

Revisions to Form 8038-CP: Tax Exempt Bonds

Text version of the **EIN Applications for Indian Tribal Governments and Their Entities** presentation on [StayExempt.irs.gov](https://stayexempt.irs.gov)

Welcome to the Office of Tax Exempt Bonds video. We will discuss the January 2022 revisions to IRS Form 8038 CP, which is the form used by issuers of direct pay bonds to claim credit payments. The information in this video is not official guidance.

Filers of Form 8038 CP should carefully read and follow the revised instructions for the form. The IRS is always looking for ways to improve taxpayer service, and we periodically release revisions to forms with this goal in mind.

In this video, we discussed some of the key changes in the January 2022 revision of Form 8038 CP. The revised form includes significant changes and representing this video to provide a brief overview of these changes for the tax-exempt bond community, including issuers of direct pay bonds, paid preparers, and other industry professionals.

The revised Form 8038 CP, the new Schedule A for the form, and the instructions can be found on irs.gov. Search for 8038-CP, then filter by selecting forms and instructions on the left side.

Another purpose of this video is to remind you to use the January 2022 revision of Form 8038 CP instead of the 2020 version. The January 2022 revision supersedes the January 2020 version. It's important to use the correct form so your credit payment requests will be processed as efficiently as possible.

The January 2022 revision simplifies the filing process for issuers when providing certain explanations and supplemental information. Additionally, revisions to the form were needed to facilitate electronic filing, which is planned for later in 2022. The instructions for the form were also revised and include examples to prevent errors in completing the form. Please read the instructions carefully the first time you complete the January 2022 Form 8038 CP. The revised form has an effective date provision based on processing of the form.

Use the January 2022 revision of Form 8038 CP when the form will be received by the IRS on or after January 1st, 2022. The credit payment could be delayed or normal processing could be affected if the IRS receives a prior version of the Form 8038 CP on or after January 1st, 2022, or receives a Form 8038-CP that's not correctly completed.

The most noticeable change to the Form 8038-CP is the new Schedule A. The new schedule will simplify and increase accuracy for claims with respect to specified tax credit bonds. Specified tax credit bonds reported on Schedule A are new clean renewable energy bonds, qualified energy conservation bonds, qualified zone Academy bonds, and qualified school construction bonds. Under Internal Revenue Code section 6431, computation of the refundable credit payment for specified tax credit bonds must be done on a bond-by-bond basis.

The allowable credit payment is the lesser of the interest payable on the bond or the interest that would have been payable had the bond paid interest at the applicable credit rate or, in the case of new clean renewable energy bonds and qualified energy conservation bonds, 70% of the applicable credit rate. As a result, for specified tax credit bond issues, which include several different bonds in a single bond issue, a separate computation is required for each individual bond and for bonds with the same maturity but different terms, such as different interest rates.

This is different than the credit payment amount for Build America Bonds and Recovery Zone Economic Development Bonds, where credit payments are based on a uniform percentage of the interest paid on every bond in the issue. Filers of a claim for credit payment with respect to Build America Bonds and Recovery Zone

Economic Development Bonds will not use Schedule A because of the need to compute the credit separately for each different bond.

In an issue under the January 2020 and earlier versions of the Form 8038 CP, issuers of Qualified Zone Academy Bonds and Qualified School Construction bonds followed complex instructions to compute the proper claim amount. Additionally, issuers of new clean renewable energy bonds and qualified energy conservation bonds were required to file separate Form 8038 CPs for each different bond in the issue for each interest payment date.

The new Schedule A will document in tabular form all the required steps in the bond-by-bond computation of the credit claimed for an interest payment date. For specified tax credit bonds, this includes the 70% of the applicable credit rate limitation.

For new clean renewable energy bonds and qualified energy conservation bonds, the total amount from the tables on Schedule A is entered on line 19 C of Form 8038 CP. Issuers of new clean renewable energy bonds and qualified energy conservation bonds using the January 2022 revision are no longer required to file separate Form 8038-CPs for each different bond in the issue on each interest payment date.

The instructions for Form 8038 CP provide 2 examples for completing Schedule A.

Now I'd like to discuss report numbers.

An important change for all filers is the report number on the return. Previously, filers of Form 8038 CP did not fill out line 10 for the report number. IRS personnel added the report number to the paper return when it was processed. For January 2022 and later filings, issuers are now required to assign a report number for the filing and to use the same report number when filing to claim credit for the bonds for subsequent interest payment dates.

Separate filings of Form 8038 CP Payment Requests continue to be required for different types of bonds, such as Build America Bonds and Recovery Zone Economic Development bonds, even though the bond may be part of the same issue for most other tax purposes. And if the bond issue consists of fixed rate bonds and variable rate bonds where the issuer doesn't know the interest amount to be paid before 45 days prior to the interest payment date. Separate Form 8038 CPs are filed for the fixed rate bonds and the variable rate bonds.

Previously, the IRS assigned different report numbers to those different returns. With the January 2022 revision, issuers must assign different report numbers for the separate filings.

On the revised form, filers assign a report number in the range from 401 through 450 when filing for more than one type of bond or when filing multiple returns for the same As I discussed earlier, the separate Form 8038 CP payment requests should have report numbers numbered consecutively, starting with 401.

To avoid duplicate report numbers on different bonds, issuers will need to coordinate with paid preparers, trustees and others who may be preparing Form 8038 CPs on the issuer's behalf to ensure no duplication occurs. Once a report number is used on a filing for an issue or a portion of an issue of bonds, the same report number must be used as the report number for all future filings of Form 8038-CP for those bonds. And once assigned, the report number may not be used for any other direct pay bonds, even after the bonds to which the number was initially assigned are redeemed or no longer outstanding.

The QSIP number entered on line 14 of the form must contain nine digits without spaces or hyphens.

Enter none if the bond issue does not have a QSIP number.

The instructions now provide an example concerning issue price entries for line 17B.

Now I'd like to discuss some of the additions to the form which enable you to provide specific information about the bond issue.

To facilitate processing and future E filing of the return, 4 new lines have been added to Form 8038 CP which provide detailed information about the filing. Each of these lines requires that you enter a three-digit code number.

The first is line 17 C where you identify the type of bonds for which the filing is being made by entering the appropriate 3-digit code number. These code numbers are 102 for New clean renewable energy bonds, 103 for Qualified energy conservation bonds, 104 for Qualified Zone Academy bonds, 105 for Qualified school construction bonds, 109 for Build America bonds, and 110 for Recovery zone economic development bonds.

The 1st 4 codes for the four types of specified tax credit bonds are the same as the code that was required for the Form 8038 TC filed upon the original issuance of those bonds.

Now let's discuss amended returns.

An amended Form 8038-CP return can only be filed if you're filing to correct errors in Part 3 on a previously filed final return. A previously filed final return is a Form 8038 CP previously submitted for the final interest payment date for the bonds. Previously submitted return will have Line 25 checked Yes on the January 2020 or later versions of Form 8038 CP and Line 23 checked Yes on the January 2012 or prior versions of Form 8038 CP, in each case indicating the return was the final return to be filed. The instructions provide detailed directions for the entries on an amended return.

Now let's discuss what to do if you need to make adjustments or corrections to a previously filed Form 8038 CP that's not a final return.

If it's not a final return, do not amend it. Instead, you should make the appropriate adjustments on a subsequently filed return.

For erroneously claimed amounts on returns for earlier interest payment dates, use line 21 to reduce or increase the claim for the current interest payment date to correct the prior erroneous claim amount on the January 2022 revision. Three-digit codes are used to explain the reason for the increase or decrease to previously claimed payments. These codes are 211 for an erroneous entry on prior returns caused by a typographical or input error or an incorrect debt service schedule date used, 212 for a math error on a prior return, 213 for claimed interest on prior return on bonds previously redeemed, 214 for claimed interest on prior return on bonds previously legally defeased, and 219 for other. Use this if codes 211 through 214 don't apply or if more than one code is applicable.

Codes 215 through 218 are reserved and should not be used.

The filer is to submit on a separate explanation document the prior interest payment date to which the correction relates and certain other information is provided in the instructions to the form.

Now I will discuss updated debt service schedules reported on line 23.

Issuers are required to provide an updated debt service schedule for the bonds whenever an event occurs, such as early redemption of some of the bonds which makes the previously filed schedule inaccurate.

Lines 23A and 23B deal with this requirement and require a three-digit code to explain the change.

These codes are:

- 231 for retirement of all or part of the bonds,
- 232 for a correction of a mistake in the most recently filed debt service schedule,
- 233 to reflect a closing agreement with the IRS,
- 234 for illegal defeasance of bonds,
- 235 for a remedial action under Revenue Procedure 2018 Dash 26, and
- 239 for other Use.

This if codes 231 through 235 don't apply or if more than one code is applicable.

Codes 236 through 238 are reserved and should not be used.

The filer is to submit on a separate explanation document certain related information such as the redemption date of bonds or the date of the closing agreement with the IRS or if code 239 is entered, all as provided in the instructions to the form.

Now I'd like to discuss how to report payment or non-payment of interest.

Previously, issuers used line 24 of the January 2020 version of Form 8038 CP to state whether they will be paying the interest related to the claim for the direct payment tax credit. The January 2022 revision uses line 24a for this.

When nonpayment of interest is indicated, line 24B requires an explanation code about the nonpayment or expected nonpayment of interest to bondholders.

These codes are:

- 241 for insolvent, no receivership or bankruptcy proceedings,
- 242 for insolvency, receivership, or bankruptcy proceedings in progress.
- 243 for insolvency, receivership, or bankruptcy proceedings discharged debt.
- 244 for insufficient payment sources due to sequestration, no receivership proceedings, 245 for insufficient payment resources for reasons other than sequestration, and no receivership proceedings, or
- 249 for other.

Codes 246 through 248 are reserved and should not be used.

An attachment with additional information is required when particular 3-digit codes, including other, are used.

Now that we've covered the changes to the Form 8038 CP, I'd like to share some helpful tips for forms to be received for processing in 2022.

Do not use the 2020 version of Form 8038 CP use the new 2022 version.

Issuers should assign permanent report numbers to all the separate bonds that require their own individual report number.

Issuers should share the assigned report numbers with internal and external preparers of your returns.

Follow the instructions carefully and correctly complete all lines.

Include attachments when required, including required explanations, Revised debt service schedule and Schedule A for new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds.

We hope you found this video helpful and informative.

For additional information on Form 8038 CP and other matters relating to tax advantage bonds, please visit the Tax Exempt Bonds website@[irs.gov/bonds](https://www.irs.gov/bonds).

Thank you for watching this presentation from the Tax Exempt & Government Entities division of the IRS.