

Supporting Statement  
Arbitrage Restriction on Tax Exempt Bonds  
FI-7-94 (TD 8718), FI-36-92 (TD 8476), and TD 9777  
1545-1347

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 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. Form 8038-T is used to pay the arbitrage rebate to the United States and to pay penalty in lieu of rebates. Burden for the form is being reported under 1545-1219. 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 (TD 8718), 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.

The collection of information in regulation TD 9777 is in § 1.148-4(h)(2)(viii), which contains a requirement that the issuer maintain in its records a certificate from the hedge provider. For a hedge to be a qualified hedge, existing regulations require, among other items, that the actual issuer identify the hedge on its books and records. The identification must specify the hedge provider, the terms of the contract, and the hedged bonds. These final regulations require that the identification also include a certificate from the hedge provider specifying certain information regarding the hedge.

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

There are no small entities affected by this collection. these regulations will not have a significant economic impact on a substantial number of small entities.

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

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. The consequences are that the IRS will have to spend more taxpayer assistance resources to collect this data through other means. This will compromise the Agency's ability to enforce tax compliance. Tax compliance is a vital part of the government's ability to meet its' mission and serve the public.

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

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

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).

This document contains amendments to the Income Tax Regulations (26 CFR part 1) on the arbitrage investment restrictions under section 148 of the Code and related provisions. On June 18, 1993, the Department of the Treasury (the Treasury Department) and the IRS published comprehensive final regulations in the Federal Register (TD 8476, 58 FR 33510) on the arbitrage investment restrictions and related provisions for tax-exempt bonds under sections 103, 148, 149, and 150, and, since that

time, those final regulations have been amended in certain limited respects (the regulations issued in 1993 and the amendments thereto collectively are referred to as the Existing Regulations).

A notice of proposed rulemaking was published in the Federal Register (72 FR 54606; REG-106143-07) on September 26, 2007 (the 2007 Proposed Regulations). The 2007 Proposed Regulations proposed amendments to the Existing Regulations. Comments on the 2007 Proposed Regulations were received and a public hearing was held on January 30, 2008.

Another notice of proposed rulemaking was published in the Federal Register (78 FR 56842; REG-148659-07) on September 16, 2013 (the 2013 Proposed Regulations). The 2013 Proposed Regulations proposed additional amendments to the Existing Regulations (the 2007 Proposed Regulations and the 2013 Proposed Regulations collectively are referred to as the Proposed Regulations). Comments on the 2013 Proposed Regulations were received and a public hearing was held on February 5, 2014. The 2013 Proposed Regulations addressed the definition of issue price, among other topics.

A partial withdrawal of notice of proposed rulemaking and notice of proposed rulemaking was published in the Federal Register (80 FR 36301; REG-138526-14) on June 24, 2015, re-proposing amendments to the definition of issue price. After consideration of all the comments, the remaining portions of the Proposed Regulations are adopted as amended by this Treasury decision (the Final Regulations).

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

No payment or gift has been provided to any respondents.

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

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Business Master File (BMF)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under: IRS 24.046-Customer Account Data Engine Business Master File. The Internal Revenue Service PIA’s can be found at:

<https://www.irs.gov/uac/Privacy-Impact-Assessments-PIA> .

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or

other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.\_

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

FI-36-92 (TD 8718):

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-l(d) for various elections provided in the following sections:

FI-36-92 (TD 8476):

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.

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.

(TD 9777):

The collection of information in these final regulations is in § 1.148-4(h)(2)(viii), which contains a requirement that the issuer maintain in its records a certificate from the hedge provider. For a hedge to be a qualified hedge, existing regulations require, among other items, that the actual issuer identify the hedge on its books and records. The identification must specify the hedge provider, the terms of the contract, and the hedged bonds. These final regulations require that the identification also include a certificate from the hedge provider specifying certain information regarding the hedge. The burden for this requirement is estimated to be 52,276 hours, based on 12,546 recordkeepers/20,910 responses, and 4 hours per record.

13 ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There is no annual start-up costs associated with this collection.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no annualized cost to the federal government.

15 REASONS FOR CHANGE IN BURDEN

Regulations (TD 9777) are being added to the information collection request, resulting in

an overall hourly burden increase of 52,276 and an increase in the number of responses by 20,910.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

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 regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

**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.

