the form** 10 hr., 35 min.
- Preparing the form** 12 hr., 27 min.
- Copying, assembling, and sending the form to the IRS** 16 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** on page 1.

Form **8038-T** **Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate**
 (Rev. January 2005)
 Department of the Treasury Internal Revenue Service
 OMB No. 1545-1219
 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 Check box if Amended Return

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 7
5 City, town, or post office, state, and ZIP code	6 Date of issue
7 Name of issue	8 CUSIP number
9 Name and title of officer or legal representative whom the IRS may call for more information	10 Telephone number of officer or legal representative ()
11 Type of issue	Issue price 11 \$

Part II Arbitrage Rebate and Yield Reduction Payments

12 Computation date to which this payment relates (MMDDYYYY)	
13 Arbitrage rebate payment (see instructions) <input type="checkbox"/> check box if less than 100% of rebate amount	13 \$
14 Yield reduction payment (see instructions) <input type="checkbox"/> check box if less than 100% of yield reduction amount	14 \$
15 Rebate payment from Qualified Zone Academy Bond (QZAB) defeasance escrow (see instructions)	15 \$

Part III Penalty in Lieu of Arbitrage Rebate

16 Number of months since date of issue: <input type="checkbox"/> 6 mos <input type="checkbox"/> 12 mos <input type="checkbox"/> 18 mos <input type="checkbox"/> 24 mos <input type="checkbox"/> Other. No. of mos	17 \$
17 Penalty in lieu of rebate	17 \$
18 Date of termination election (MMDDYYYY)	18 \$
19 Penalty upon termination	19 \$

Part IV Late Payments

20 Does failure to pay timely qualify for waiver of penalty (see instructions) Yes <input type="checkbox"/> No <input type="checkbox"/>	21 \$
21 Penalty for failure to pay on time (see instructions)	21 \$
22 Interest on underpayment (see instructions)	22 \$

Part V Total Payment

23 Total payment. Add lines 13, 14, 15, 17, 19, 21, and 22. Enter total here	23 \$
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Part VI Miscellaneous

24 Unspent proceeds as of this computation date	24 \$
25 Proceeds used to redeem bonds	25 \$
26 Gross proceeds used for qualified administrative costs for GICs and defeasance escrows	26 \$
27 Fees paid for a qualified guarantee	27 \$

	Yes	No
28 Is the issue a variable rate issue?		
29 Did the issuer enter into a hedge? Name of provider _____ Term of hedge _____		
30 Were gross proceeds invested in a GIC? Name of provider _____ Term of GIC _____		
31 Were any gross proceeds invested beyond an available temporary period?		
32 Calculations for filing of this form prepared by: <input type="checkbox"/> Issuer <input type="checkbox"/> Preparer:		

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.

Sign Here

Signature of issuer's authorized representative _____ Date _____ Type or print name and title _____

For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 11545Y Form **8038-T** (Rev. 1-2005)

Instructions for Form 8038-T

(Rev. January 2005)



Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate

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

General Instructions

Purpose of Form

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. Use this form to make arbitrage rebate and related payments.

Mortgage Revenue Bonds

Section 143(g)(3) and section 103A(i)(4) of the Internal Revenue Code of 1954 (1954 Code) provide special arbitrage rebate rules for qualified mortgage bonds and qualified veterans' mortgage bonds. 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.

Qualified Zone Academy Bonds

A qualified zone academy bond (QZAB) is a bond issued by a state or local government to finance certain eligible public school purposes. An issuer may establish a defeasance escrow to cure a failure to properly use QZAB proceeds. An issuer must pay 100 percent of the investment earnings on amounts in the defeasance escrow. Use this form to make payments of investment earnings on amounts in defeasance escrows. See Proposed Regulations section 1.1397E-1(h)(7)(ii)(C), 2004-16 I.R.B. 793.

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

Who Must File

Issuers of tax-exempt bonds must file Form 8038-T to pay:

1. Arbitrage rebate.
2. Yield reduction payments.
3. The penalty:
 - In lieu of arbitrage rebate or
 - To terminate the election to pay a penalty in lieu of arbitrage rebate.
4. Penalties and interest on the failure to pay on time any amounts in 1-3 above.

Qualified Zone Academy Bonds

Issuers of QZABs that establish a defeasance escrow under the Proposed Regulations must file Form 8038-T to pay 100 percent of the investment earnings on amounts in the defeasance escrow.

Applicable Regulations

General

Unless otherwise stated, regulation sections referenced in these instructions are to the 1993 regulations, as amended. Generally, an issuer may apply these regulations to bonds that are outstanding on July 8, 1997. For the 1993 regulations, see T.D. 8476, 1993-2 C.B. 13, and T.D. 8538, 1994-1 C.B. 26. For the 1997 amendments to the 1993 regulations, see T.D. 8718, 1997-1 C.B. 47. The 1992 regulations generally apply to bonds issued before July 1, 1993. For the 1992 regulations, see T.D. 8418, 1992-1 C.B. 29.

Special Rules

For rules on computing the arbitrage rebate for mortgage revenue bonds, 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, T.D. 8005, 1985-1 C.B. 39, if the issuer has not applied the later regulations.

For qualified zone academy bonds, see Proposed Regulations section 1.1397E-1. For rules on the effective dates of regulations for QZABs, see Proposed Regulations 1.1397E-1(k).

Arbitrage Rebate

Computation of Arbitrage Rebate

The rebate amount for an issue is based on the difference between the amount actually earned on nonpurpose investments and the amount that would have been earned if those investments had a yield equal to the yield on the issue.

Exceptions

General. A number of exceptions may relieve an issuer of the rebate requirement for all or a part of an issue of bonds.

Note. The following exceptions may apply only to a portion of an issue. In such cases, the rebate requirement continues to apply to the portion of the issue not covered by the exception.

Small Issuer Exception. The rebate requirement does not apply to certain bonds issued by governmental units issuing no more than \$5 million of bonds in a calendar year.

The exception is modified as follows: a governmental unit may issue up to \$10 million in bonds after 1997 (\$15 million after 2001) per calendar year, provided no more than \$5 million of proceeds are used to finance expenditures other than public school capital expenditures. See section 148(f)(4)(D) and Regulations section 1.148-8.

6-Month Exception. The rebate requirement is considered to be met for gross proceeds of an issue (as defined in Regulations section 1.148-7(c)(3)) if those gross proceeds are spent within 6 months of the issue date. The 6-month exception is the only exception available for refunding issues.

See section 148(f)(4)(B) and Regulations section 1.148-7(a)-(c).

18-Month Exception. The rebate requirement is considered to be met for gross proceeds of an issue if those gross proceeds are spent according to an 18 month expenditure schedule measured from the issue date.

See Regulations section 1.148-7(a), (b) and (d).

2-Year Exception. The "available construction proceeds" of a construction issue are treated as meeting the rebate requirement if those proceeds are spent in accordance with a 2 year expenditure schedule measured from the issue date.

See section 148(f)(4)(C) and Regulations section 1.148-7(a), (b) and (e)-(j).

Exception for Certain Investments.

The rebate requirement generally does not apply to gross 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

Penalty

An issuer may elect to pay a penalty in lieu of rebating arbitrage for the available construction proceeds of an issue if the spending requirements of the 2-year exception are not satisfied. The penalty is equal to 1½ percent of the amount of the available construction proceeds that do not meet the spending requirements.

See section 148(f)(4)(C) and Regulations section 1.148-7(a), (b) and (e)-(k).

Election to Terminate 1½ Percent Penalty

An issuer may terminate the election to pay penalty in lieu of rebate by paying an amount equal to 3 percent of the unspent available construction proceeds multiplied by the number of years in the initial temporary period. The termination election also requires other actions, such as yield restricting the unspent proceeds and using such proceeds to redeem bonds.

See Code section 148(f)(4)(C)(viii) and (ix) and Regulations section 1.148-7(i).

Yield Reduction Payments

Bond proceeds may be invested in higher yielding investments only during a temporary period described in Regulations section 1.148-2(e). After expiration of an applicable temporary period, proceeds must be yield restricted.

One method of complying with the yield restriction requirement is to make "yield reduction payments." For certain investments, a yield reduction payment is taken into account in computing the yield on that investment. See Regulations section 1.148-5(c).

For investments with excess yield that are not eligible for yield reduction payments (such as an incorrectly invested advance refunding escrow fund), see Notice 2001-60, Voluntary Closing Agreement Program for Tax-Exempt Bonds.

Where to File

File Form 8038-T with the Internal Revenue Service Center, Ogden, UT 84201-0027.

When to File

Arbitrage Rebate

An issuer must pay rebate in installments for computation dates that occur at least once every 5 years. Rebate payments are due within 60 days after each computation date. The final rebate payment for an issue is due within 60 days after the issue is discharged.

See Regulations section 1.148-3(e) through (g).

Special rules. For an issue retired within 3 years of issuance, the final rebate payment need not occur before the end of 8 months after the issue date or during the period the issuer expects to meet any of the spending exceptions under Regulations section 1.148-7.

For rules concerning qualified mortgage bonds and qualified veterans' mortgage bonds see section 143(g)(3) and section 103A(i)(4) of the 1954 Code.

Penalty in Lieu of Arbitrage Rebate and Termination Penalty

Penalty in lieu of arbitrage rebate payments must be paid within 90 days of the end of the applicable spending period.

Payment of the 3 percent penalty to terminate the penalty in lieu of arbitrage rebate election must be made within 90 days of (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).

Yield Reduction Payments

Yield reduction payments are payable at the same time as arbitrage rebate payments.

See Regulations section 1.148-5(c)(2).

Qualified Zone Academy Bonds

The issuer must pay 100 percent of the investment earnings on amounts in a defeasance escrow established for an issue of QZABs at the same time and in the same manner as arbitrage rebate payments.

Failure to Pay Timely

General

A failure to pay the required amounts of arbitrage rebate, yield reduction, or penalty payments on time may cause bonds 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 disregarded if the issuer pays a penalty to the United States.

For governmental and qualified 501(c)(3) bonds, the penalty equals 50 percent of the rebate amount not paid when required to be paid, plus interest on that amount. Otherwise the penalty equals 100 percent of the rebate amount not paid when required to be paid, plus interest on that amount.

The penalty is automatically waived if the rebate amount plus interest is paid within 180 days of discovery of the failure.

See Regulations section 1.148-3(h).

For issues to which the 1992 Regulations apply, see 1992 Regulations section 1.148-1(c) for rules relating to innocent failure, willful neglect, computation of the correction amount and penalty and interest. In general, these rules also apply to the Penalty in Lieu of Arbitrage Rebate and the Termination Penalty. See 1992 Regulations section 1.148-6(n)(4).

Recovery of Overpayment

In general, an issuer may recover an overpayment for an issue of tax-exempt bonds by establishing to the Internal Revenue Service that an overpayment occurred. Payments that may be recovered include:

- Arbitrage rebate,
- Yield reduction,
- Penalty in lieu of arbitrage rebate, and
- Penalty to terminate penalty in lieu of arbitrage rebate.

See Regulations section 1.148-3(i) and Form 8038-R, Request for Recovery of

Overpayments Under Arbitrage Rebate Provisions.

Specific Instructions

Part I—Reporting Authority and Filing Information

Amended Return

An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the "Amended Return" box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new or corrected information. Attach an explanation of the reason for the amended return.

Lines 1-10

General. Enter the same information that was entered on Form 8038, 8038-G or 8038-GC (the "initial filing"), making any necessary changes, for example, a change of address.

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 or the eligible taxpayer claiming the QZAB credit.

Line 4. After the preprinted "7", enter the last two digits of the year corresponding with the computation date to which this filing relates. For example, for a payment made for a computation date in 2001, enter a report number of 701.

Alternatively, an issuer may consistently use any system of assigning report numbers so long as a number is not duplicated for an issue over its life.

Line 11. Enter the same type of issue that was entered on Form 8038 or 8038-G. For bonds previously reported on Form 8038-GC, enter "Small Governmental Bond." Also enter the total issue price that was listed on the initial filing for this issue. For QZABs enter "qualified zone academy bond" and the total issue price.

Part II—Arbitrage Rebate and Yield Reduction Payments

Line 12. Enter the computation date to which this payment relates. The first rebate installment payment must be made for a computation date that is not later than 5 years after the issue date.

Subsequent rebate installment payments must be made for a computation date that is not later than 5 years after the previous computation date for which an installment payment was made.

Line 13. Enter the amount of the rebate payment. A rebate installment payment must be in an amount that, when added to the future value, as of the computation

date, of previous rebate payments made for the issue, equals at least 90 percent of the rebate amount as of that date. A final rebate payment must be paid in an amount that, when added to the future value of previous rebate payments made for the issue, equals 100 percent of the rebate amount as of that date.

See Regulations section 1.148-3(f).

For issues to which the 1992 Regulations apply, see 1992 Regulations section 1.148-1(b)(3).

Line 14. For investments covered by the special yield reduction rule, rebate and yield reduction payments are included in the computation of yield for that investment.

See Regulations section 1.148-5(c).

Line 15. Enter the amount equal to 100 percent of the investment earnings in a QZAB defeasance escrow.

Part III—Penalty in Lieu of Arbitrage Rebate

Complete this section only if, on or before the issue date of the bonds, an election was made under section 148(f)(4)(C)(vii).

Line 16. Check the appropriate box for the number of months between the issue date of the bonds and the end of the spending period for which this Form 8038-T is being filed. For periods greater than 24 months, check the box marked "Other" and fill in the number of months since the date of issue.

Note. File a separate Form 8038-T for each 6-month spending period.

Lines 17-19. See *Penalty in Lieu of Arbitrage Rebate* on page 1.

Part IV—Late Payments

Line 20. Under the current regulations, in order to qualify for a waiver of penalty, a failure to pay must not be due to willful neglect. Attach an explanation of the failure and the basis for concluding that the failure is not due to willful neglect.

Line 21. For a failure that does not qualify for a waiver of penalty, the failure will be disregarded if the issuer pays a penalty to the United States. For governmental and qualified 501(c)(3) bonds, the penalty equals 50 percent of the rebate amount not paid timely plus interest on that amount. For other bonds, the penalty is 100 percent of the rebate amount not paid timely plus interest on that amount.

Line 22. Compute interest at the underpayment rate under section 6621, beginning on the date the correct rebate amount is due and ending on the date 10 days before it is paid.

For issues to which the 1992 Regulations apply, see 1992 Regulations

section 1.148-1(c)(2) for computation of the correction amount.

Part V—Total Payment

Line 23. Combine all payment amounts on lines 13, 14, 15, 17, 19, 21, and 22. Enclose a check or money order for the total amount made payable to the "United States Treasury." Include the issuer's name, address, EIN, "Form 8038-T", and the date on the payment.

Part VI—Miscellaneous

Line 24. Enter the amount of proceeds (consisting of sale, investment and transferred proceeds) not allocated to expenditures for a governmental purpose of the issue.

Line 25. Enter the amount of proceeds used to pay principal of and call premiums on the bonds for which this form is being filed.

Line 26. Under Regulations section 1.148-5(e)(2), qualified administrative costs are taken into account in determining payments and receipts on nonpurpose investments. Regulations section 1.148-5(e)(2)(iii) and (iv) provide special rules for qualified administrative costs for guaranteed investment contracts and yield restricted defeasance escrows. Enter the amount of any qualified administrative costs taken into account in computing the rebate amount under these special rules.

Line 27. Under Regulations section 1.148-4(f), fees properly allocable to payments for a qualified guarantee for an issue are treated as additional interest in computing the yield on that issue. Enter the amount of such fees.

Line 28. A variable rate issue is an issue that contains a bond that has a yield that is not fixed and determinable on the issue date.

Line 29. In general, payments made or received by an issuer under a qualified hedge are taken into account to determine the yield on the issue. A hedge may be entered into before, at the same time as, or after the date of issue. See Regulations section 1.148-4(h). Enter the name of the provider of the hedge and term of the hedge to the nearest tenth of a year (for example, 2.4 years). Attach additional sheets if necessary.

Line 30. Enter "yes" if any gross proceeds of the issue were invested in a guaranteed investment contract ("GIC"). A GIC includes any nonpurpose investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply

investments on two or more dates (for example, a forward supply contract). Enter the name of the provider of the GIC and term of the GIC to the nearest tenth of a year. Attach additional sheets if necessary.

Line 31. Indicate if any gross proceeds were invested beyond the temporary periods set forth in Regulations section 1.148-2(e) or 1.148-9(d).

Line 32. Indicate who prepared the calculations necessary for the filing of this form. If other than "issuer", indicate the name of the entity or individual preparing the calculations.

Signature

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

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 arbitrage rebate, yield reduction payments, and penalties.

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	10 hr., 2 min.
Learning about the law or the form	5 hr., 51 min.
Preparing, copying, assembling, and sending the form to the IRS	6 hr., 16 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 Internal Revenue Service, Tax Products Coordinating Committee, SE:W-CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224. Do not send the form to this address. Instead, see *Where to File* on page 2.

Form **8038-R** **Request for Recovery of Overpayments Under Arbitrage Rebate Provisions** OMB No. 1545-1750
 (November 2001)
 Department of the Treasury
 Internal Revenue Service

Part I Reporting Authority

1 Issuer's name

2 Issuer's employer identification number

3 Number and street (or P.O. box if mail is not delivered to street address) Room/suite

4 Report number

5 City, town, or post office, state, and ZIP code

6 Date of issue

7 Name of issue

8 CUSIP number

9 Name and title of officer or legal representative whom the IRS may call for more information

10 Telephone number of officer or legal representative

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).

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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.

Part II Request for Refund of Amounts Paid Under Rebate Provisions (see instructions)

11 If the issue is outstanding on June 30, 1993, and the issuer elects not to apply the 1992 regulations, check here (see instructions)

12 Total amount paid under rebate provisions **12**

13 Rebate amount as of the most recent computation date **13**

14 Amounts (not included in line 12) required to be paid under section 148 as of the date the recovery is requested **14**

15 Add lines 13 and 14 **15**

16 Amount of overpayment. Subtract line 15 from line 12 **16**

17 Computations and relevant facts that led to overpayment (see instructions). Attach additional sheets if necessary.

18 Schedule of payments (see instructions). Attach additional sheets if necessary.

Part III Other Information (see instructions) Check the "Yes" or "No" box for each question below.

19 Was the overpayment paid as penalty in lieu of rebate under section 148(f)(4)(C)(vii)? **19**

20 Has the final computation date for the issue occurred? **20**

21 Is the issue comprised of qualified redevelopment, qualified small issue, or exempt facilities bonds? If "Yes," provide name and EIN of the primary private user. **21**

Name EIN

Sign Here

Under penalties of perjury, I declare that I have examined this request for recovery of overpayment, including accompanying schedules and statements, and to the best of my knowledge and belief, the facts represented in support of the request are true, correct, and complete.

Signature of issuer's authorized representative Date Type or print name and title

Form **8328** Carryforward Election of Unused Private Activity Bond Volume Cap
 (Rev. January 2003)
 Department of the Treasury
 Internal Revenue Service

OMB No. 1545-0874

(Under Sections 146(f) and 142(k))

Form 8328 (Rev. 1-2003)

Page 2

Enter the calendar year for which the election is made ▶

Part I Reporting Authority

State name for qualifying public educational facility bond or issuer's name for all other bonds

Reporting Authority's EIN

Number, street (or P.O. box if mail is not delivered to street address) Room/suite Report number

City or town, state, and ZIP code

Caution: Part II is only for section 146(f) filers. Part III is only for qualifying public educational facility bond filers.

Part II Unused Volume Cap and Carryforward under Section 146(f)

Computation of Unused Volume Cap

1	Total volume cap of the issuer for the calendar year		1
2	Aggregate amount of private activity bonds issued to date that are taken into account under section 146 (see instructions)	2	
3	Total amount of volume cap exchanged for authority to issue mortgage credit certificates (see instructions)	3	
4	Total amount of volume cap allocated to private activity portion of governmental bonds (see instructions)	4	
5	Add lines 2 through 4		5
6	Unused volume cap (subtract line 5 from line 1)		6

Purpose and Amount of Each Carryforward

7	Qualified student loan bonds	7
8	Qualified mortgage bonds or mortgage credit certificates	8
9	Qualified redevelopment bonds	9
10	Exempt facility bonds:	
a	Mass commuting facilities (section 142(a)(3))	10a
b	Water furnishing facilities (section 142(a)(4))	10b
c	Sewage facilities (section 142(a)(5))	10c
d	Solid waste disposal facilities (section 142(a)(6))	10d
e	Qualified residential rental projects (section 142(a)(7))	10e
f	Facilities for the local furnishing of electric energy or gas (section 142(a)(8))	10f
g	Local district heating or cooling facilities (section 142(a)(9))	10g
h	Qualified hazardous waste facilities (section 142(a)(10))	10h
i	25% of bonds for privately owned high-speed intercity rail facilities (section 142(a)(11))	10i
j	Qualified enterprise zone facility bonds (section 1394)	10j
11	Total carryforward amount (add lines 7 through 10j) (not to exceed line 6)	11

Part III Unused Volume Cap and Carryforward Under Section 142(k) (Qualifying Public Educational Facility Bonds)

12	Total volume cap for the calendar year	12
13	Total amount of bonds issued under 142(k) for the calendar year	13
14	Unused volume cap available for carryforward (subtract line 13 from line 12)	14
15	Amount elected to carryforward (not to exceed line 14)	15

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

Signature of authorized public official Date Type or print name and title.

For Paperwork Reduction Act Notice, see instructions on back. Cat. No. 13900J Form 8328 (Rev. 1-2003)

A Change To Note

Form 8328 has been revised for use by states to compute and carry forward unused volume cap for qualified public educational facility bonds. States will use Part III of Form 8328 to report under section 142(k)(5). Revised Part II of Form 8328 includes the computation of unused volume cap, and purpose and amount of each carryforward under section 146(f).

General Instructions

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

Purpose of Form

Form 8328 is filed by the issuing authority of private activity bonds to elect to carry forward its unused volume cap for one or more carryforward purposes (see section 146(f)). If the election is made, bonds issued with respect to a specified carryforward purpose are not subject to the volume cap under section 146(a) during the 3 calendar years following the calendar year in which the carryforward arose, but only to the extent that the amount of such bonds does not exceed the amount of the carryforward elected for that purpose. Also, Form 8328 is used by a state to carry forward the unused volume cap under section 142(k). A state may elect to carry forward an unused limitation for any calendar year for 3 calendar years following the calendar year in which the unused limitation arose under rules similar to the rules of section 146(f). However, this election can only be made for the issuance of qualified public educational facility bonds. For definitions related to qualified public educational facilities, see section 142(k).

When To File

Form 8328 must be filed by the earlier of: (1) February 15 of the calendar year following the year in which the excess amount arises, or (2) the date of issue of bonds issued pursuant to the carryforward election.

Once Form 8328 is filed, the issuer may not revoke the carryforward election or amend the carryforward amounts shown on this form.

Where To File

File Form 8328 with the Internal Revenue Service Center, Ogden, UT 84201.

Bonds Taken Into Account Under Section 146

All private activity bonds issued during a calendar year are taken into account under section 146 except:

1. Qualified 501(c)(3) bonds.
2. Exempt facility bonds for governmentally owned airports, docks and wharves, environmental enhancements of hydroelectric generating facilities, and solid waste disposal facilities.
3. 75% of any exempt facility bonds for privately owned high-speed intercity rail facilities; 100% if governmentally owned.
4. Qualified veterans' mortgage bonds.
5. Bonds issued pursuant to a carryforward election. See section 146(f)(3)(A).
6. Certain current refundings. See section 146(i).
7. Certain bonds issued by Indian tribal governments for tribal manufacturing facilities. See section 7871(c)(3).
8. Qualified public educational facilities.

In addition, the private activity portion of governmental bonds is taken into account to the extent that the nonqualified amount exceeds \$15 million. See sections 141(b)(5) and 146(m).

Bonds Eligible for Elections

- An election under section 146(f) may be made by the issuing authority for only the following types of tax-exempt bonds:
 1. Qualified student loan bonds.
 2. Qualified mortgage bonds (or mortgage credit certificates).
 3. Qualified redevelopment bonds.
 4. Exempt facility bonds taken into account under section 146.
- An election under section 142(k) may be made by the state for qualified public educational facility bonds.

Specific Instructions

Parts I and II of this form must be completed to properly elect the carryforward provisions under section 146(f).

Parts I and III must be completed to properly elect the carryforward provisions under section 142(k).

Part I. Reporting Authority

Name. Enter the name of the state if filing under section 142(k). For all others, enter the name of the entity issuing the bonds.

Report number. After the preprinted 9, enter two self-designated numbers. Number reports consecutively during any calendar year (e.g., 928, 929, etc.).

Part II. Unused Volume Cap and Carryforward Under Section 146(f)

Computation of Unused Volume Cap

Line 1. Enter the issuing authority's volume cap under section 146 for the current calendar year. Take into account any reduction in the amount of the volume cap under section 25(f) (relating to the reduction in the aggregate amount of qualified mortgage bonds where certain requirements are not met). See section 146(h)(2).

Line 2. Enter the total amount of private activity bonds issued by the issuing authority during the current calendar year that are taken into account under section 146. See Bonds Taken Into Account Under Section 146.

Line 3. Enter the total amount of qualified mortgage bonds the issuing authority has elected not to issue under section 25(c)(2)(A)(ii) during the current calendar year. See section 146(n)(1).

Line 4. Enter the total amount of volume cap allocated by the issuer to the private activity portion of governmental bonds. See sections 141(b)(5) and 146(m).

Purpose and Amount of Each Carryforward

Enter the amount of unused volume cap the issuer elects to carry forward for each carryforward purpose and the total carryforward amount.

Part III. Unused Volume Cap and Carryforward Under Section 142(k) (Qualifying Public Educational Facility Bonds)

Complete lines 12 through 15 to compute the amount elected to carry forward under section 142(k).

Signature

Form 8328 must be signed by an authorized public official responsible for carrying forward unused volume cap.

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 7 hr., 24 min.
- Learning about the law or the form 2 hr., 47 min.
- Preparing and sending the form to the IRS 3 hr., 1 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.



Form **2848**
(Rev. March 2004)
Department of the Treasury
Internal Revenue Service

**Power of Attorney
and Declaration of Representative**

OMB No. 1545-0150
For IRS Use Only
Received by:
Name _____
Telephone _____
Function _____
Date / / _____

► Type or print. ► See the separate instructions.

Part I Power of Attorney
Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address	Social security number(s) : : : : : :	Employer identification number :
	Daytime telephone number ()	Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for **Line 4. Specific uses not recorded on CAF.**

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See **Unenrolled Return Preparer** on page 2 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Circular 230. See the line 5 instructions for restrictions on tax matters partners.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: _____

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ► _____

7 Notices and communications. Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.
a If you also want the second representative listed to receive a copy of notices and communications, check this box
b If you do not want any notices or communications sent to your representative(s), check this box

8 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here.
YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

9 Signature of taxpayer(s). If a tax matter concerns a joint return, **both** husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

► IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.

Signature	Date	Title (if applicable)
Print Name	PIN Number <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Print name of taxpayer from line 1 if other than individual
Signature	Date	Title (if applicable)
Print Name	PIN Number <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	

Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the instructions for Part II.

- Under penalties of perjury, I declare that:
- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
 - I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
 - I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
 - I am one of the following:
 - a** Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b** Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c** Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d** Officer—a bona fide officer of the taxpayer's organization.
 - e** Full-Time Employee—a full-time employee of the taxpayer.
 - f** Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g** Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d) of Treasury Department Circular No. 230).
 - h** Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Treasury Department Circular No. 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See **Unenrolled Return Preparer** on page 2 of the instructions.

► IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. See the Part II instructions.

Designation—Insert above letter (a-h)	Jurisdiction (state) or identification	Signature	Date

Instructions for Form 2848

(Rev. March 2004)



Power of Attorney and Declaration of Representative

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

General Instructions

What's New

Revocation of an existing power of attorney. The instructions have been revised to allow representatives to use the same procedures as taxpayers for revoking an existing power of attorney. See **Revocation of Power of Attorney/Withdrawal of Representative** on page 2.

Authorization to file Form 2848 electronically. Your representative may be able to file Form 2848 with the IRS electronically. PIN number boxes have been added to the taxpayer's signature section. Entering a PIN number will give your representative authority to file Form 2848 electronically using the PIN number as the electronic signature. You can use any five digits other than all zeros as a PIN number. You may use the same PIN number that you used on other filings with the IRS. See **Where To File** below if completing Form 2848 only for this purpose.

Use of Form 2848 is limited to appointing a representative. If the representative you appoint is not qualified to sign Part II of this form, Form 2848 will not be honored and will be returned to you. As of March 2004, the IRS will no longer treat such invalid forms as authority for the person you named to receive your tax information.

Purpose of Form

Use Form 2848 to authorize an individual to represent you before the IRS. The individual you authorize must be a person eligible to practice before the IRS. The eligible individuals are listed in **Part II, Declaration of Representative, items a-h**. You may authorize a student who works in a Qualified Low Income Taxpayer Clinic (QLITC) or Student Tax Clinic Program (STCP) to represent you under a special order issued by the Office of

Professional Responsibility. See page 3. Your authorization of a qualifying representative will also allow that individual to receive and inspect your confidential tax information. See the instructions for line 7 on page 4.

Use **Form 8821, Tax Information Authorization**, if you want to authorize an individual or organization to receive or inspect your confidential tax return information, but do not want to authorize the individual or organization to represent you before the IRS.

Use **Form 56, Notice Concerning Fiduciary Relationship**, to notify the IRS of the existence of a fiduciary relationship. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer, not as a representative. If a fiduciary wishes to authorize an individual to represent or perform certain acts on behalf of the entity, then a power of attorney must be filed and signed by the fiduciary who is acting in the position of the taxpayer.

Where To File

Generally, mail or fax Form 2848 directly to the IRS. See the **Where To File Chart** below. Exceptions are listed below.

- If Form 2848 is for a specific use, mail or fax it to the office handling the specific matter. For more information on specific use, see the instructions for line 4 on page 3.
- If you complete Form 2848 only for the purpose of electronic signature authorization, **do not** file Form 2848 with the IRS. Instead, give it to your representative, who will retain the document.

Authority Granted

This power of attorney authorizes the representative to perform any and all acts you can perform, such as signing consents extending the time to assess tax, recording the interview, or executing waivers agreeing to a tax adjustment.

Also, you may authorize your representative to substitute another representative or delegate authority to another representative by adding this authority in the space provided on line 5. However, authorizing someone as your power of attorney does not relieve you of your tax obligations.

The power to sign tax returns can be granted only in limited situations. See the instructions for line 5 on page 3.

Unenrolled Return Preparer

An unenrolled return preparer is an individual other than an attorney, CPA, enrolled agent, or enrolled actuary who prepares and signs a taxpayer's return as the preparer, or who prepares a return but is not required (by the instructions to the return or regulations) to sign the return.

An unenrolled return preparer is permitted to represent you only before customer service representatives, revenue agents, and examination officers, with respect to an examination regarding the return he or she prepared.

- An unenrolled return preparer **cannot**:
- Represent a taxpayer before other offices of the IRS, such as Collection or Appeals. This includes the Automated Collection System (ACS) unit.
 - Execute closing agreements.
 - Extend the statutory period for tax assessments or collection of tax.
 - Execute waivers.
 - Execute claims for refund.
 - Receive refund checks.

For more information, see Rev. Proc. 81-38, printed as **Pub. 470, Limited Practice Without Enrollment**.

If the unenrolled return preparer does not meet the requirements for limited representation, you may file Form 8821, which will authorize the unenrolled return preparer to inspect and/or receive your taxpayer information, but will not authorize the unenrolled return preparer to represent you. See Form 8821.

Revocation of Power of Attorney/ Withdrawal of Representative

If you want to revoke an existing power of attorney and do not want to name a new representative, or if a representative wants to withdraw from representation, send a copy of the previously executed power of attorney to the IRS, using the **Where To File Chart** on page 1. The copy of the power of attorney must have a current signature of the taxpayer if the taxpayer is revoking, or the representative if the representative is withdrawing, under the original signature on line 9. Write "REVOKE" across the top of Form 2848. If you do not have a copy of the power of attorney you want to revoke or withdraw, send a statement to the IRS. The statement of revocation or withdrawal must indicate that the authority of the power of attorney is revoked, list the tax matters, and must be signed and dated by the taxpayer or representative. If the taxpayer is revoking, list the name and address of each recognized representative whose authority is revoked. If the representative is withdrawing, list the name, TIN, and address (if known) of the taxpayer.

To revoke a specific use power of attorney, send the power of attorney or statement of revocation/withdrawal to the IRS office handling your case, using the above instructions.

Substitute Form 2848

If you want to prepare and use a substitute Form 2848, see **Pub. 1167, General Rules and Specifications for Substitute Forms and Schedules**. If your substitute Form 2848 is approved, the form approval number must be printed in the lower left margin of each substitute Form 2848 you file with the IRS.

Additional Information

Additional information concerning practice before the IRS may be found in:

- **Pub. 216, Conference and Practice Requirements and Treasury Department Circular No. 230.**

For general information about taxpayer rights, see **Pub. 1, Your Rights as a Taxpayer**.

Specific Instructions

Part I. Power of Attorney

Line 1. Taxpayer Information

Individuals. Enter your name, social security number (SSN), individual taxpayer identification number (ITIN), and/or employer identification number (EIN), if applicable, and your street address or post office box. **Do not** use your representative's address or post office box for your own. If a joint return is, or will be, filed and you and your spouse are designating the same representative(s), also enter your spouse's name and SSN or ITIN, and your spouse's address if different from yours.

Corporations, partnerships, or associations. Enter the name, EIN, and business address. If this form is being prepared for corporations filing a consolidated tax return (Form 1120), do not attach a list of subsidiaries to this form. Only the parent corporation information is required on line 1. Also, for line 3 only list Form 1120 in the Tax Form Number column. A subsidiary must file its own Form 2848 for returns that must be filed separately from the consolidated return, such as **Form 720, Quarterly Federal Excise Tax Return**, and **Form 941, Employer's Quarterly Federal Tax Return**.

Employee plan. Enter the plan name, EIN of the plan sponsor, three-digit plan number, and business address of the sponsor.

Trust. Enter the name, title, and address of the trustee, and the name and EIN of the trust.

Estate. Enter the name, title, and address of the decedent's executor/personal representative, and the name and identification number of the estate. The identification number for an estate includes both the EIN, if the estate has one, and the decedent's SSN or ITIN.

Line 2. Representative(s)

Enter your representative's full name. Only individuals may be named as representatives. Use the identical full name on all submissions and correspondence. If you want to name more than three representatives, indicate so on this line and attach an additional Form(s) 2848.

Enter the nine-digit CAF number for each representative. If a CAF number has not been assigned, enter "None," and the IRS will issue one directly to your representative. The CAF number is a unique nine-digit identification number (not the SSN, EIN, PTIN, or enrollment card number) that the IRS assigns to representatives. The CAF number is not an indication of authority to practice. The representative should use the assigned CAF number on all future powers of attorney. CAF numbers will not be assigned for employee plans and exempt organizations application requests.

Check the appropriate box to indicate if either the address, telephone number, or fax number is new since a CAF number was assigned.

If the representative is a former employee of the Federal Government, he or she must be aware of the postemployment restrictions contained in 18 U.S.C. 207 and in Treasury Department Circular No. 230, section 10.25. Criminal penalties are provided for violation of the statutory

Where To File Chart

IF you live in...	THEN use this address...	Fax number*
Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, or West Virginia	Internal Revenue Service Memphis Accounts Management Center 5333 Getwell Road Stop 8423 Memphis, TN 38118	901-546-4115
Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, or Wyoming	Internal Revenue Service Ogden Accounts Management Center 1973 N. Rulon White Blvd. Mail Stop 6737 Ogden, UT 84404	801-620-4249
All APO and FPO addresses, American Samoa, nonpermanent residents of Guam or the Virgin Islands**, Puerto Rico (or if excluding income under Internal Revenue Code section 933), a foreign country: U.S. citizens and those filing Form 2555, 2555-EZ, or 4563.	Internal Revenue Service Philadelphia Accounts Management Center 11601 Roosevelt Blvd. DPSW 312 Philadelphia, PA 19255	215-516-1017

* These numbers may change without notice.

**Permanent residents of Guam should use Department of Taxation, Government of Guam, P.O. Box 23607, GMF, GU 96921; permanent residents of the Virgin Islands should use: V.I. Bureau of Internal Revenue, 9601 Estate Thomas Charlotte Amalie, St. Thomas, V.I. 00082.

restrictions, and the Office of Professional Responsibility is authorized to take disciplinary action against the practitioner.

Students in QLITCs and the STCP. If the lead attorney or CPA will be listed as a representative, list the lead attorney or CPA first on line 2, then the student on the next line. Also see page 4 for how to complete Part II.

Line 3. Tax Matters

Enter the type of tax, the tax form number, and the year(s) or period(s) in order for the power of attorney to be valid. For example, you may list "Income tax, Form 1040" for calendar year "2003" and "Excise tax, Form 720" for the "1st, 2nd, 3rd, and 4th quarters of 2003." For multiple years, you may list "2001 through (thru or a dash (-)) 2003" for an income tax return; for quarterly returns, list "1st, 2nd, 3rd, and 4th quarters of 2001 through 2002" (or 2nd 2002 - 3rd 2003). For fiscal years, enter the ending year and month, using the YYYYMM format. Do not use a general reference such as "All years," "All periods," or "All taxes." Any power of attorney with a general reference will be returned. Representation can only be granted for the years or periods listed on line 3.

You may list any tax years or periods that have already ended as of the date you sign the power of attorney. However, you may include on a power of attorney only future tax periods that end no later than 3 years after the date the power of attorney is received by the IRS. The 3 future periods are determined starting after December 31 of the year the power of attorney is received by the IRS. You must enter the type of tax, the tax form number, and the future year(s) or period(s). If the matter relates to estate tax, enter the date of the decedent's death instead of the year or period.

If the type of tax, tax form number, or years or periods does not apply to the matter (i.e., representation for a penalty or filing a ruling request or determination), specifically describe the matter to which the power of attorney pertains and enter "Not Applicable" in the appropriate column(s).

Civil penalty representation (including the trust fund recovery penalty). Forms 2848 for civil penalty issues will now be recorded on the CAF. Generally, this applies to non-return related civil penalties, such as the penalty for not meeting the due diligence requirement for return preparers of earned income credit and the penalty for failure to file information returns. For example, Joann prepares Form 2848 authorizing Margaret to represent her before the IRS regarding the penalty for failure to file information returns. Margaret will have authority to represent Joann for all non-return related civil penalties. However, Margaret will not be able to represent Joann for any other tax matters, such as Form 941 or Form 1040 issues unless authorized on Form 2848.

Representation for return related civil penalties, such as the accuracy-related penalty or the failure to file penalty is included when representation is authorized for the related tax return. For example, Diana prepares Form 2848 authorizing Susan to represent Diana for an examination of her 2001 and 2002 Form 1040. If the accuracy-related penalty is proposed by the IRS during the examination, Susan would be authorized to discuss the penalty with the IRS.

How to complete line 3. On line 3, enter "Civil penalties" in the type of tax column and the year(s) to which the penalty applies in the year(s) or period(s) column. Enter "Not Applicable" in the tax form number column. You do not have to enter the specific penalty.

Line 4. Specific Uses Not Recorded on CAF

Generally, the IRS records powers of attorney on the CAF system. However, a power of attorney will not be recorded

on the CAF if it does not relate to a specific tax period (except for civil penalties) or if it is for a specific issue. Examples of specific issues include but are not limited to the following:

- Requests for a private letter ruling or technical advice,
- Applications for an EIN,
- Claims filed on Form 843, Claim for Refund and Request for Abatement,
- Corporate dissolutions, and
- Requests to change accounting methods or periods.

Check the box on line 4 if the power of attorney is for a use that will not be listed on the CAF. If the box on line 4 is checked, the representative should mail or fax the power of attorney to the IRS office handling the matter. Otherwise, the representative should bring a copy of the power of attorney to each meeting with the IRS.

A specific-use power of attorney will not revoke any prior powers of attorney.

Line 5. Acts Authorized

Use line 5 to modify the acts that your named representative(s) can perform. In the space provided, describe any specific additions or deletions. For example, the representative's authority to substitute another representative or to delegate authority must be specifically stated by you on line 5.

Disclosure of returns to a third party. A representative cannot execute consents that will allow the IRS to disclose your tax return or return information to a third party unless this authority is specifically delegated to the representative on line 5.

Authority to sign your return. Regulations section 1.6012-1(a)(5) permits another person to sign a return for you **only** in the following circumstances:

- (a) Disease or injury,
- (b) Continuous absence from the United States (including Puerto Rico), for a period of at least 60 days prior to the date required by law for filing the return, or
- (c) Specific permission is requested of and granted by the IRS for other good cause.

Authority to sign your income tax return may be granted to (1) your representative or (2) an agent (a person other than your representative).

Authorizing your representative. Write a statement on line 5 that you are authorizing your representative to sign your income tax return pursuant to Regulations section 1.6012-1(a)(5) by reason of *enter the specific reason listed under (a), (b), or (c) under Authority to sign your return above*.

Authorizing an agent. To authorize an agent you must do **all four** of the following.

1. Complete lines 1-3.
2. Check the box on line 4.
3. Write the following statement on line 5:

"This power of attorney is being filed pursuant to Regulations section 1.6012-1(a)(5), which requires a power of attorney to be attached to a return if a return is signed by an agent by reason of *enter the specific reason listed under (a), (b), or (c) under Authority to sign your return above*. No other acts on behalf of the taxpayer are authorized."

4. Sign and date the form. See the instructions for line 9 for more information on signatures. The agent **does not** complete Part II of Form 2848.

Tax matters partner. The tax matters partner (TMP) (as defined in section 6231(a)(7)) is authorized to perform various acts on behalf of the partnership. The following are examples of acts performed by the TMP that **cannot** be delegated to the representative:

- Binding nonnotice partners to a settlement agreement under section 6224 and, under certain circumstances,

binding all partners to a settlement agreement under Tax Court Rule 248 and

- Filing a request for administrative adjustment on behalf of the partnership under section 6227.

Line 6. Receipt of Refund Checks

If you want to authorize your representative to receive, but not endorse, refund checks on your behalf, you must initial and enter the name of that person in the space provided. Treasury Department Circular No. 230, section 10.31, prohibits an attorney, CPA, or enrolled agent, any of whom is an income tax return preparer, from endorsing or otherwise negotiating a tax refund check that is not issued to him or her.

Line 7. Notices and Communications

Original notices and other written communications will be sent to you and a copy to the first representative listed. If you check:

- **Box (a).** The original will be sent to you and copies to the first two listed representatives.
- **Box (b).** The original will be sent to you. No copies will be sent to any representatives.

Line 8. Retention/Revocation of Prior Power(s) of Attorney

If there is any existing power(s) of attorney that you **do not** want to revoke, check the box on this line and attach a copy of the power(s) of attorney. The filing of a Form 2848 will **not** revoke any Form 8821 that is in effect.

Line 9. Signature of Taxpayer(s)

Individuals. You must sign and date the power of attorney. If a joint return has been filed and both husband and wife will be represented by the same individual(s), both must sign the power of attorney. However, if a joint return has been filed and the husband and wife will be represented by different individuals, each spouse must execute his or her own power of attorney on a separate Form 2848.

Corporations or associations. An officer having authority to bind the taxpayer must sign.

Partnerships. All partners must sign unless one partner is authorized to act in the name of the partnership. A partner is authorized to act in the name of the partnership if, under state law, the partner has authority to bind the partnership. A copy of such authorization must be attached. For purposes of executing Form 2848, the TMP is authorized to act in the name of the partnership. However, see **Tax matters partner** on page 3. For dissolved partnerships, see Regulations section 601.503(c)(6).

All others. If the taxpayer is a dissolved corporation, decedent, insolvent, or a person for whom or by whom a fiduciary (a trustee, guarantor, receiver, executor, or administrator) has been appointed, see Regulations section 601.503(d).

Part II. Declaration of Representative

The representative(s) you name must sign and date this declaration and enter the designation (i.e., items a-h) under which he or she is authorized to practice before the IRS. In addition, the representative(s) must list the following in the "Jurisdiction/Identification" column:

- a Attorney—Enter the two-letter abbreviation for the state (e.g., "NY" for New York) in which admitted to practice.
- b Certified Public Accountant—Enter the two-letter abbreviation for the state (e.g., "CA" for California) in which licensed to practice.
- c Enrolled Agent—Enter the enrollment card number issued by the Office of Professional Responsibility.

d Officer—Enter the title of the officer (e.g., President, Vice President, or Secretary).

e Full-Time Employee—Enter title or position (e.g., Comptroller or Accountant).

f Family Member—Enter the relationship to taxpayer (must be a spouse, parent, child, brother, or sister).

g Enrolled Actuary—Enter the enrollment card number issued by the Joint Board for the Enrollment of Actuaries.

h Unenrolled Return Preparer—Enter the two-letter abbreviation for the state (e.g., "KY" for Kentucky) in which the return was prepared and the year(s) or period(s) of the return(s) you prepared.

Students in QLITCs and the STCP. Complete Part II as follows:

1. In the Designation column, enter "Special Orders."
2. In the Jurisdiction column, enter "QLITC" or "STCP."
3. Sign and date Form 2848. Be sure to attach a copy of the letter from the Office of Professional Responsibility authorizing practice before the IRS.



Any individual may represent an individual or entity before personnel of the IRS when such representation occurs outside the United States. Individuals acting as representatives must sign and date the declaration; leave the Designation and Jurisdiction columns blank. See section 10.7(c)(1)(vii) of Circular 230.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Form 2848 is provided by the IRS for your convenience and its use is voluntary. If you choose to designate a representative to act on your behalf, under section 6109, you must disclose your SSN, ITIN, or EIN. The principal purpose of this disclosure is to secure proper identification of the taxpayer. We need this information to gain access to your tax information in our files and properly respond to any request. If you do not disclose this information, the IRS may suspend processing of the power of attorney and may not be able to honor your power of attorney until you provide the number.

We may disclose this information to Department of Justice for civil or criminal litigation. We may also disclose this information to other countries under a tax treaty, or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism. The authority to disclose information to combat terrorism expired on December 31, 2003. Legislation is pending that would reinstate this authority.

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.

The time needed to complete and file Form 2848 will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 6 min.; **Learning about the law or the form**, 31 min.; **Preparing the form**, 26 min.; **Copying and sending the form to the IRS**, 34 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 2848 simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send Form 2848 to this address. Instead, see the **Where To File Chart** on page 1.

Through the TEB Web site www.irs.gov/bonds, you can access tax-exempt bond-related materials and information on TEB programs and services including:

- IRS news releases, publications, notices and announcements
- basic and advanced student text for training purposes
- articles (on technical topics, best practices, compliance initiatives and current developments) issued as part of our continuing professional education (CPE) technical instruction program
- the tax-exempt bonds tax kit that includes return and election forms and instructions; IRM materials; Treasury regulations; and revenue procedures, all of which relate specifically to tax-exempt bonds
- private letter rulings and memoranda that are taxpayer-specific rulings furnished by the IRS in response to requests made by taxpayers and/or Service officials
- information about TEB voluntary closing agreement program

In addition to these materials, the TEB staff is available to provide outreach and educational services relating to tax exempt bonds. Services may include delivering speeches, participating in panel discussions, conducting training sessions, and assisting in preparation of newsletter articles. The Web site posts contacts, email addresses, and telephone numbers for personal assistance.