

Rev. Proc. 2002-48, 2002-37 I.R.B. \_\_\_\_ (Rev. Proc. 88-10 , revised)

## SECTION 1. PURPOSE

This revenue procedure provides guidance to issuers of state or local bonds for requesting an extension of time to file, or for amending, the statement of information required by section 149(e) of the Internal Revenue Code. In general, these statements must be filed on Forms 8038, 8038-G, or 8038-GC.

## SECTION 2. BACKGROUND

01. The Tax Reform Act of 1986, 1986-3 (Vol. 1) C.B. 1, 567, amended and reorganized the sections of the 1954 Code pertaining to information reporting for certain state or local bonds. Former section 103(l), pertaining to information reporting for private purpose bonds, and former section 103A(j)(3)(A), pertaining to information reporting for qualified mortgage bonds, were consolidated in section 149(e) of the 1986 Code, which requires information reporting for any state or local bond.

02. Section 103(a) of the 1986 Code provides that, with certain exceptions, gross income does not include interest on any state or local bond.

03. Rev. Proc. 88-10, 1988-1 C.B. 635, provided guidance to issuers of state or local bonds for requesting an extension of time to file the statement of information required by section 149(e) of the 1986 Code.

04. Section 149(e)(1) of the 1986 Code provides that interest on a state or local bond will not be excludable from gross income unless certain information reporting requirements are satisfied. The issuer must submit a statement that contains the information required under section 149(e)(2). The statement must be submitted not later than the 15<sup>th</sup> day of the 2<sup>nd</sup> calendar month after the close of the calendar quarter in which the bond is issued (or such later time as the Secretary may prescribe with respect to any portion of the statement).

05. In general, the statement required by section 149(e)(2) of the 1986 Code must be filed on one of the following forms: Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues; Form 8038-G, Information Return for Tax-Exempt Governmental Obligations; or Form 8038-GC, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales.

06. Section 1.149(e)-1(d)(2)(ii) of the Income Tax Regulations provides that the Commissioner may grant an extension of time to file any form or attachment required under section 149(e) if the Commissioner determines that the failure to file in a timely manner was not due to willful neglect. The Commissioner may make this determination with respect to an issue or a class of issues.

### SECTION 3. PROCEDURES

01. An issuer of a state or local bond who fails to timely submit the statement (Form 8038, 8038-G, or 8038-GC) required by section 149(e)(2) should take the following action as promptly as is reasonably practical after discovery of the failure.

- (1) Mail the statement to the Internal Revenue Service, Ogden Submission Processing Center, Ogden, UT 84201. The words, *“Request for Relief under Section 3 of Rev. Proc. 2002-\_\_\_”* should be typed or printed across the top of the statement.
  - (2) Attach the statement to a letter briefly setting forth the reasons why the statement was not timely submitted to the Service. The letter must be signed by an individual who has knowledge of the relevant facts and circumstances. The letter should include all relevant information, including when the applicable statement (Form 8038, 8038-G, or 8038-GC) was required to be filed, and a description of the events that led up to both the failure to timely file and discovery of the failure to timely file. The letter should also indicate whether the bond issue in question is under examination by the Service. An issue generally is under examination on the date a letter opening an examination of the issue is sent.
02. A request for an extension filed in accordance with section 3.01 shall be deemed accepted if the Service does not notify the issuer regarding the request within 90 days after the Service’s receipt of the request.
03. The Service will notify the issuer in writing if it is unable to make a determination, based on the issuer’s request for an extension, that the failure to file the statement was not due to willful neglect. The notification will be made within 90 days of the Service’s receipt of the issuer’s request and will inform the issuer that the Service has been unable to make the

determination. In the notification, the Service may request additional information from the issuer.

04. If, after the notification under section 3.03, and based on the information submitted, the Service determines that the failure to file the statement was not due to willful neglect, it will so inform the issuer in writing.
05. If, after the notification under section 3.03, and based on the information submitted, it appears that a determination adverse to the issuer will be made, the issuer will be entitled, upon request, to a conference with the Service. If the issuer requests a conference, no adverse determination (whether preliminary or otherwise) will be made prior to the conference. If, after the conference, the Service determines that the failure to file the statement was not due to willful neglect, it will so inform the issuer in writing.
06. If the Service determines that the failure to timely file the statement is not due to willful neglect, then the filing of the statement in section 3.01 above is accepted, and the information reporting requirement of section 149(e)(1) is deemed satisfied.
07. If the Service determines that the failure to timely file the statement is due to willful neglect, the Service will issue a preliminary adverse determination to the issuer that the interest on the bond is not excludable from gross income under section 103(a). In such circumstances, the procedures set forth in Rev. Proc. 99-35, 1999-41 I.R.B. 501 (procedures

for administrative appeal of proposed adverse determination of tax-exempt status of the bond issue), or its successor shall be followed.

#### SECTION 4. AMENDMENT TO STATEMENT FILED ON FORM 8038, 8038-G OR 8038-GC.

If, after timely filing the statement required under section 149(e)(2), an issuer discovers that there is an inaccuracy in the statement, the issuer may file an amended statement.

#### SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 88-10 is superseded.

#### SECTION 6. EFFECTIVE DATE

This revenue procedure is effective immediately.

#### DRAFTING INFORMATION

The principal author of this revenue procedure is Susan D. Ruth of Tax Exempt Bonds, Outreach Planning and Review, Tax Exempt/Government Entities (TE/GE). For further information regarding this revenue procedure, contact Ms. Ruth on (202) 283-9792 (not a toll-free call).