

# Request for Recovery of Overpayments Under Arbitrage Rebate Provisions

▶ **File a separate form for each issue.** ▶ **See instructions.**  
▶ **Go to [www.irs.gov/Form8038R](http://www.irs.gov/Form8038R) for the latest information.**

## Part I Reporting Authority

1 Issuer's name		2 Issuer's employer identification number (EIN)	
3 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	4 Report number (For IRS Use Only)	
5 City, town, or post office, state, and ZIP code		6 Date of issue	
7 Name of issue		8 CUSIP number	
9 Name and title of officer of the issuer or other person whom the IRS may call for more information		10 Telephone number of officer or other person	

## Part II Request for Refund of Amounts Paid Under Rebate Provisions (see instructions)

11 If the issue was outstanding on or prior to June 30, 1993, and the issuer elects **not** to apply the 1992 regulations, check here. See instructions . . . . .

12 Total amount paid under rebate provisions . . . . .	12		
13 Rebate amount as of the most recent computation date . . . . .	13		
14 Amounts (not included in line 12) required to be paid under section 148 as of the date the recovery is requested . . . . .	14		
15 Add lines 13 and 14 . . . . .	15		
16 Amount of overpayment. Subtract line 15 from line 12 . . . . .	16		

17 Computations and relevant facts that led to overpayment (see instructions). Attach additional sheets if necessary.

18 Schedule of payments (see instructions). Attach additional sheets if necessary.

## Part III Other Information (see instructions) Check the "Yes" or "No" box for each question below.

	Yes	No
19 Was the overpayment paid as penalty in lieu of rebate under section 148(f)(4)(C)(vii)? . . . . . ▶	19	
20 Has the final computation date for the issue occurred? . . . . . ▶	20	
21 If an entity other than a governmental entity is to use proceeds of these obligations, enter the name and EIN of that organization. If more than one, attach schedule. Name ▶ EIN ▶		
22 If the issuer wishes to authorize the IRS to communicate directly with a person who is a representative of the entity listed on line 21, check the box and enter the name and telephone number of such person. <input type="checkbox"/> Name ▶ Phone no.		

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this request for recovery of overpayment, including accompanying schedules and statements, and to the best of my knowledge and belief, the facts represented in support of the request are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the persons that I have authorized on lines 9 and 22 above.

Signature of issuer's authorized representative \_\_\_\_\_ Date \_\_\_\_\_ Type or print name and title \_\_\_\_\_

**Paid Preparer Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name ▶	Firm's EIN ▶		Phone no.	
Firm's address ▶				

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

## Future Developments

For the latest information about developments related to Form 8038-R, such as legislation enacted after they were published, go to [www.irs.gov/Form8038R](http://www.irs.gov/Form8038R).

## What's New

Claims for recovery of overpayments cannot be filed later than the date that is 2 years after (1) the date that is 60 days after the final computation date of the issue to which the payment relates; or (2) with respect to the portion of the overpayment paid more than 60 days after the final computation date, the date that the payment was made to the United States. See Rev. Proc. 2017-50, which is on page 234 of Internal Revenue Bulletin 2017-37 at [www.irs.gov/pub/irs-irbs/irb17-37.pdf](http://www.irs.gov/pub/irs-irbs/irb17-37.pdf).

## General Instructions

**Note:** Use a separate Form 8038-R for each issue.

### Purpose of Form

Form 8038-R is used by issuers of state and local bonds to request a refund of amounts paid with Form 8038-T, Arbitrage Rebate, Yield Reduction, and Penalty in Lieu of Arbitrage Rebate.

Payments made with Form 8038-T that may be recoverable include:

1. Yield reduction payments,
2. The arbitrage rebate to the United States,
3. A penalty in lieu of rebating arbitrage to the United States, or
4. A penalty to terminate the election to pay a penalty in lieu of rebating arbitrage.

### Recovery of Overpayment

In general, an issuer may recover an overpayment of rebate for an issue of bonds by establishing to the IRS that the overpayment occurred. An overpayment is the excess of the amount paid to the United States for an issue under section 148 over the sum of the rebate amount for the issue as of the most recent computation date and all amounts that are otherwise required to be paid under section 148 as of the date the recovery is requested.

An overpayment may be recovered only to the extent that a recovery on the date that it is first requested wouldn't result in an additional rebate amount if that date were treated as a computation date.

Except for overpayments of penalty in lieu of rebate under section 148(f)(4)(C)(vii) and Regulations section 1.148-7(k), an overpayment of less than \$5,000 may not be recovered before the final computation date. See Regulations section 1.148-3(i).

The amount of rebate overpayment is based on the amount actually paid, not the future value of the amount paid.

**Note:** Regulations section 1.148-3(b) provides that as of any date, the rebate amount for an issue is the excess of the future value, as of that date, of all receipts on nonpurpose investments over the future value, as of that date, of all payments on nonpurpose investments. The definitions of payments and receipts in Regulations section 1.148-3(d), in part, require inclusion of transactions (including, but not limited to, acquisition, earnings, and return of principal) on a date for each nonpurpose investment. Any cash flow representation to the contrary may result in the understatement of rebate amount. Yield reduction payments are determined using payments and receipts as described in Regulations section 1.148-5(b)(1).

### Processing the Request

When filing Form 8038-R, you must provide:

- All copies of Form(s) 8038-T related to the request for refund, and
- The computations of the overpayment and interest (if any) on line 17. The computations must show all cash flows from the issue date to the computation date reflecting the overpayment (for example, if a series of reports were prepared, all such reports must be provided, unless the last report details all cash flows). Provide any additional attachments if needed.

Generally, this information will be sufficient to determine whether a refund is appropriate. For refund claim rejections where there is a procedural deficiency or where an issuer has failed to provide sufficient information to enable a determination that an overpayment occurred, the IRS will contact the issuer or its representative to resolve the deficiency. If all the requested information isn't timely received, a letter will be sent explaining that the request for recovery is deficient and that its processing is rejected.

For refund claim denials, in full or in part, if the IRS makes a preliminary determination to deny a refund claim, the IRS will notify the issuer in writing that it may submit additional information or participate in a conference, or both. Additional information must be submitted within 21 days of the request for additional information or the conference. If the issuer fails to submit additional information or if the IRS disagrees that an overpayment occurred, the IRS will send the issuer a registered or certified letter denying the claim, subject to the issuer's appeal rights.

The procedures for processing a request for refund are detailed in Rev. Proc. 2008-37, which is on page 137 of Internal Revenue Bulletin 2008-29 at [www.irs.gov/pub/irs-irbs/irb08-29.pdf](http://www.irs.gov/pub/irs-irbs/irb08-29.pdf) as modified by Rev. Proc. 2017-50.

An issuer is entitled to appeal a refund claim denial. See Rev. Proc. 2006-40, which is on page 694 of Internal Revenue Bulletin 2006-42 at [www.irs.gov/pub/irs-irbs/irb06-42.pdf](http://www.irs.gov/pub/irs-irbs/irb06-42.pdf), for details.

### Where To File

File Form 8038-R, and attachments, with the Internal Revenue Service, Ogden Submission Processing Center, Ogden, UT 84201.

**Private delivery services.** Filers can use certain private delivery services (PDSs) designated by the IRS to meet the "timely mailing as timely filing" rule for tax returns. Go to [www.irs.gov/PDS](http://www.irs.gov/PDS) for the current list of designated services.

The PDS can tell you how to get written proof of the mailing date.

For the IRS mailing address to use if you're using a PDS, go to [www.irs.gov/PDSStreetAddresses](http://www.irs.gov/PDSStreetAddresses).



*PDSs can't deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.*

## Specific Instructions

**Line 1.** Enter the name of the governmental entity that issued the bonds, not the name of the entity receiving the benefit of the financing.

### Part I. Reporting Authority

**Line 6.** Enter the date of issue. This date should be identical to the date on the corresponding Form 8038-T, Part I, line 6. This is generally the first date on which there is a physical exchange of the bonds for the purchase price.

**Line 7.** Enter the name of the issue. This name should be identical to the name listed on the corresponding Form 8038-T, Part I, line 7. If there is no name, please provide other identification of the issue.

**Line 8.** Enter the CUSIP (Committee on Uniform Securities Identification Procedures) number of the bond with the latest maturity. The CUSIP number should be identical to the CUSIP number listed on the corresponding Form 8038-T, Part I, line 8. Enter "None" if the issue doesn't have a CUSIP number.

**Lines 9 and 10.** Enter the name, title, and telephone number of the officer of the issuer whom the IRS may call for more information. If the issuer designates a person other than an officer of the issuer (including a legal representative or paid preparer) whom the IRS may call for more information with respect to this return, enter the name, title, and telephone number of such person here.

**Note:** By authorizing a person other than an authorized officer of the issuer to communicate with the IRS and whom the IRS may call for more information with respect to this return, the issuer authorizes the IRS to communicate directly with the individual listed in line 9 and consents to the disclosure of the issuer's return information to that individual, as necessary, in order to process this return.

## Part II. Request for Refund

**Line 11.** Current Regulations sections 1.148-1 through 1.148-11 apply to issues outstanding after June 30, 1993. If the issue was outstanding prior to July 1, 1993, the 1992 regulations apply (that is, Regulations sections 1.148-1 through 1.148-12 effective May 18, 1992 (T.D. 8418, 1992-1 C.B. 29)). However, check the box if the issue was outstanding prior to July 1, 1993, and the issuer has elected not to apply the 1992 regulations; the current Regulations sections 1.148-1 through 1.148-11 apply.

**Line 17.** Provide the computations of the overpayment paid as part of a rebate payment, penalty in lieu of rebate, or to terminate the penalty in lieu of rebate. Also, include the computations for interest (if any). A description of the facts that led to the overpayment must be included on this form.

**Line 18.** Provide a schedule showing amounts and dates that payments were made to the United States for the issue. Attach copies of Form(s) 8038-T that accompanied payments to the United States.

## Part III. Other Information

**Line 20.** The final computation date is the date the issue is discharged. For details, see Regulations section 1.148-3(e)(2).

**Line 21.** Enter the name and EIN of an entity, other than a governmental entity, that is to use proceeds of these obligations. If more than one, attach a schedule.

**Line 22.** If the issuer wishes to authorize the IRS to communicate directly with a person who is a representative of the entity listed on line 21, check the box and enter the name and telephone number of such person.

**Note:** By authorizing a person other than an authorized officer of the issuer to communicate with the IRS and whom the IRS may contact with respect to this return, the issuer authorizes the IRS to communicate directly with the individual entered in line 22 and consents to disclose the issuer's return information to that individual, as necessary, in order to process this return.

## Signature and Consent

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

The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, including information provided on the issuer's corresponding Form 8038-T, as necessary to process this return, to the person(s) that have been designated in Form 8038-R.

**Note:** If authority is granted in line 9 or line 22 for the IRS to communicate with a person other than an officer of the issuer, by signing this form, the issuer's authorized representative consents to the disclosure of issuer's return information, as necessary to process this return, to such person.

## Paid Preparer

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

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

The paid preparer must:

- Sign the return in the space provided for the preparer's signature (a facsimile signature is acceptable),
- Enter the preparer information, and
- Give a copy of the return to the issuer.

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**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.

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**, 5 hr., 30 min.; **Learning about the law or the form**, 3 hr., 16 min.; **Preparing, copying, assembling, and sending the form to the IRS**, 3 hr., 30 min.

We welcome your comments about this form and instructions and your suggestions for future editions.

You can send us comments from [www.irs.gov/FormComments](http://www.irs.gov/FormComments).

Or you can write to:

Internal Revenue Service  
Tax Forms and Publications  
1111 Constitution Ave. NW, IR-6526  
Washington, DC 20224

We respond to many letters by telephone. Therefore it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

Although we cannot respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

Do not send the form to this address. Instead, see *Where To File*, earlier.