

Instructions for Form 8038-B



Department of the Treasury
Internal Revenue Service

(Rev. January 2010)

DRAFT

Information Return for Build America Bonds and Recovery Zone Economic Development Bonds

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

General Instructions

What's New

The American Recovery and Reinvestment Act of 2009 created three types of Build America Bonds. Section 54AA added both Tax Credit and Direct Pay Build America Bonds. Section 1400U-2 added Recovery Zone Economic Development Bonds, a form of Direct Pay Build America Bonds. Notice 2009-26 required that, subject to updated IRS information reporting forms or procedures, all three types of Build America Bonds issued were to be reported on Form 8038-G.

Purpose of Form

Beginning January 1, 2010, Form 8038-B is to be used by issuers of Build America Bonds (Tax Credit) and Build America Bonds (Direct Pay) and Recovery Zone Economic Development Bonds to provide the IRS with the information required by section 149(e).

Who Must File

Governmental issuers of Build America Bonds and Recovery Zone Economic Development Bonds must file a separate Form 8038-B for each issue of Build America Bonds and Recovery Zone Economic Development Bonds issued after January 1, 2010.

When To File

File Form 8038-B on or before the 15th day of the 2nd calendar month after the close of the calendar quarter in which the bond was issued. Form 8038-B may not be filed before the issue date and must be completed based on the facts as of the issue date. For Build America Bonds (Direct Pay) and for Recovery Zone Economic Development Bonds, Form 8038-B must be filed at least 30 days prior to the submission of the first Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds, that is filed to request payment with respect to an interest payment date for that issue.

Late filing An issuer may be granted an extension of time to file Form 8038-B under Section 3 of Rev. Proc. 2002-48, 2002-37 I.R.B. 531, 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, "Request for Relief under Section 3 of Rev. Proc. 2002-48", and attach a letter explaining why Form 8038-B 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.

Note. If Form 8038-B is filed late, it still must be filed 30 days prior to the submission of the first 8038-CP for that issue.

Where To File

File Form 8038-B and any attachments with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0020.

Other Forms That May Be Required

For issuers who elect under section 6431 to receive a direct payment from the Federal Government equal to a percentage of the interest payment, the payment must be requested on Form 8038-CP. Each Form 8038-CP can only relate to the interest paid on a single bond issue.

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal Government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

Rounding to Whole Dollars

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

Definitions

Build America Bond (Tax Credit). This is an issue of taxable state or local governmental bonds (excluding private activity bonds under section 141) as defined in section 54AA(d) that provide a tax credit to the holder of the bond.

Build America Bond (Direct Pay). This is an issue of taxable state or local governmental bonds (excluding private activity bonds under section 141) as defined in section 54AA(g) the issuer of which elects to receive a refundable credit under section 6431 in lieu of tax credits to the holder of the bond.

Recovery Zone Economic Development Bond. This is an issue of taxable state or local governmental bonds that meet the requirements under section 1400U-2 that may be used to finance certain qualified economic development purposes as defined under section

1400U-2(c) the issuer of which receives a refundable credit under section 6431.

Arbitrage rebate. The issuer of a Build America Bond or Recovery Zone Economic Development Bond must rebate to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

Gross proceeds. Gross proceeds means any proceeds and replacement proceeds of an issue as defined under Regulations section 1.148-1(b).

Sale proceeds. Sale proceeds are determined under Regulations section 1.148-1(b) as any amount actually or constructively received from the sale of the issue, including amounts used to pay underwriters' discount or compensation and accrued interest, other than pre-issuance accrued interest. Sale proceeds also include, but are not limited to, amounts derived from the sale of a right that is associated with a bond, and that is described in Regulations section 1.148-4(b)(4). Sale proceeds shall also include the proceeds from the sale of credit strips. See Regulations section 1.148-4(h)(5) treating amounts received upon the termination of certain hedges as sale proceeds.

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

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.

Specific Instructions

Part I—Reporting Authority

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

DRAFT

reason for the amended return and write across the top, "Amended Return Explanation."

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. For a lease or installment sale, the issuer is the lessee or the purchaser.

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 website 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. Enter two self-designated digits after the preprinted 3. If filing multiple Form 8038-Bs for separate bond issues during the calendar year, number reports consecutively in the order of issue date (for example, 314, 315, etc.). If the return is amending a previously filed Form 8038-B, use the same report number that was used on the original filing.

Line 7. The date of issue is generally the date on which the issuer exchanges the bonds for the underwriter's (or other purchaser's) funds. For a lease or installment sale, enter the date interest starts to accrue.

Line 8. If there is no name of the issue, please provide other identification of the issue.

Line 9. Enter the CUSIP (Committee on Uniform Securities Identification Procedures) number of each bond. If some or all of the tax credits are stripped, attach a schedule with the name of each purchaser of the tax credit bonds or tax credit strips, each purchaser's EIN and the CUSIP numbers associated with the bonds and the stripped tax credits. If the issue does not have a CUSIP number, write, "None". If the issue either has no CUSIP number or is privately placed, attach a schedule with each purchaser's EIN, name, and address.

Part II—Types of Bonds



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

Line 1. You must identify the type of bonds issued by checking the corresponding box. If box 1b or 1c is checked, complete lines 2 and 3.

Line 2. Enter the first interest payment date. An interest payment date is the date on which interest is payable by the governmental issuer to the holders of the bonds. (For variable rate issues, enter the last interest payment date applicable to the quarterly period for which the first 8038-CP for the issue will relate.)

Part III—Type of Issue

Line 1. For Build America Bonds identify the type of issue and enter the issue price allocable to each type of project expenditure.

Line 2. For Recovery Zone Economic Development Bonds identify the type of issue and enter the issue price allocable to each type of expenditure.

Lines 3. See *Issue Price* under *Definitions* on page 1. For Build America Bonds, the amounts under Line 1a through 1h, or for Recovery Zone Economic Development Bonds, the amounts under Line 2a through 2d, must total the issue price of the entire issue entered in Line 3. In addition, issuers of Build America Bonds (Direct Payment) and Recovery Zone Economic Development Bonds must attach a schedule to the Form 8038-B which contains the information described below for the bond issue:

1. For fixed-rate bonds, attach a complete debt service schedule titled "Fixed Rate Bond-Debt Service Schedule" that provides a list of each interest payment date, the total interest payable on such date, the total principal amount of bonds expected to be outstanding on such date, the credit payment expected to be requested from the IRS on such date, and the earliest date that the bonds can be called.

2. For variable rate bonds, attach a debt service schedule titled "Variable Rate Bond-Debt Service Schedule" that provides a list of each interest payment date, the total principal amount of bonds expected to be outstanding on such date, and a description of how interest on the bonds is computed.

Line 4. If obligations are Tax Anticipation Notes (TANS) or Revenue Anticipation Notes (RANS), check box 4a. Check this box if property other than cash is exchanged for the obligation, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease".) Also check this box if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal. Do not check this box if the proceeds of the obligation are received in the form of cash, even if the term "lease" is used in the title of the issue.

Line 5. Check this box if property other than cash is exchanged for the obligation, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease".) Also check this box if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal. **Do not** check this box if the proceeds of the obligation are received in the form of cash, even if the term "lease" is used in the title of the issue.

Part IV—Description of Obligations

Line 1. 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 a lease or installment sale, write "N/A".

Line 2. Enter the last date on which any of the bonds will mature.

Line 3. 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 Part III, Line 3.) For a lease or installment sale, enter instead the total number of years the lease or installment sale will be outstanding.

Line 4. The yield is generally 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 issue 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 (for example, 5.3125%). If reporting Build America Bonds (Direct Pay) or Recovery Zone Economic Development Bonds the yield is reduced by the amount of credit payments received under section 6431. If the issue is a lease or installment sale, enter the effective rate of interest being paid.

Part V—Use of Proceeds of Issue

For a lease or installment sale, write "N/A" in the space to the right of the title for Part V.

Line 1. See *Sale Proceeds* under *Definitions* on page 1.

Line 2. Estimate reasonably expected investment proceeds on the sales proceeds in Line 1.

Line 3. 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 4. Enter the amount of the proceeds that will be used to pay bond issuance costs, including underwriter's fees, fees for trustees, and bond counsel.

Note. Costs of issuance are limited to not more than 2 percent of sale proceeds for Build America Bonds (Direct Pay) and Recovery Zone Economic Development Bonds.

Line 5. 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), for example, bond insurance premiums and certain fees for letters of credit.

Line 6. Enter the amount of the proceeds that will be allocated to a reasonably required reserve fund. See funding limitations for such a reserve under Regulations section 1.148-2(f).

Line 9. Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds within 90 days of the date of issue.

Note. This applies only to Build America Bonds (Tax Credit).

Line 10. Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds after 90 days of the date of issue, including proceeds that will be used to fund an escrow account for this purpose.

Note. This applies only to Build America Bonds (Tax Credit).

Part VI— Description of Refunded Bonds

Complete this part only if the bonds are to be used to refund a prior issue of governmental bonds.

Note. Pursuant to Notice 2009-26, and Notice 2009-50, refinancing of certain short term indebtedness with Build America Bonds (Direct Pay), and Recovery Zone Economic Development Bonds is not treated as a refunding.

Lines 1 and 2. The remaining weighted average maturity is determined without regard to the refunding. The weighted average maturity is determined in the same manner as for Part IV, Line 3.

Line 3. Enter the last date on which any of the bonds being refunded will be called.

Line 4. If more than a single issue of bonds will be refunded, enter the date of issue of each of the issues to be refunded on a schedule.

Part VII—Miscellaneous

Line 1. Enter the amount of volume cap allocated to the issue of Recovery Zone Economic Development Bonds. Attach a copy of the certification of the volume cap allocation by the state, county, or large municipality. Also attach a copy of the certification of the Recovery Zone designation by the issuer. Failure to attach the required certifications will delay the processing of this return.

Line 2. See *Gross Proceeds* under *Definitions* on page 1. If any portion of the gross proceeds of the issue is or will be invested in a guaranteed investment contract, as defined in Regulations section 1.148-1(b), enter the amount of the gross proceeds so invested, as well as the final maturity date of the guaranteed investment contract and the name of the provider of such contract.

Line 3. Enter the amount of proceeds of this issue used to fund a loan to another governmental unit.

Line 4. If this issue is a loan of proceeds from another governmental issue, check box 4a and enter the date of issue, EIN, and name of the issuer of the master pool obligation.

Line 5. 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 require an issuer of bonds to identify a hedge in order for it to be included in bond yield calculations for purposes of section 148.

Line 6. In determining if the issuer has super-integrated a hedge, apply the rules of Regulations section 1.148-4(h)(4). If the hedge is super-integrated, check the box.

Line 7. Check this box if the issue is a construction issue as defined in Regulations section 1.148-7(f) 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 8. An issue is an issue of private activity bonds if the issuer takes a deliberate action defined in Regulations section 1.141-2(d)(3) as any action taken by the issuer that is within its control, regardless of whether such act was intended to violate the private business use test or the private loan financing test. Regulations section 1.148-12 sets forth certain remedial actions that prevent a deliberate action with respect to property financed by an issue from causing that issue to meet the private business use test or the private loan financing test. Check the box if the issuer has established procedures to ensure remedial action with respect to all nonqualified bonds in accordance with Regulations section 1.141-12.

Line 9. Check the box if the issuer has established procedures to monitor compliance with the arbitrage, yield restriction, and rebate requirements of section 148.

Part VIII— Consent to Disclosure of Certain Information From This Return

Line 1. If the issuer of a Build America Bond (Tax Credit) consents to the IRS’s

publication, through a website or other publication, of its name and address, name and description of the bond issue, date of issuance, CUSIP number, final maturity date, and stated redemption price at maturity, in order to assist the IRS in the proper reporting of interest, tax credits or other benefits under section 6049, and the regulations thereunder, check the box next to “YES” on Line 1.

Signature

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

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. You are required to give us the information. We need it to ensure that you are complying with these laws. Section 6109 requires paid preparers to provide their identifying number.

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	x hr., xx min.
Learning about the law or the form	xx min.
Preparing, copying, assembling, and sending the form to the IRS	xx 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-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File* on page 1.