

SUPPORTING STATEMENT  
FI-7-94 and FI-36-92

. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 148 of the Internal Revenue Code requires issuers of tax-exempt bonds to rebate certain arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Under FI-36-92, issuers are required to file a Form 8038-T and remit the rebate. Issuers are also required to keep records of certain interest rate hedges so that the hedges are taken into account in determining arbitrage profits. Under FI-7-94, the scope of interest rate hedging transactions covered by the arbitrage regulations was broadened by requiring that hedges entered into prior to the sale date of the bonds are covered as well.

. USE OF DATA

The data is used by the IRS to verify that issuers of tax-exempt bonds are properly associating an interest rate hedging transaction with an issue of tax-exempt bonds for purposes of the arbitrage restrictions.

. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5 METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6 CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

The notice of proposed rulemaking was published in the **Federal Register** on November 6, 1992. A public hearing was held on February 2, 1993. After consideration of the comments, the proposed regulations were modified and adopted in final form. The final regulations (58 FR 33510) were published in the **Federal Register** on June 18, 1993. FI-7-94 amended section 1.148-4 in a notice of proposed rulemaking (59 FR 24094) and temporary regulation (59 FR 24039) in the **Federal Register** on May 10, 1994. The final regulations for FI-7-94 were published in the **Federal Register** on May 9, 1997 (62 FR 25502).

We received no comments during the comment period in response to the **Federal Register** notice dated March 19, 2009 (74 FR 11815).

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

FI-36-92:

Section 1.148-3(g) of the regulations requires issuers to file Form 8038-T with their rebate payments. The burden of this requirement is reflected on Form 8038-T.

Section 1.148-2(b)(2) permits an issuer to certify its reasonable expectations regarding the use of bond proceeds. The total burden for this requirement is estimated to be 4,500 hours, based on 3,000 recordkeepers and 1.5 hours per record.

In addition, issuers must prepare and maintain written statements in accordance with

section 1.148-1(d) for various elections provided in the following sections:

Section 1.148-7(f)(2) permits an issuer to use an "actual fact" analysis rather than one based on reasonable expectations for some purposes. The total burden for this requirement is estimated to be 4,500 hours, based on 3000 recordkeepers and 1.5 hours per record.

Section 1.148-7(i)(2) permits an issuer to elect to exclude earnings on a reasonably required reserve or replacement fund from the definition of available construction proceeds. The total burden for this requirement is estimated to be 4,500 hours, based on 3,000 recordkeepers and 1.5 hours per record.

Section 1.148-7(j) permits an issuer to elect to treat the different purposes of a multipurpose issue as separate issues for purposes of the 2-year exception. The total burden for this requirement is estimated to be 4,500 hours, based on 3,000 recordkeepers and 1.5 hours per record.

Section 1.148-7(k) permits the issuer to elect to pay a penalty in lieu of arbitrage rebate. The total burden for this requirement is estimated to be 4,500 hours, based on 3,000 recordkeepers and 1.5 hours per record.

Section 1.148-7(l) permits an issuer to elect to terminate application of the penalty provision. The total burden for this requirement is estimated to be 4,500 hours, based on 3,000 recordkeepers and 1.5 hours per record.

Section 1.148-7(b)(6)(ii) permits an issuer to elect to treat each loan of a pooled financing issue as a separate issue for purposes of applying the spending exception. The total burden for this requirement is estimated to be 4,500 hours, based on 3,000 recordkeepers and 1.5 hours per record.

Section 1.148-11(b) permits issuers to elect to apply certain provisions of the regulation before the effective date. The total burden for this requirement is estimated to be 4,500 hours, based on 3,000 recordkeepers and 1.5 hours per record.

FI-7-94:

Sections 1.148-4(h)(2)(viii) and 1.148-4(h)(5)(iv) permit an issuer of tax-exempt bonds to identify a hedge so that the hedge may be included in yield calculations, which are necessary to compute arbitrage profits. Under this regulation, hedges can be entered into prior to the sale date. The total burden for this requirement is estimated to be 6,000 hours, based on 3,000 recordkeepers and 2 hours per recordkeeper.

Section 1.150-1(c)(4)(iii) permits an issuer to elect to treat certain bonds secured by a pledge of the issuer's full faith and credit as part of the same issue. The election must be

made in writing and should be kept with the bond documents. The burden for this requirement is estimated to be 50 hours, based on 100 recordkeepers and .5 hour per record.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated March 19, 2009 (74 FR 11815), requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## OMB EXPIRATION DATE

We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes supplies owned by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval expiration date. This form may be privately printed by users at their own expense. Some businesses print complex and expensive marginally punched continuous versions, their expense, for use in their computers. The form may be printed by commercial printers and stocked for sale. In such cases, printing the expiration date on the form could result in extra costs to the users.

Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.