

Instructions for Form 8038-CP

(Rev. June 2010)



Department of the Treasury
Internal Revenue Service

Return for Credit Payments to Issuers of Qualified Bonds

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

What's New

Section 301 of P.L. 111-147 (H.R. 2847), the Hiring Incentives to Restore Employment (HIRE) Act, provides that issuers of new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds may elect to apply section 6431(f) to receive a refundable credit in lieu of tax credits under section 54A (specified tax credit bonds). For qualified school construction bonds and qualified zone academy bonds the amount of the refundable credit allowed is equal to the lesser of:

1. the amount of interest payable under such bond on such date, or
2. the amount of interest which would have been payable under such bond on such date if such interest were determined at the applicable credit rate determined under section 54A(b)(3).

For qualified energy conservation bonds and new clean renewable energy bonds, the amount of the refundable credit allowed is equal to the lesser of:

1. the amount of interest payable under such bond on such date, or
2. 70% of the amount of interest which would have been payable under such bond on such date if such interest were determined at the applicable credit rate determined under section 54A(b)(3).

For specified tax credit bonds with multiple bond maturities, the refundable credit payment is determined separately with respect to each maturity. The refundable credit payment for each maturity must be requested on a separate Form 8038-CP. See instructions for Part III, lines 19a and 19c, if reporting specified tax credit bonds with multiple maturities.

Note. Only issuers of specified tax credit bonds that qualify for, and have elected to receive, a refundable credit under section 6431(f) may file Form 8038-CP. If the issuer of a specified tax credit bond makes the election under section 6431(f), the holder of the bond will not then be eligible to receive a tax credit under section 54A.

Other tax credit bonds, including qualified forestry conservation bonds, clean renewable energy bonds, and Midwestern tax credit bonds, are not

eligible to elect to receive direct payments under section 6431(f).

Reminders

A direct deposit box was added to the Form 8038-CP to allow issuers of bonds the choice of having their credit payment directly deposited into their account.

General Instructions

Purpose of Form

The American Recovery and Reinvestment Act of 2009 (ARRA) created build America bonds and recovery zone economic development bonds. The HIRE Act provides for issuers to elect to issue specified tax credit bonds. The ARRA and the HIRE Act are referred to throughout these instructions as the Acts.

Form 8038-CP is used by issuers of build America bonds and recovery zone economic development bonds who elect to receive a direct payment from the Federal Government equal to a percentage of the interest payments on these bonds. For more information, see Notice 2009-26.

Form 8038-CP is also used by issuers of specified tax credit bonds who elect to receive a direct payment from the Federal Government equal to a percentage of the interest payments on these bonds. For more information see Notice 2010-35. Issuers of each issue of specified tax credit bonds must file a separate Form 8038-CP to request payment of a refundable credit under 6431(f).

Note. Each type of specified tax credit bond must be reported on a separate Form 8038-CP. For specified tax credit bonds with multiple maturities, each maturity must be reported on a separate Form 8038-CP.

 *This return is to be filed only if, as of the date the form is filed, the issuer of the outstanding obligation(s) with respect to which this return is submitted has reasonably concluded that the obligation(s) meet all applicable requirements for the payment of the requested credit.*

Who Must File

Issuers of qualified build America bonds, recovery zone economic development bonds, and specified tax credit bonds must submit this return to request credit payments payable under the Acts.

What To File

The payment requested on Form 8038-CP can only relate to the interest paid on a single bond issue. If the issue has both fixed rate and variable rate bonds, file a separate Form 8038-CP for each type of bond. If a single bond issue constitutes both build America bonds (Direct Pay) and recovery zone economic development bonds, file a separate Form 8038-CP for each type of bond. Each issue consisting of a single maturity of specified tax credit bonds must also be reported on a separate Form 8038-CP. Issuers of specified tax credit bonds with multiple maturities must file a separate Form 8038-CP for each bond maturity. If the information provided on the return relates to more than one bond issue, or in the case of specified tax credit bonds with multiple maturities relates to more than one maturity, or if the return is not completed in full, the credit payment may be delayed. In order to process the refundable credit payment, the IRS will correspond with either the designated contact person of the entity listed in Part I at the address listed in Part I, the issuer, or its designee listed in Part II, as necessary.

When To File

A Form 8038-CP filed with respect to fixed rate bonds must be filed no later than 45 days before the relevant interest payment date. Form 8038-CP may not, however, be submitted earlier than 90 days before the relevant interest payment date.

With respect to variable rate bonds when the issuer knows the interest payment amount 45 days prior to the interest payment date, Form 8038-CP may be filed within the same timelines as fixed rate bonds (45 days before the relevant interest payment date but no earlier than 90 days before the relevant interest payment date).

For variable rate bonds when the issuer does not know the interest payment amount 45 days prior to the interest payment date, the issuer must aggregate all credit payments on a quarterly basis and file a Form 8038-CP for reimbursement in arrears no later than 45 days after the last interest payment date within the quarterly period for which reimbursement is being requested.

Effective on its release, issuers of build America bonds, recovery zone economic development bonds, and specified tax

credit bonds are required to submit this revised Form 8038-CP to request payment of a refundable credit. Revised Form 8038-CP will be processed on receipt for build America bonds and recovery zone economic development bonds. Processing of the revised Form 8038-CP submitted for specified tax credit bonds will begin no later than July 12, 2010. The IRS will make timely refundable credit payments with respect to bond interest payment dates on specified tax credit bonds that are on or after September 1, 2010. Issuers of specified tax credit bonds with interest payment dates prior to September 1, 2010, see Notice 2010-35 for more information.

Where To File

File Form 8038-CP with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0050.

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 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. For the issuance of all build America bonds and recovery zone economic development bonds, use Form 8038-B, Information Return for Build America Bonds and Recovery Zone Economic Development Bonds. The Form 8038-B associated with a Form 8038-CP filing must be filed at least 30 days prior to the submission of the first Form 8038-CP of the bond issue. For more information, see Notice 2009-26. For reporting the issuance of all tax credit bonds, including specified tax credit bonds, use Form 8038-TC, Information Return for Tax Credit Bonds and Specified Tax Credit Bonds. For specified tax credit bonds, the Form 8038-TC associated with a Form 8038-CP filing must be filed at least 30 days prior to the submission of the first Form 8038-CP of the bond issue. For more information, see Notice 2010-35.

Note. Issuers of specified tax credit bonds must report on Form 8038-TC. The IRS will not be able to process the related subsidy payment request submitted on Form 8038-CP, unless Form 8038-TC is filed for these bonds. Issuers that have filed Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues, for an issue of specified tax credit bonds must refile on Form 8038-TC prior to filing the initial Form 8038-CP for these bonds.

Rounding to Whole Dollars

You may show amounts 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.

Where the Requested Payment Will Be Sent

The credit payment on line 22 will be sent by check to the entity that is to receive payment listed in Part I at the address designated in Part I, unless the issuer has elected to have the payment deposited directly, in which case the payment will be directly deposited to the routing and account numbers listed on lines 25a and 25c.

Note. If the entity listed in Part I is not the issuer, the account information (routing and account numbers listed on lines 25a and 25c) must be the account information of the entity listed in Part I. If the entity listed in Part I is the issuer, the account information must be the account information of the issuer.



If the amount of the credit payment requested is required to be offset against other outstanding taxes or obligations, then the credit payment to be received could be less than the amount requested. For more information see Notices 2009-26 and 2010-35.

Questions on Filing Form 8038-CP

For specific questions on how to file Form 8038-CP send an email to the IRS at: TaxExemptBondQuestions@irs.gov and put “Form 8038-CP 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.

Specific Instructions

Part I—Information on Entity That Is To Receive Payment of Credit and Communications

Amended return. An issuer may file an amended return to change or add to the information reported on a previously filed return, with respect to a single issue for the same interest payment date. If you are filing to correct errors or change a previously filed return, check the *Amended Return* box in the heading of the return.

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.”

Note. Do not check the *Amended Return* box if you are correcting prior filings of Form 8038-CP by using lines 21a or 21b. Any corrections to Part III must be corrected by using the net adjustment lines 21a or 21b. Such corrections must only be submitted on a subsequent Form 8038-CP filed to request a credit payment. An amended return should only be filed:

1. To correct information in Parts I and II for Form 8038-CP, or
2. If you previously filed a final return and need to make subsequent corrections to lines 21a or 21b only, then you should check the *Amended Return* box.

Line 1. Enter the name of the entity to which the requested refundable credit payment is to be paid. If the payment is to be made to the entity that issued the bonds, enter the name of that issuer. For build America bonds and recovery zone economic development bonds, the issuer's name should be identical to the name listed on Form 8038-B, Part I, line 1. For specified tax credit bonds, the issuer's name should be identical to the name listed on Form 8038-TC, Part I, line 1. If the issuer authorized another entity (for example, a trustee bank) to receive the requested refundable credit payment on its behalf, enter the name of that entity.

Note. The IRS will send payment only to the entity listed in Part I. By entering the name of an entity other than the issuer, the issuer consents to and authorizes the IRS to send the requested refundable credit payment directly to the entity listed in Part I. The issuer further consents to and authorizes the IRS to communicate directly with the entity listed in Part I and to disclose its return information to that entity, as necessary, in order to process the refundable credit payment.

Line 2. Enter the employer identification number (EIN) of the entity identified in line 1. If the issuer is the entity listed in Part I, for build America bonds and recovery zone economic development bonds the issuer's EIN should be identical to the EIN listed on Form 8038-B, Part I, line 2. If the issuer is the entity listed in Part I, for specified tax credit bonds, the issuer's EIN should be identical to the EIN listed on Form 8038-TC, Part I, line 2. An entity that does not have an 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.

Lines 5 and 6. If the issuer is not the entity listed in Part I, enter on line 5 the

name and title, and on line 6, the phone number of the designated contact person for the entity named in Part I that is to receive payment of the credit (such as an employee of the trustee bank) that the IRS may call for more information. If the issuer is the entity listed in Part I, enter on line 5 the name and title, and on line 6, the phone number of the designated contact person (such as an officer of the issuer, the legal representative of the issuer, or the paid preparer) whom the IRS may call for more information.

Note. If the issuer on line 5 authorizes the IRS to call a person other than an officer of the issuer for more information, by signing this return the issuer's authorized representative consents to the disclosure of issuer's return information to such person, as necessary to process this return.

Part II—Reporting Authority

Part II should be completed in full if the issuer authorized the IRS to pay the requested refundable credit payment to another entity on its behalf (for example, a trustee bank).

Lines 7 and 8. If the issuer's name is the same as line 1, enter "SAME" and skip lines 8, 9, 11, 15, and 16. If the issuer's name is not the same as line 1, enter the name, EIN, and complete address of the issuer of the bond issue. For build America bonds and recovery zone economic development bonds the issuer's name and EIN should be identical to the name and EIN listed on Form 8038-B, Part I, lines 1 and 2 filed with respect to the bond issue. For specified tax credit bonds, the issuer's name and EIN should be identical to the name and EIN listed on Form 8038-TC, Part I, lines 1 and 2 filed with respect to the bond issue.

Line 10. This line is for IRS use only. Do not make any entries in this box.

Line 12. Enter the issue date of the bond issue. For build America bonds and recovery zone economic development bonds, the issue date should be identical to the issue date listed on Form 8038-B, Part I, line 7. For specified tax credit bonds, the issue date should be identical to the issue date listed on Form 8038-TC, Part I, line 7.

Line 13. Enter the name of the bond issue. The name of the bond issue should be identical to the name listed on Form 8038-B, Part I, line 8, filed with respect to the bond issue. If the bond issue is not named write "None." For specified tax credit bonds, the name of the bond issue should be identical to the name listed on Form 8038-TC, Part I, line 8, filed with respect to the bond issue.

Line 14. Enter the Committee on Uniform Securities Identification Procedures (CUSIP) number on the bond with the latest maturity. For build America bonds and recovery zone economic development bonds, the CUSIP number should be identical to the CUSIP number listed on Form 8038-B, Part I, line 9, filed

for the bond issue. For specified tax credit bonds with a single maturity, the CUSIP number should be identical to the CUSIP number listed on Form 8038-TC, Part I, line 9, filed for the bond issue. For specified tax credit bonds with multiple maturities, the CUSIP number should be the CUSIP for the corresponding maturity reported on this form. If the bond issue was not publicly offered and there is no assigned CUSIP number, write "None."

Lines 15 and 16. If the issuer is not the entity listed in Part I, enter the name, title, and phone number of the officer of the issuer or other person (including legal representative or paid preparer) whom the IRS may call for more information. If the issuer is the entity listed in Part I, leave lines 15 and 16 blank.

Note. If the issuer authorizes, on line 15, the IRS to call a person other than an officer of the issuer for more information, by signing this form the issuer's authorized representative consents to the disclosure of the issuer's return information to such person, as necessary to process this return.

Line 17a. For build America bonds and recovery zone economic development bonds, check the type of issue that was identified in Part III, *Purpose of Issue*, of Form 8038-B, for example, education, health and hospital, transportation, public safety, environment (including sewage bonds), housing, utilities, or other (with description). Do not check more than one type of issue; if the issuance is multipurpose, check the type of issue that is the largest portion of the issue price.

Line 17b. For build America bonds and recovery zone economic development bonds, also enter the total issue price for the bond listed on Form 8038-B, Part III, line 3 filed for the bond issue. For specified tax credit bonds, also enter the total issue price for the bond listed on Form 8038-TC, Part III, line I filed for the bond issue.

Line 17c. Check the box that applies to the bonds of the issue for which this return is submitted.

 **Do not leave lines 12, 13, 14, 17a, 17b, and 17c blank. If these lines are left blank it will delay processing of this return.**

Part III—Payment of Credit

Line 18. Enter the interest payment date to which the requested refundable credit payment relates. An interest payment date is the date on which interest is payable by the issuer to the holders of the bonds. (For a variable rate issue, enter the last interest payment date applicable to the quarterly period to which this return relates.) For certain variable rate bonds the remarketing date or the date the interest rate is reset may not be the same date the interest is paid.

Line 19a. Enter the amount of interest payable to the holders of the bonds on the interest payment date. The amount entered on line 19a can only relate to the

interest payable on a single bond issue and the amount of interest allocable to a single bond type (build America bond, recovery zone economic development bond, or a single type of specified tax credit bond). Issuers of specified tax credit bonds with multiple maturities must file a separate Form 8038-CP for each bond maturity. Such issuers should enter the amount of interest payable on a single maturity on the interest payment date. (See *What To File*.)

Note. Credit payments are not allowed for preissuance accrued interest.

Line 19b. For specified tax credit bonds only, enter the applicable credit rate. The applicable credit rate is the daily tax credit bond 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. Carry the percent out to two decimal places, do not round (for example, 10.74%). Such rate is published by the Bureau of Public Debt on its internet site for State and Local Government Series Securities at www.treasurydirect.gov. See Notice 2009-15, which is on page 449 of Internal Revenue Bulletin 2009-6 at www.irs.gov/pub/irs-irbs/irb09-06.pdf.

Line 19c. For specified tax credit bonds only, enter the amount of interest payable to the holders of the bonds on the interest payment date calculated using the applicable credit rate in the box on line 19b. Issuers of specified tax credit bonds with multiple maturities should enter the amount of interest payable to the holders of the bonds on the interest payment date calculated using the applicable credit rate in the box on line 19b for the single maturity they are reporting on this Form 8038-CP under line 19a.

Lines 20a and 20b. For build America bonds and recovery zone economic development bonds enter the amount of the requested credit payment relating to the interest paid on the interest payment date. The amount reported on line 20a must equal 35% of the amount reported on line 19a or the amount on line 20b must equal 45% of the amount reported on line 19a.

For specified tax credit bonds the amount of the refundable credit payment allowed under section 6431(f) for qualified zone academy bonds and qualified school construction bonds is the lesser of 100% of the amount of interest payable under the bond on such interest payment date or 100% of the amount of interest which would have been payable under such bond on such date if such interest were determined at the applicable tax credit bond rate determined under section 54A(b)(3). For new clean renewable energy bonds and qualified energy conservation bonds, the amount of the refundable credit payment allowed under 6431(f) is the lesser of 100% of the amount of interest payable under the bond on such interest payment date or 70% of the amount of interest which

would have been payable under such bond on such date if such interest were determined at the applicable tax credit bond rate determined under section 54A(b)(3).

For specified tax credit bonds enter the amount of the requested credit payment as follows:

- Line 20c—new clean renewable energy bonds, enter the lesser of 100% of line 19a or 70% of line 19c,
- Line 20d—qualified energy conservation bonds, enter the lesser of 100% of line 19a or 70% of line 19c,
- Line 20e—qualified zone academy bonds, enter 100% of the lesser of lines 19a or 19c, and
- Line 20f—qualified school construction bonds, enter 100% of the lesser of lines 19a or 19c.

Note. You may not have more than one entry on lines 20a, 20b, 20c, 20d, 20e, and 20f.

If the amount shown on lines 20a, 20b, 20c, 20d, 20e, and 20f does not equal the amount of the credit payment shown on the debt service schedule attached to the information return for the bonds filed separately with the IRS (Form 8038-TC or Form 8038-B), please attach an explanation and write across the top, "Explanation for difference in scheduled credit payment." For variable rate bonds, no explanation is required.

Lines 21a and 21b. Lines 21a and 21b are available to correct prior mistakes with respect to credit payments related to prior filings of Form 8038-CP for the respective issue.

- If a prior credit payment amount was received that was less than the correct amount, then enter the amount on line 21a that relates to the corresponding increase to this payment request.
- If a prior credit payment amount was received that exceeded the correct amount for that payment, then enter the amount on line 21b that relates to the corresponding decrease to this payment request.
- If there are both increase and decrease adjustments related to multiple prior payments, then net the amounts and include the corresponding amount in either line 21a or 21b as appropriate.

If any amount is entered on either line 21a or 21b, attach an explanation and write across the top, "Explanation for Adjustment - Line 21a/21b" as to how the error occurred and what steps were taken to prevent similar errors from recurring. If an explanation is not attached, credit payment may be delayed.

Line 22. Enter the amount of the credit payment to be received. Combine the amount in line 20a, 20b, 20c, 20d, 20e, or 20f with the amount in either line 21a or 21b, as applicable.

Note. If an amount of the credit payment requested is required to be offset against other outstanding taxes or obligations, then the credit payment to be received could be less than the amount on line 22.

For more information, see Notices 2009-26 and 2010-35.

Line 23. Check "Yes" or "No." Check "Yes" if the requested payment is the final payment of interest with respect to the bond issue. The final payment of interest is the last payment of interest prior to, or in conjunction with, the maturity or redemption of the issue. If a box is not checked, credit payments may be delayed.

Line 24. If the issuer completed Part I authorizing another entity (for example, a trustee bank) to receive the requested refundable credit payment on its behalf, check this box.

Line 25. Complete lines 25a through 25c if you want the amount shown on line 22 directly deposited into your checking or savings account. Otherwise, we will send a check to the entity listed in Part I.



The IRS is not responsible for a lost credit payment if you enter the wrong account information. Check with your financial institution to get the correct ACH (Automated Clearing House) routing and account numbers and to make sure your direct deposit will be accepted.

If the direct deposit to your account is different from the amount you expected, you will receive an explanation in the mail about 2 weeks after your credit payment is deposited.

Line 25a. The routing number must be nine digits. The first two digits must be 01 through 12 or 21 through 32. Otherwise, the direct deposit will be rejected and a check will be sent instead. If the entity listed in Part I is not the issuer (such as a trustee bank), ask that entity for the correct routing number. (See *Where the Requested Payment Will Be Sent.*)

Line 25b. Check the appropriate box for the type of account. Do not check more than one box. If unknown, leave blank.

Line 25c. The account number can be up to 17 characters (both numbers and letters). Include hyphens but omit spaces and special symbols. Enter the number from left to right and leave any unused boxes blank.

Signature and Consent

An officer of the issuer with authority to bind the issuer must sign Form 8038-CP and any applicable certification. If the entity listed in Part I is not the issuer, the authority of the person signing this return must include the authority to bind the issuer, the authority to request that the IRS send the refundable credit payment to the entity identified in Part I, and the authority to consent to the disclosure of return information necessary to process the refundable credit payment to the designated contact person(s) listed in Parts I and II on Form 8038-CP, as applicable. Also print the name and title of the person signing Form 8038-CP.

Note. If the issuer designates on line 5 of Part I or line 15 of Part II a person

other than an officer of the issuer as a contact person for the IRS to call for more information, by signing this return the issuer's authorized representative consents to the disclosure of the issuer's return information to such person, as necessary to process the refundable credit payment.

Paid Preparer

If an authorized officer of the issuer filled in this return, the paid preparer block should remain blank. Anyone who prepares the return but does not charge the issuer should not sign the return. Certain others who prepare the return should not sign. For example, a regular, full-time employee of the organization, 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	6 hr., 13 min.
Learning about the law or the form	12 min.
Preparing, copying, assembling, and sending the form to the IRS	18 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 2.