

Instructions for Form 8038-TC

(Rev. January 2010)



Department of the Treasury
Internal Revenue Service

DRAFT

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
- New Clean Renewable Energy Bonds
- Qualified Energy Conservation Bonds
- Qualified Zone Academy Bonds
- Qualified School Construction Bonds
- Clean Renewable Energy 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.

Private Delivery Services. You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

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 should report the money items 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 or 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 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. This line is for *IRS Use Only*. Do not make any entries in this box.

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 Committee on Uniform Securities Identification Procedures (CUSIP) number of the latest maturity on line 9. Attach a schedule with a complete list of CUSIP numbers for 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 - New Clean Renewable Energy Bonds
- 103 - Qualified Energy Conservation Bonds
- 104 - Qualified Zone Academy Bonds
- 105 - Qualified School Construction Bonds
- 106 - Clean Renewable Energy Bonds
- 107 - Midwestern Tax Credit Bonds
- 108 - 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 a 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 line 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.

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.”

Schedule A. New Clean Renewable Bonds (CREBs) under section 54A and 54C

Part I— Issuer Questions

Line 1. A public power provider is a state utility with a service obligation as such terms are defined in section 217 of the Federal Power Act. If the issuer is a public power provider, check “Yes.”

Line 2. A cooperative electric company is a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(c). If the issuer is a cooperative electric company, check “Yes.”

Line 3. A governmental body is any state or Indian tribal government, or any political subdivision thereof. If the issuer is a governmental body, check “Yes.”

Line 4. A clean renewable energy bond lender is a lender which is a cooperative owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender. If the issuer is a clean renewable energy bond lender, check “Yes.”

Line 5. If the issuer is a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act, check “Yes.”

Line 6. Notice 2009-33 provides that, except in limited circumstances involving reimbursements to which section 54A(d)(2)(D) applies, costs of acquiring

existing facilities generally will be treated as nonqualified costs. If any of the available project proceeds have been used to acquire existing facilities, check “Yes.”

Line 7. Notice 2009-33 provides that refinancing costs (as contrasted with costs of enhancements, repair or rehabilitation of existing facilities), generally will be treated as nonqualified costs. If any of the available project proceeds have been used to refinance existing facilities, check “Yes.”

Line 8. Notice 2009-33 provides that an allocation limitation of new CREB volume cap is valid for 3 years after the date of the letter issuing the allocation (the “allocation date.”) If the allocation date is within 3 years of the issue date, check “Yes.”

Line 9. A new CREB must be designated as such by a qualified issuer. If these bonds have been designated as new CREBs, check “Yes.” See section 54C(a) for more information.

Line 10. For IRS Use Only.

Part III— List of Qualified Renewable Energy Facilities

Line 1. A “Qualified Renewable Energy Facility” means a qualified facility as determined under section 45(d) (without regard to paragraph (8) and (10) and to any placed in service date) owned by a public power provider, a governmental body, or a cooperative electric company. List the type of qualified renewable energy facility to be financed by the bonds, the location of the facility, the owner(s) of the facility, the owner’s EIN and the amount of available project proceeds to be used for that facility. (If more than one facility, attach a schedule.)

Schedule B. Qualified Energy Conservation Bonds (QECBs) under IRC sections 54A and 54D

Part I— Issuer and Project Questions

Line 1. A QECB must be designated as such by the issuing state or local government. See section 54D(a). If these bonds have been designated as QECBs, check “Yes.”

Line 2. Section 54D(e)(B) provides that the amount allocated to a large local government may, if unused, be reallocated by such local government to the state in which such local government is located. If the bonds are issued based on an allocation that has been reallocated from a large local government to a state, check “Yes.”

Line 4. A large local government means any municipality or county if such municipality or county has a population of 100,000 or more. If the issuer is a large local government, check “Yes.”

Line 6. If the issuer issued the bonds based on a volume cap allocation received by another authorized entity (that allocated volume cap to the issue), provide the name of such authorized entity. If more than one authorized entity allocated volume cap to the bond issue, attach a schedule listing the names of, and amount of bonds for, each such authorized entity.

Lines 7 through 10. For IRS Use Only.

Part III— List of Conservation Purposes and Use of Proceeds

Line 1. Eligible issuers of QECBs include states, political subdivisions as defined for purposes of section 103, and entities empowered to issue bonds on behalf of any such entity under rules similar to those for determining whether a bond issued on behalf of a state or political subdivision constitutes an obligation of that State or political subdivision for purposes of section 103 and Regulation section 1.103-1(b). Further, eligible issuers include otherwise eligible issuers in conduit financing issues (as defined in Regulations section 1.150-1(b)). List each type of qualified conservation purpose described under section 54D(f) to be financed by the bonds, the location of the facility (if applicable), and the amount of available project proceeds to be used for each qualified conservation purpose. If the bonds are private activity bonds, provide the name and EIN of the private user(s). (If more than one purpose, facility, owner or user, attach schedule.)

Schedule C. Qualified Zone Academy Bonds (QZABs) under IRC sections 54A and 54D

Part I— Academy and Issuer Information

Line 1. If the school is located in a designated empowerment zone, check “Yes.”

Line 2. If the school is located in a designated enterprise community, check “Yes.”

Line 5. 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 year in which the unused limitation arose. 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 “Yes” and enter the year in which the limitation arose.

Line 7. In order for a bond to be a “qualified zone academy bond,” the issuer must certify that it has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance

of the issue) of not less than 10% of the proceeds of the issue. If the eligible local educational agency that established the qualified zone academy has received such written commitments, check “Yes.”

Line 9. A QZAB must be designated as such by the issuing state or local government within the jurisdiction that the school is located. If these bonds have been designated as QZABs, check “Yes”. See section 54E(a)(3) for more information.

Part II—Description of the Private Business Contribution

Lines 1 through and including 4. Qualified private business contributions under section 54E(d)(4) are: (a) equipment for the use in the qualified zone academy (including state-of-the art technology and vocational equipment); (b) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom; (c) services of employees as volunteer mentors; (d) internships, field trips, or other educational opportunities outside the academy for students, or (e) any other property or service specified by the eligible local education agency. List the value of the dollar amount of each private contribution on the corresponding line.

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

Lines 6 through 10. For IRS Use Only.

Part III—Private Business Contributor

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.)

Schedule D. Qualified School Construction Bonds (QSCBs) under sections 54A and 54F

Part I— Use of Proceeds

Line 1. An Indian school is a school funded by the Bureau of Indian Affairs.

Line 3. A QSCB must be designated as such by the issuing state or local government. See section 54F(a). If these bonds have been designated as QSCBs, check “Yes.”

Lines 8 through 10. For IRS Use Only.

Part III— Issuer Information

Line 1. If the issuer is not the local education agency in the jurisdiction of which the public school facility for which the proceeds will be used is located, enter the name of such local education agency. If the issuer is issuing bonds for more than one local educational agency, attach a schedule listing the names of, and

amount of bonds for, each such local education agency.

Line 2. If the issuer issued the bonds based on a volume cap allocation received by another authorized entity (that allocated volume cap to the issue), provide the name of such authorized entity. If more than one authorized entity allocated volume cap to the bond issue, attach a schedule listing the names of, and amount of bonds for, each such authorized entity.

Signature

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

Paid Preparer

If an authorized representative of the issuer filled in this return, the paid preparer’s space should remain blank. Anyone who prepares the return but does not charge the organization should not sign the return. Certain others who prepare the return should not sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc, should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the *Paid Preparer’s Use Only* area of the return. The paid preparer must:

- Sign the return in the space provided for the preparer’s signature,
- Enter the preparer information, and
- Give a copy of the return to the issuer.

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	27 hrs., 44 min.
Learning about the law or the form	3 hrs., 25 min.
Preparing, copying, assembling, and sending the form to the IRS	6 hrs., 24 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler,

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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.
