

# Instructions for Form 8038-B



Department of the Treasury  
Internal Revenue Service

(Rev. January 2010)

## Information Return for Build America Bonds and Recovery Zone Economic Development 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 created three types of build America bonds. Section 54AA added both Tax Credit and Direct Pay build America bonds. Section 1400U-2 added recovery zone economic development bonds, a form of Direct Pay build America bonds. Notice 2009-26 required that, subject to updated IRS information reporting forms or procedures, all three types of build America bonds issued were to be reported on Form 8038-G, Information Return for Tax-Exempt Governmental Obligations.

#### Purpose of Form

Beginning February 2010, Form 8038-B is to be used by issuers of build America bonds (Tax Credit), build America bonds (Direct Pay), and recovery zone economic development bonds to provide the IRS with the information required by section 149(e).

#### Who Must File

Governmental issuers of build America bonds and recovery zone economic development bonds must file a separate Form 8038-B for each issue of build America bonds and recovery zone economic development bonds issued after February 2010.

**Note.** Build America bonds (Tax Credit), build America bonds (Direct Pay), and recovery zone economic development bonds must each be reported on a separate Form 8038-B. This instruction applies regardless of whether the single issue consists of variable rate, fixed rate, or both variable rate and fixed rate bonds.

#### When To File

File Form 8038-B 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-B may not be filed before the issue date and must be completed based on the facts as of the issue date. For build America bonds (Direct Pay) and for recovery zone economic development bonds, Form 8038-B must be filed at least 30 days prior to the submission of the first Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds, that is filed to

request payment with respect to an interest payment date for that issue.

Failure to complete the form including the attached schedules may result in a delay in processing this form. All attached schedules must include the issuer's name and EIN at the top.

**Late filing.** An issuer may be granted an extension of time to file Form 8038-B under Rev. Proc. 2002-48, 2002-37 I.R.B. 531. Type or print at the top of the form, "Request for Relief under Section 3 of Rev. Proc. 2002-48." See Rev. Proc. 2002-48 for complete information on requirements for an extension of time to file Form 8038-B.

**Note.** If Form 8038-B is filed late, it still must be filed 30 days prior to the submission of the first Form 8038-CP for that issue.

#### Where To File

File Form 8038-B and any attachments with the 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 issuers who elect under section 6431 to receive a direct payment from the Federal Government equal to a percentage of the interest payment, the payment must be requested on Form 8038-CP. Each Form 8038-CP can only relate to the interest paid on a single bond issue.

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the

Federal Government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

If the bond issue consists of both tax-exempt bonds and build America bonds, the issuer must report the tax-exempt portion on Form 8038-G and the build America bond portion on 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.

#### Questions on Filing Form 8038-B

For specific questions on how to file Form 8038-B send an email to the IRS at:

**TaxExemptBondQuestions@irs.gov** and put "Form 8038-B Question" in the subject line. In the email include a description of your question, a return email address, the name of a contact person, and a telephone number.

#### Definitions

**Build America bond (Tax Credit).** This is an issue of taxable state or local governmental bonds (excluding private activity bonds under section 141) as defined in section 54AA(d) that provides a tax credit to the holder of the bond.

**Build America bond (Direct Pay).** This is an issue of taxable state or local governmental bonds (excluding private activity bonds under section 141) as defined in section 54AA(g), the issuer of which elects to receive a refundable credit under section 6431 in lieu of tax credits to the holder of the bond.

**Recovery zone economic development bond.** This is an issue of taxable state or local governmental bonds that meets the requirements under section 1400U-2 that may be used to finance certain qualified economic development purposes as defined under section 1400U-2(c), the issuer of which receives a refundable credit under section 6431.

**Arbitrage rebate.** The issuer of a build America bond or recovery zone economic development bond must rebate to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

**Gross proceeds.** Gross proceeds means any proceeds and replacement

proceeds of an issue as defined under Regulations section 1.148-1(b).

**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 Regulations section 1.148-4(b)(4). Sale proceeds shall also include the proceeds from the sale of credit strips. Also, see Regulations section 1.148-4(h)(5) treating amounts received upon the termination of certain hedges as sale proceeds.

**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. Even if part of the same issue, build America bonds (Direct Pay), build America bonds (Tax Credit), and recovery zone economic development bonds must each be filed on a separate Form 8038-B.

**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 Regulations.

## 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." Failure to attach an explanation may result in a delay in processing this form.

**Line 1.** The issuer's name is the name of the entity issuing the bonds, not the name of the entity receiving the benefit of the financing. For a lease or installment sale, the issuer is the lessee or the purchaser.

**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](http://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 3.** If the issuer wishes to authorize a person other than an officer of the issuer (including a legal representative or paid preparer) to communicate with the IRS and whom the IRS may contact with respect to this return (including in writing or by telephone), enter the name of such person here. The person listed in line 3 must be an individual. Do not enter the name and title of an officer of the issuer here (use line 10 for that purpose).

**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 3 and consents to disclose the issuer's return information to that individual, as necessary, in order to process this return.

**Line 4.** This line is for IRS use only. Do not make any entries in this box.

**Lines 5 and 6.** If you listed in line 3 a person other than an officer of the issuer (including a legal representative or paid preparer) to communicate with the IRS and whom the IRS may contact with respect to this return, enter the number and street (or P.O. Box if mail is not delivered to street address), city, town, or post office, state, and ZIP code of that person. Otherwise, enter the issuer's number and street (or P.O. Box if mail is not delivered to street address), city, town, or post office, state, and ZIP code.

**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. For a lease or installment sale, enter the date interest starts to accrue in an MM/DD/YYYY format.

**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.

**Line 10.** Enter the name and title of the officer of the issuer whom the IRS may call for more information. If the issuer designates a person in line 3 (such as a legal representative or paid preparer) with whom the IRS may communicate with respect to this return, leave line 10 blank.

**Line 11.** Enter the telephone number of the person whom the IRS may contact for

more information identified in line 3 or line 10, as applicable.

### Part II—Type of Bonds



*Elections referred to in Part II are made on the original bond documents, not on this form.*

**Line 1.** You must identify the type of bonds issued by checking the corresponding box. If box 1b or 1c is checked, complete lines 2 and 3.

**Line 2.** Enter the first interest payment date. An interest payment date is the date on which interest is payable by the governmental issuer to the holders of the bonds. (For variable rate issues, enter the last interest payment date applicable to the quarterly period for which the first 8038-CP for the issue will relate.) Enter the date in an MM/DD/YYYY format.

**Line 3.** Check the box indicating the interest payment date frequency. In addition, issuers of build America bonds (Direct Pay) and recovery zone economic development bonds must attach a debt service schedule to the Form 8038-B which contains the information described below for the bond issue:

1. For fixed-rate bonds, attach a complete debt service schedule titled "Fixed Rate Bond-Debt Service Schedule" that provides a list of each interest payment date, the total interest payable on such date, the total principal amount of bonds expected to be outstanding on such date, the credit payment expected to be requested from the IRS on such date, and the earliest date that the bonds can be called.

2. For variable rate bonds, attach a debt service schedule titled "Variable Rate Bond-Debt Service Schedule" that provides a list of each interest payment date, the total principal amount of bonds expected to be outstanding on such date, and a description of how interest on the bonds is computed.

**Note.** If the bond issue reported on Form 8038-B constitutes both fixed rate bonds and variable rate bonds, both the fixed rate and variable rate bonds must be reported on the same Form 8038-B; however, separate debt service schedules, as described above, must be entered for each of the bonds. Credit payments are not allowed for preissuance accrued interest. Failure to provide the applicable debt service schedules may result in a delay in processing the return.

### Part III—Purpose of Issue

**Line 1.** For build America bonds identify the purpose of issue and enter the portion of the issue price allocable to each type of project expenditure. The portion of the issue price allocated to each type of project expenditure should include a pro rata allocation of proceeds representing such items as costs of issuance or a reasonably required reserve. For example, if 60% of the principal amount of the bond issue is for education purposes

and 40% of the principal amount of the bond issue is for public safety purposes, the proceeds used for items such as costs of issuance or a reasonably required reserve should be allocated 60% to education and 40% to public safety. Line 1h is to be used solely to identify the portion of the issue price allocated to a purpose other than those listed in lines 1a through 1g. Lines 1a through 1h must equal the total issue price in line 3.

Attach a schedule listing names and EINs of organizations that are to use proceeds of these obligations if different from those of the issuer. Also indicate whether each organization listed on the schedule is a government or private entity. Failure to attach the schedule may result in a delay in processing the return.

**Line 2.** For recovery zone economic development bonds identify the purpose of issue and enter the portion of the issue price allocable to each type of expenditure. The portion of the issue price allocated to each type of project expenditure should include a pro rata allocation of proceeds representing such items as costs of issuance or a reasonably required reserve. For example, if 60% of the principal amount of the bond issue is for capital expenditures purposes and 40% of the principal amount of the bond issue is for job training purposes, the proceeds used for items such as costs of issuance or a reasonably required reserve should be allocated 60% to capital expenditures and 40% to job training. Line 2d is to be used solely to identify the portion of the issue price allocated to a purpose other than those listed in lines 2a through 2c. Lines 2a through 2d must equal the total issue price in line 3.

Attach a schedule listing names and EINs of organizations that are to use proceeds of these obligations if different from those of the issuer. Also indicate whether each organization listed on the schedule is a government or private entity. Failure to attach the schedule may result in a delay in processing the return.

**Line 3.** See *Issue Price* under *Definitions* on page 2. For build America bonds, the amounts under lines 1a through 1h, or for recovery zone economic development bonds, the amounts under lines 2a through 2d must total the issue price of the entire issue entered in line 3.

**Note.** Build America bonds (Tax Credit), build America bonds (Direct Pay), and recovery zone economic development bonds must each be filed on a separate Form 8038-B regardless of whether or not they constitute a single issue.

**Line 4.** If obligations are Tax Anticipation Notes (TANs) or Revenue Anticipation Notes (RANs), check box 4a. If obligations are Bond Anticipation Notes (BANs), check box 4b. Do not check both boxes.

**Line 5.** Check this box if property other than cash is exchanged for the obligation,

for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease.") Also check this box if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal. **Do not** check this box if the proceeds of the obligation are received in the form of cash, even if the term "lease" is used in the title of the issue.

## Part IV—Description of Obligations

**Line 1.** 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. For a lease or installment sale, write "N/A."

**Line 2.** Enter the last date on which any of the bonds will mature. Enter the date in an MM/DD/YYYY format.

**Line 3.** The weighted average maturity is the sum of the products of the issue price of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory redemptions, divided by the issue price of the entire issue (from Part III, line 3). For a lease or installment sale, enter the total number of years the lease or installment sale will be outstanding. Carry the year out to two decimal places, do not round (for example, 10.72).

**Line 4.** The yield is generally the discount rate that when used to compute the present value of all payments of principal and interest to be paid on the obligation produces an amount equal to the issue price, including accrued interest. See Regulations section 1.148-4 for specific rules to compute the yield on an issue. If the issue is a variable rate issue, leave blank. For other than variable rate issues, carry the yield out to four decimal places, do not round (for example, 5.3125%). If reporting build America bonds (Direct Pay) or recovery zone economic development bonds, the yield is reduced by the amount of credit payments received under section 6431. If reporting build America bonds (Tax Credit) and the issue is a lease or installment sale, enter the effective rate of interest being paid.

## Part V—Use of Proceeds of Issue

For a lease or installment sale, write "N/A" in the space to the right of the title for Part V.

**Line 1.** See *Sale Proceeds* under *Definitions* on page 2.

**Line 2.** Estimate reasonably expected investment proceeds on the sales proceeds in line 1.

**Line 3.** Enter the amount of pre-issuance interest accrued from the date the bonds are dated to the date of issue.

**Line 4.** Enter the amount of the proceeds (including accrued interest) that will be used to pay bond issuance costs, including underwriter's fees, fees for trustees, and bond counsel.

**Note.** Costs of issuance are limited to not more than 2 percent of sale proceeds for build America bonds (Direct Pay) and recovery zone economic development bonds.

**Line 5.** Enter the amount of the proceeds that will be used to pay fees for credit enhancement that are taken into account in determining the yield on the issue for purposes of section 148(h), for example, bond insurance premiums and certain fees for letters of credit.

**Line 6.** Enter the amount of the proceeds that will be allocated to a reasonably required reserve fund. See funding limitations for such a reserve under Regulations section 1.148-2(f).

**Line 9.** Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds within 90 days of the date of issue.

**Note.** This line applies only to build America bonds (Tax Credit).

**Line 10.** Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds after 90 days of the date of issue, including proceeds that will be used to fund an escrow account for this purpose.

**Note.** This line applies only to build America bonds (Tax Credit).

## Part VI—Description of Refunded Bonds

Complete this part only if the bonds are to be used to refund a prior issue of governmental bonds.

**Note.** According to Notice 2009-26 and Notice 2009-50, build America bonds (Direct Pay) generally may not be issued to refinance capital expenditures in "refunding issues" as defined in Regulations section 1.150-1. However, refinancing of certain short term indebtedness with build America bonds (Direct Pay) and recovery zone economic development bonds is not treated as a refunding.

**Lines 1 and 2.** The remaining weighted average maturity is determined without regard to the refunding. The weighted average maturity is determined in the same manner as for Part IV, line 3.

**Line 3.** Enter the last date on which any of the bonds being refunded will be called. Enter the date in an MM/DD/YYYY format.

**Line 4.** If more than a single issue of bonds will be refunded, enter the date of issue of each of the issues to be refunded on a schedule. Enter the date in an MM/DD/YYYY format. If the schedule is not attached, it may result in a delay in processing the return.

## Part VII—Miscellaneous

**Line 1.** Enter the amount of volume cap allocated to the issue of recovery zone economic development bonds. Attach a copy of the certification of the volume cap allocation by the state, county, or large municipality. For build America bonds, enter the amount of state volume cap allocated to the issue under section 141(b)(5), if applicable. For recovery zone economic development bonds, attach a separate statement indicating the amount of state volume cap allocated to the issue under section 141(b)(5), if applicable. Also attach a copy of the certification of the recovery zone designation by the state, county, or large municipality. Failure to attach the required certifications will delay the processing of this return.

**Line 2.** See *Gross Proceeds* under *Definitions* on page 1. If any portion of the gross proceeds of the issue is or will be invested in a guaranteed investment contract (GIC), as defined in Regulations section 1.148-1(b), enter the amount of the gross proceeds so invested, as well as the final maturity date of the GIC and the name of the provider of such contract. Enter the final maturity date in an MM/DD/YYYY format on line 2b. Attach additional sheets if necessary.

**Note.** A GIC includes any nonpurpose investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply investments on two or more dates (for example, a forward supply contract).

**Line 3.** Enter the amount of proceeds of this issue used to fund a loan to another governmental unit.

**Line 4.** If this issue is a loan of proceeds from another governmental issue, check box 4a and enter the date of issue, EIN, and name of the issuer of the master pool obligation. Enter the issue date in an MM/DD/YYYY format on line 4b.

**Line 5.** Check this box if the issuer has identified a hedge on its books and records in accordance with Regulation sections 1.148-4(h)(2)(viii) and 1.148-4(h)(5) that require an issuer of bonds to identify a hedge in order for it to be included in bond yield calculations for purposes of section 148. If the box on line 5a is checked, enter the name of the hedge provider on line 5b, the type of the hedge on line 5c, and the term of the hedge to the nearest tenth of a year (for example, 2.4 years) on line 5d. Attach additional sheets, if necessary.

**Line 6.** In determining if the issuer has super-integrated a hedge, apply the rules of Regulations section 1.148-4(h)(4). If the hedge is super-integrated, check the box.

**Line 7.** Check this box if the issue is a construction issue as defined in Regulations section 1.148-7(f) and an irrevocable election to pay a penalty in

lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of arbitrage rebate with Form 8038-B. See Rev. Proc. 92-22, 1992-1 C.B. 736 for rules regarding the “election document.”

**Line 8.** An issue is an issue of private activity bonds if the issuer takes a deliberate action. Regulations section 1.141-2(d)(3) defines a deliberate action as any action taken by the issuer that is within its control, regardless of whether such act was intended to violate the private business use test or the private loan financing test. Regulations section 1.141-12 sets forth certain remedial actions that prevent a deliberate action with respect to property financed by an issue from causing that issue to meet the private business use test or the private loan financing test. Check the box if the issuer has established written procedures to ensure timely remedial action with respect to all nonqualified bonds in accordance with Regulations section 1.141-12 or other additional remedial actions authorized by the Commissioner under Regulations section 1.141-12(h).

**Line 9.** Check the box if the issuer has established written procedures to ensure that the bonds comply with the arbitrage yield restriction and rebate requirements of section 148.

### Signature and Consent

An authorized representative of the issuer must sign Form 8038-B and any applicable certification. Also print the name and title of the person signing Form 8038-B. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that have been designated in Form 8038-B.

**Note.** If the governmental issuer in Part I, line 3 authorizes the IRS to communicate (including in writing and by telephone) 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 officer 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.

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

**Line 1.** The IRS is considering publishing a list of tax credit bonds in order to assist in applicable reporting requirements. If the issuer of a build America bond (Tax Credit) consents to the IRS's publication, through a website or other publication, of its name and address, EIN, name and description of the bond issue, date of issuance, CUSIP number, issue price, final maturity date, and stated redemption price at maturity, in order to assist the IRS in the proper reporting of interest, tax credits, or other benefits under section 6049, and the Regulations thereunder, check the box next to “YES” on line 1.

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**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:

<b>Recordkeeping</b> . . . . .	16 hrs., 1 min.
<b>Learning about the law or the form</b> . . . . .	1 hr., 29 min.
<b>Preparing, copying, assembling, and sending the form to the IRS</b> . . . . .	1 hr., 49 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.

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