

Rev. Proc. 92-83, 1992-2 C.B. 487—Recovery of Overpayment of Rebate (ARB)

Section 1. Purpose

This revenue procedure provides guidance to issuers of tax-exempt bonds that seek to recover overpayments of amounts paid under sections 1.148-1 through 1.148-8 of the Income Tax Regulations.

Sec. 2. Background

.01 Section 103(a) of the Internal Revenue Code provides that gross income does not include interest on any State or local bond. Under section 103(b)(2), however, that interest is not excludable from gross income if the bond is an arbitrage bond. Section 148(f) provides that a bond is treated as an arbitrage bond if the issuer does not rebate to the United States the arbitrage profits earned on the issue of which that bond is a part.

.02 Under section 148(f)(4)(C), the rebate requirement does not apply to the available construction proceeds of a construction issue if certain spending requirements are met. Under section 148(f)(4)(C)(vii), if those requirements are not met, the issuer of a construction issue may elect to pay a penalty in lieu of rebate with respect to the “available construction proceeds.” Thus, the issuer can comply with the penalty provisions rather than the rebate provisions for those proceeds. The issuer may later choose to terminate this election with another election under sections 148(f)(4)-(C)(viii) and 148(f)(4)(C)(ix).

.03 Sections 1.148-1 through 1.148-8 of the regulations provide rules to determine the amount of rebatable arbitrage, the amount of the penalty in lieu of rebate, the amounts necessary to terminate the penalty in lieu of rebate, and the amount due for the late payment of any of these.

.04 Section 148(i) of the Code authorizes the Secretary to prescribe regulations that are necessary or appropriate to carry out the purposes of section 148.

.05 Section 1.148-13T(a) of the temporary Income Tax Regulations provides that an issuer may recover an overpayment of an amount paid under the rebate provisions with respect to an issue by proving to the satisfaction of the Commissioner that the issuer made the overpayment. Section 1.148-13T(b) defines an overpayment, and section 1.148-13T(c) sets forth special rules for recovery.

.06 The regulatory guidance under sections 1.148-1 through 1.148-8 expires on June 30, 1993. Those regulations will be further simplified and clarified to provide future guidance and the provisions regarding recoveries of overpayments will be considered with those regulations for further simplification and clarification.

Sec. 3. Scope

This revenue procedure applies only to the recovery of overpayments of amounts paid under sections 1.148-1 through 1.148-8 of the regulations and any successor provision to those sections.

Sec. 4. Procedure For Seeking Recovery

.01 Under section 1.148-13T(a) only issuers of bonds may recover overpayments of amounts paid under sections 1.148-1 through 1.148-8 of the regulations. To request a recovery of an overpayment with respect to an issue, an issuer must submit, in the format (including the heading) and order specified below, the requested information. If an authorized representative requests a recovery on behalf of an issuer, a properly executed power of attorney must be attached.

REQUEST FOR RECOVERY OF AMOUNTS PAID UNDER REBATE PROVISIONS

1. ISSUER'S NAME:

2(a). ISSUER'S ADDRESS (number and street):

2(b). CITY, STATE, AND ZIP CODE:

3. EMPLOYER IDENTIFICATION NUMBER:

4. PERSON TO CONTACT FOR INFORMATION:

5. PHONE NUMBER OF PERSON TO CONTACT:

6. NAME OF THE ISSUE: (If there is no name, provide other identification of the issue.)

7. CUSIP (Committee on Uniform Securities Identification Procedures) NUMBER OF THE BOND WITH THE LATEST MATURITY: (If the issue does not have a CUSIP number, write "none.")

8. DATE OF ISSUE:

9. AMOUNT THAT HAS BEEN PAID TO THE UNITED STATES UNDER §§ 1.148-1 THROUGH 1.148-8 OF THE REGULATIONS WITH RESPECT TO THE ISSUE:

10. AMOUNT OF REBATABLE ARBITRAGE AS OF THE MOST RECENT INSTALLMENT COMPUTATION DATE WITH RESPECT TO THE ISSUE:

11. AMOUNT OTHERWISE REQUIRED TO BE PAID UNDER §§ 1.148-1 THROUGH 1.148-8 OF THE REGULATIONS WITH RESPECT TO THE ISSUE AS OF THE DATE THE REFUND IS FIRST REQUESTED:

12. AMOUNT REQUESTED TO BE RECOVERED, WHICH MAY BE LESS THAN THE OVERPAYMENT:

CIRCLE YES OR NO TO ANSWER QUESTION 13:

13(a). Yes No Was the overpayment paid as a penalty in lieu of rebate, paid to terminate the penalty in lieu of rebate, or paid because of a late payment of either of those payments? If no, skip 13(b).

13(b). Yes No Has the fourth spending period elapsed? Skip questions 13(c) through (f).

13(c). Yes No Has the final computation date for the issue occurred? If yes, skip questions 13(d) and 13(e).

13(d). Yes No Will there be additional rebatable arbitrage for the issue? If no, skip question 13(e).

13(e). Yes No Was the amount requested to be recovered paid solely as a result of an arithmetic mistake?

13(f). Yes No Would the receipt of the amount requested to be recovered result in additional rebatable arbitrage as of the date the recovery is requested?

14. DESCRIPTION OF FACTS: (Describe all the facts, including the mistake, that led to the overpayment. If the overpayment is of an amount paid as a penalty in lieu of rebate, paid to terminate the penalty in lieu of rebate, or paid because of a late payment of either of those payments, include the relevant computations. If the overpayment was paid as part of a rebate payment, include the relevant rebate computations for the issue. Use additional pages if necessary.)

15. SCHEDULE OF PAYMENTS: (Provide a schedule showing amounts and dates that payments were made to the United States for the issue. A copy of all Forms 8038-T that accompanied those payments must be attached. Use additional pages if necessary.)

16. SIGN UNDER PENALTIES OF PERJURY: Under penalties of perjury, I declare that I have examined this request for recovery of overpayment, including accompanying documents, and to the best of my knowledge and belief, the facts represented in support of the request are true, correct, and complete.

PLEASE SIGN HERE: DATE:

TYPE OR PRINT NAME AND TITLE:
(Must be signed by issuer.)

.02 The completed request must be sent to the Internal Revenue Service Center, Attention: Accounting Control Section RACS Unit, Philadelphia, PA 19255.

.03 Although the information in Section 4.01 will generally be sufficient to enable the Commissioner to determine whether a refund is appropriate, additional information may be necessary. If so, a representative from the Internal Revenue Service will contact the issuer or its representative. Processing of the request will be suspended and the issuer will then have 21 calendar days to submit that information. If all of the information is not timely received, a letter will be sent explaining that the request for recovery is deficient and that processing of the request has terminated. This letter may be sent instead of a request for additional information if the initial request is severely deficient.

Sec. 5. Effect of Recovery

A payment to the issuer under this revenue procedure is not a determination by the Service that the requirements of section 148 have been met with respect to the issue.

Sec. 6. Procedure If Recovery Tentatively Denied

After a request is analyzed, if it appears the Service will deny the request and if a conference has been requested by the issuer, a conference will be held in the National Office. The issuer will be notified by telephone, if possible, of the time and place of the conference, which must be held within 21 calendar days after this contact. Since conference procedures are informal, no tape, stenographic, or other verbatim recording of a conference may be made.

Sec. 7. Effective Date

This revenue procedure applies upon publication.

DRAFTING INFORMATION

The principal author of this revenue procedure is William P. Cejudo of the Office of Assistant Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Mr. Cejudo on (202) 622-3980 (not a toll-free call).