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Instructions for Form 8038-TC

(Rev. January 2010)



Department of the Treasury
Internal Revenue Service

Information Return for Tax Credit 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 added Qualified School Construction Bonds as well as Qualified Energy Conservation Bonds and consolidated those bonds together with Qualified Forestry Conservation Bonds, Qualified Zone Academy Bonds and New Clean Renewable Energy Bonds under section 54A.

Purpose of Form

Form 8038-TC is used by the issuers of the qualified tax credit bonds listed below under *Who Must File*, to provide the IRS with the information required by section 149(e).

Who Must File

Issuers of the following bonds must file a separate Form 8038-TC for each qualified tax credit bond issued after January 1, 2010.

- Qualified Forestry Conservation Bonds
- Qualified Zone Academy Bonds
- Qualified School Construction Bonds
- Clean Renewable Energy Bonds
- New Clean Renewable Energy Bonds
- Qualified Energy Conservation Bonds
- Midwestern Tax Credit Bonds
- All other qualified tax credit bonds (except Build America Bonds which should be reported on Form 8038-B, Information Return for Build America Bonds and Recovery Zone Economic Development Bonds.)

When To File

File Form 8038-TC 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-TC 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-TC 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." Attach to the Form 8038-TC a letter explaining why Form 8038-TC 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.

Where To File

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

Other Forms That May Be Required

For submitting payment of arbitrage rebate to the Federal Government use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate. For reporting Build America Bonds, both Tax Credit and Direct Pay, including Recovery Zone Economic Development Bonds, use Form 8038-B.

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

Qualified Tax Credit Bond. An obligation issued under sections 54, 54A or 1400N(l) that entitles the taxpayer holding such bond on one or more credit allowance dates occurring during any taxable year to a credit against the federal income tax imposed for that taxable year.

Qualified Forestry Conservation Bond An obligation that is part of an issue 100 percent of the available project proceeds of which are to be used to finance one or more qualified forestry conservation purposes as defined in section 54B.

Qualified Zone Academy Bond. An obligation that is part of an issue 100 percent of the available project proceeds of which are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency as provided in section 54E.

Qualified School Construction Bond. An obligation that is part of an issue 100 percent of the available project proceeds of which are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with the proceeds as set forth in section 54F.

Clean Renewable Energy Bond An obligation that is part of an issue 95 percent or more of the proceeds of which are to be used for capital expenditures incurred by qualified borrowers for one or more eligible clean renewable energy projects as defined in section 54.

New Clean Renewable Energy Bond. An obligation that is part of an issue 100 percent of the available project proceeds of which are to be used for capital expenditures incurred by governmental bodies, public power providers, or cooperative electric companies for one more qualified renewable energy facilities as defined in section 54C.

Qualified Energy Conservation Bond. An obligation that is part of an issue 100 percent of the available project proceeds of which are to be used for one or more qualified energy conservation purposes as defined in section 54D.

Midwestern Tax Credit Bond. An obligation that is part of an issue of bonds issued in connection with Midwestern disaster areas in any state in which a Midwestern disaster area is located. See section 1400N(l) for more information about these requirements.

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 income tax regulations.

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 section 1.148-4(b)(4). Sale proceeds shall also include the proceeds from the sale of credit strips. See also section 1.148-4(h)(5) treating

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amounts received upon the termination of certain hedges as sale proceeds.

Arbitrage. The issuer must comply with the arbitrage requirements of sections 148 and 54A.

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

Line 1. Enter 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 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. After the preprinted 1, enter two self-designated digits. If filing multiple Form 8038-TC's for separate bond issues during the calendar year, number reports consecutively in the order of issue date (for example, 134, 135, etc.). If the return is amending a previously filed Form 8038-TC, 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.

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—Type of Issue

Line 1. Identify the type of tax credit bonds issued by entering the corresponding three digit code as follows:

- 101 - Qualified Forestry Conservation Bonds
- 102 - Qualified Zone Academy Bonds
- 103 - Qualified School Construction Bonds
- 104 - Clean Renewable Energy Bonds
- 105 - New Clean Renewable Energy Bonds
- 106 - Qualified Energy Conservation Bonds
- 107 - Midwestern Tax Credit Bonds
- "Other"

Line 2. Enter title of bond.

Part III—Description of Obligations

Line 1. See Issue price under Definitions on page 1.

Line 2. 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.

Line 3. Enter the last date on which any of the bonds will mature. If more than one maturity, attach a schedule for each principal payment date.

Line 4. The applicable credit rate is the daily rate set by the Secretary under section 54A(b)(3) determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond. Such rate is posted by the Bureau of Public Debt on its internet site for State and Local Government Series securities at <http://www.treasurydirect.gov>. See Notice 2009-15.

Line 5. Enter the maximum term set by the Secretary under section 54A(d)(5) applicable during each calendar month in which the tax credit bonds are sold. The maximum term is posted by the Bureau of Public Debt on its internet site for State and Local Government Series securities at <http://www.treasurydirect.gov>.

Line 6. Enter the applicable maximum permitted yield for the sinking fund expected to be used to repay the issue under section 54A(d)(4)(C). The permitted sinking fund yield is set by the Secretary consistent with the maximum term determined under section 54A(d)(5) and is posted by the Bureau of Public Debt on its internet site for State and Local Government Series securities at <http://www.treasurydirect.gov>.

Part IV—Proceeds of Issue

Line 1. See *Sale proceeds*, under *Definitions* on page 1.

Note. If the bond is stripped at issuance, line 1 must include sale proceeds of the principal and sale proceeds of the credit strips.

Line 2. 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. Bond issuance costs for tax credit bonds issued under section 54A are limited to 2 percent of sale proceeds.

Line 3. Estimate expected investment proceeds on the sale proceeds of the issue, including proceeds received by the issuer from the sale of tax credits that have been stripped from the bonds.

Line 4. For all tax credit bonds issued under section 54A expected available project proceeds shall be calculated by subtracting line 2 from line 1 and adding line 3. For Midwestern Tax Credit Bonds (Code 107) and for Clean Renewable Energy Bonds (Code 104) read line 4 substituting "proceeds" for "available project proceeds" add lines 1 and 3 and enter that amount on line 4.

Note. Do not subtract line 2, bond issuance cost.

Line 5. For Midwestern Tax Credit Bonds, insert the amount of state pledged matching funds.

Line 6. Enter any amount of proceeds not otherwise itemized in lines 1-5 and describe the purpose for which the proceeds are to be used.

Line 7. Total proceeds equal the sum of lines 4 through 6.

Note. For Midwestern Tax Credit Bonds matching pledged funds are included in Total Proceeds for the purpose of determining the percentage of proceeds to be used for qualified purpose expenditures. Thus, for Midwestern Tax Credit Bonds matching pledged funds as well as bond proceeds must be accounted for in Part V. For Qualified Tax Credit Bonds issued under section 54A, lines 4 and 7, available project proceeds and total proceeds respectively, should equal the same amount.

Part V—Description of Use of Proceeds for Qualified Purpose Expenditures

Lines 1 through 13. Enter the dollar amount of proceeds allocated to each qualified purpose expenditure on the corresponding line.

Line 14. Enter total qualified purpose expenditures equal to the sum of amounts entered in lines 1 through line 13.

Line 15. To determine the percentage of total proceeds to be used for qualified purpose expenditures, divide line 14 in Part V. by line 7 in Part IV. Then multiply the result by 100.

Line 16. Determine the proceeds of the issue used to reimburse the issuer for amounts paid for a qualified purpose prior to the issuance of the bonds. See Regulations section 1.150-2.

Line 17. Subject to certain exceptions under Regulations section 1.150-2(f), an issuer must adopt an official intent, as described in Regulations section 1.150-2(e), to reimburse itself for preissuance expenditures within 60 days after payment of the original expenditure. Enter the date the official intent was adopted.

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Part VI— Allocation of National, State, Tribal, or Local Bond Limitation Amount

Line 1a. Enter the amount of volume cap allocated to the issue by bond type. Attach a copy of the national (for example, from the Department of the Treasury or IRS), state, tribal, or local allocations with respect to the issue. Check the tribal box if the allocation is provided by the Department of Interior. Failure to attach the appropriate allocation certification will result in a delay in processing the report. The appropriate officials must certify that the issue has been designated as one or more types of qualified tax credit bonds. In the space in the Part VI. box, enter the year in which the allocation was received and if the allocation is a carryforward of unused volume cap, write “carryforward.”

Lines 1b through 1d. Check the corresponding box indicating whether the allocation is national, state, or tribal. If the allocation is local, write “local” in the box.

Line 2. If the allocation is from a state, enter the state abbreviation.

Part VII— Miscellaneous

Line 1a. Check the box if there is a reserve fund described in section 54A(d)(4)(C) (sinking fund) that is expected to repay the issue at maturity.

Line 1b. A reserve may be funded in unequal periodic installments so long as it is funded no sooner than in equal periodic installments. Check the box if the reserve fund is funded no sooner than in equal periodic payments.

Line 1c. Check the box if the reserve fund is expected to result in an amount greater than the amount necessary to repay the issue and the yield on the reserve fund is not greater than the permitted sinking fund yield (Part III., line 6).

Line 1d. For purposes of monitoring the arbitrage requirements of section 148, such monitoring shall include the arbitrage requirements of section 54A. If the issuer has established such procedures, check the box.

Line 2. The issuer must certify that applicable state and local law requirements governing conflicts of interest are satisfied with respect to the bond issue. See section 54A(d)(6). If these requirements are met, check the box in line 2.

Line 3. If some or all of the tax credits are stripped, check the box.

Note. Submit the information required under Part I., line 9.

Line 4. If an issuer fails to spend 100 percent of the available project proceeds of the issue by the close of the 3-year expenditure period (including any extensions granted), the issuer must redeem all of the nonqualified bonds within 90 days after the end of such expenditure period. See 54A(d)(2)(B). If

the issuer has established procedures to meet this requirement, check the box.

Line 5. “Other” is reserved for future tax credit bonds.

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

Line 1. If the issuer consents to the IRS’s publication, through a website or other publication, of its name and address, name and description of bond issue, date of issuance, CUSIP numbers, final maturity date, stated redemption price at maturity, applicable credit rate and maximum term to assist in the proper reporting of interest, tax credits, or other benefits under section 6049, check the box next to “Yes”.

Signature

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

Schedule A. Qualified Zone Academy Bonds under section 54A and 54E

Part I— Academy Information

Line 1. If the school is located in a designated empowerment zone, check the box.

Line 2. If the school is located in a designated enterprise community, check the box.

Line 4. If for any calendar year the allocation for a state exceeds the amount of bonds issued for such year, the limitation may be carried over but only to the first 2 years following the unused limitation year. Limitation amounts are treated on a first-in, first-out basis. If the bonds or any portion of the bonds are issued under a carryover limitation, check the box.

Part II— Description of the Private Business Contribution.

Lines 1 through 4. In order to be a *qualified zone academy bond* the issuer must certify that it has written assurances that the private business contributions have a present value of not less than 10 percent of the proceeds of the issue. A qualified business contribution is equipment, technical assistance, and services of employees as volunteers, internships, field trips, or other opportunities outside the academy. Additionally, the private business contribution may be met by any other property or service specified by the eligible local education agency. List the dollar amount of each private contribution on the corresponding line.

Line 5. For items not listed in lines 1 through 4, enter the amount contributed on line 5 and provide a description of such contribution.

Part III— Other Information

Line 1. Enter the name of the donor of the private business contribution.

Line 2. Enter the donor’s EIN. (If multiple donors, attach a schedule.)

Line 3. Enter the name of the eligible local educational agency.

Schedule B. Qualified School Construction Bonds under IRC section 54A and 54F

Part I— Use of Allocation

Line 1. A large local educational agency means, with respect to a calendar year, a large local educational agency selected by the Secretary of Education to receive allocations of volume cap for Qualified School Construction Bonds. For Qualified School Construction Bond allocations to large local educational agencies for 2009 see Notice 2009-35. If the proceeds are to be used by a large local educational agency, check “Yes”.

Line 2. Indian schools received separate allocations of \$200,000,000 for calendar years 2009 and \$200,000,000 for calendar year 2010 to be allocated by the Secretary of the Interior for purposes of construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. With respect to the amounts allocated, Indian tribal governments (as defined in section 7701(a)(40)) are qualified issuers. See section 54F(d)(4). If the proceeds are to be used by a school receiving such an allocation, check “Yes”.

Line 3. If for any calendar year, the amount allocated to the state or to the Indian schools exceeds the amount of bonds issued during such year, the excess limitation may be carried over to the succeeding year until used. See section 54F(e). If a carryover of unused allocation is used, check “Yes”.

Line 5. A Qualified School Construction Bond must be designated as such by the issuing state or local government within the jurisdiction that the school is located. See section 54F(a). If these bonds have been so designated check “Yes”.

Part II— Use of Qualified School Construction Bonds Proceeds

Lines 1 through 4. Enter the amount of proceeds expected to be used for each corresponding type of expenditures.

Line 5. For an expenditure not listed in lines 1 through 4, list in line 5 and provide a description of such expenditure.

Part III— Other Information

Line 1. Under 54F(a)(2), the eligible costs of a public schools facility financed with the proceeds of an issue of QSCBs must relate to a public school that is located within the jurisdiction of the issuer of the QSCBs. If the issuer is not the local

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education agency, enter the name of the local education agency in which the public school facility is located. (If the issuer is issuing bonds for more than one public school facility, attach a schedule of each public school facility and each local education agency in which the public school facility is located.)

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.