

SUPPORTING STATEMENT
Internal Revenue Service
Arbitrage Rebate, Yield Reduction and Penalty
in Lieu of Arbitrage Rebate
OMB# 1545-1219

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Sections 143 and 148 require bond issuers to pay a rebate to the United States if the proceeds of a bond issue are used for arbitrage and the issuer wishes the bonds to retain their exempt status. Section 148 also contains provisions for election and/or payment of various penalties associated with arbitrage bonds.

Section 148 requires state and local governmental issuers of tax-exempt bonds to rebate certain arbitrage profits earned on non-purpose investments acquired with bond proceeds. Issuers are required to submit a form with the rebate. The regulation explains how the arbitrage calculations are to be made. The regulation provides for several elections, all of which involve recordkeeping

Form 8038-T is used to pay the arbitrage rebate to the United States, and to pay a penalty in lieu of rebates. Under Internal Revenue Code 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 non-purpose investments. Issuers of tax-exempt bonds and any other bonds subject to the provisions of Internal Revenue Code section 148 must use this form to make arbitrage rebate and related payments.

2. USE OF DATA

Form 8038-T gives the IRS information necessary to determine if the bond issuer has correctly computed the arbitrage rebate paid to the United States and/or penalties applicable to arbitrage bonds.

1. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans at this time to offer electronic filing because of the low volume compared to the cost of electronic enabling.

2. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

3. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER

SMALL ENTITIES

Issuers of tax-exempt bonds and any other bonds subject to the provisions of Internal Revenue Code section 148 must use this form to make arbitrage rebate and related payments. The regulations do not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the amount of time required to meet the record keeping requirement of these final regulations, an estimated annual average of 1 hour per taxpayer, is small. Also, the regulations affect a small number of taxpayers, approximately 1400 annually. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

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

If the IRS did not collect this information, the IRS would not be able to determine if the bond issuer has correctly computed the arbitrage rebate paid to the United States and/or penalties applicable to arbitrage bonds.

5. 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).

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

TD 8801 contained amendments to the income tax regulations (26 CFR Part 1) under section 148 of the Internal Revenue Code of 1986 (Code). Section 148 provides rules addressing the use of proceeds of tax-exempt State and local bonds to acquire higher-yielding investments.

On June 18, 1993, final regulations (T.D. 8476, 1993-2 C.B. 13) relating to the arbitrage restrictions and related rules under sections 103, 148, 149, and 150 were published in the Federal Register (58 F.R. 33510). Corrections to these regulations were published in the Federal Register on August 23, 1993 (58 F.R. 44451), and May 11, 1994 (59 F.R. 24350).

On June 27, 1996, a notice of proposed rulemaking (FI-28-96, 1996-2 C.B. 458)

relating to the arbitrage restrictions was published in the Federal Register (61 F.R. 33405). The proposed regulations provide a rebuttable presumption for establishing fair market value for United States Treasury obligations that are purchased other than directly from the United States Treasury. In addition, the proposed regulations provide a rebuttable presumption that a solicitation that meets certain requirements is a bona fide solicitation for the guaranteed investment contract safe harbor of §1.148-5(d)(6)(iii). A public hearing was held on Thursday, October 24, 1996, and written comments were received. After consideration of all the comments, the regulations proposed by FI-28-96 are, with modifications, adopted by revision to §1.148-5(d)-(6)(iii).

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 8038-T.

In response to the Federal Register Notice dated September 7, 2016 (81 FR 61737), we received no comments during the comment period regarding Form 8038-T.

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

No payment or gift has been provided to any respondents.

10 ASSURANCES OF CONFIDENTIALITY OF RESPONSES

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

1. 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 PIAs can be found at <http://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.

2. ESTIMATED BURDEN OF INFORMATION COLLECTION

The total burden for this submission is 59,325 hours with 3,900 responses.

| Authority | Type of Request | Number of respondents | Responses per year | Number of Responses | Hours per response | Burden Hours |
|----------------|-----------------|-----------------------|--------------------|---------------------|--------------------|---------------|
| 26 CFR 1.148-5 | Recordkeeping | 1400 | 1 | 1400 | 1.02 | 1,425 |
| | Form 8038-T | 2,500 | 1 | 2,500 | 23.16 | 57,900 |
| | Total | | | 3,900 | | 59,325 |

Reporting regulations which impose no additional burden:

1.148-1
1.148-4
1.148-5
1.103A-2
1.149(e)-1

We have reviewed these regulations and have determined that the reporting requirements contained in them are entirely reflected on the form. The justification appearing in Item 1 of the supporting statement applies both to these regulations and to the form. Please continue to assign OMB number 1545-1219 to these regulations.

3. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated December 21, 2018, 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 responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available currently.

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

4. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

The Federal government cost estimate is based on a model that considers the following three cost factors for each information product: aggregate labor costs for development,

including annualized start-up expenses, operating and maintenance expenses, and distribution of the product that collects the information.

The government computes cost using a multi-step process. First, the government creates a weighted factor for the level of effort to create each information collection product based on variables such as; complexity, number of pages, type of product and frequency of revision. Second, the total costs associated with developing the product such as labor cost, and operating expenses associated with the downstream impact such as support functions, are added together to obtain the aggregated total cost. Then, the aggregated total cost and factor are multiplied together to obtain the aggregated cost per product. Lastly, the aggregated cost per product is added to the cost of shipping and printing each product to IRS offices, National Distribution Center, libraries and other outlets. The result is the Government cost estimate per product.

The government cost estimate for this collection is summarized in the table below.

| Product | Aggregate Cost per Product (factor applied) | Printing and Distribution | Government Cost Estimate per Product |
|---|--|----------------------------------|---|
| 8038-T | \$ 13,032 | \$ | \$ 13,032 |
| 8038-T Instructions | \$ 2,734 | \$ | \$ 2,734 |
| Grand Total | 0 15,766 | | 0 15,766 |
| Table costs are based on 2018 actuals obtained from IRS Chief Financial Office and Media and Publications | | | |
| * New product costs will be included in the next collection update. | | | |

5. REASONS FOR CHANGE IN BURDEN

There is no change in form. However, we are updating the records to include the recordkeeping burden associated with regulation section 1.148-5(d)(6)(iii), previously approved under OMB number 1545-1490 and 1545-1098.

This request is for renewal purposes only.

6. 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 revenue procedure sunsets 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.

1. 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.