

Supporting Statement
OMB Number 1545-1347
Arbitrage Restriction on Tax Exempt Bonds
FI-7-94 (TD 8718), FI-36-92 (TD 8476), FI-28-96(TD 8801),
Reg-148659-07 (TD 9777), and REG-138526-14 (TD 9801).

21856. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 148 of the Internal Revenue Code requires issuers of tax-exempt bonds to rebate certain arbitrage profits earned on nonpurpose investments acquired with the bond proceeds.

The collection of information in FI-7-94 (TD 8718), is in § 1.148-2(b)(2) permits an issuer to certify its reasonable expectations regarding the use of bond proceeds. The scope of interest rate hedging transactions covered by the arbitrage regulations was broadened by requiring that hedges entered into prior to the sale date of the bonds are covered as well.

The collection of information in FI-28-96 (TD 8801), is in § 1.148-5(d)(6)(iii) , provides that issuers are required to retain records with the bond documents until three years after the last outstanding bond is redeemed The recordkeeping requirements are necessary for the Service to verify compliance with section 148. This information will be used to establish that a Treasury obligation is purchased at fair market value.

**TD 8801 is currently under OMB NO. 1545-1490 , but is being consolidated under this collection.

The collection of information in REG-148659-07 (TD 9777) is in § 1.148-4(h)(2)(viii), which contains a requirement that the issuer maintain in its records a certificate from the hedge provider. For a hedge to be a qualified hedge, existing regulations require, among other items, that the actual issuer identify the hedge on its books and records. The identification must specify the hedge provider, the terms of the contract, and the hedged bonds. These final regulations require that the identification also include a certificate from the hedge provider specifying certain information regarding the hedge.

The collection of information in regulation REG-138526-14 (TD 9801 (final)) is in § 1.148-1(f)(2)(ii) which contains a requirement that the issuer obtain certifications and supporting documentation regarding the underwriter's sales of the issuer's bonds.

21857. USE OF DATA

The data is used by the IRS to verify that issuers of tax-exempt bonds are properly associating an interest rate hedging transaction with an issue of tax-exempt bonds for purposes of the arbitrage restrictions.

21858. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

21859. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

There are no small entities affected by this collection. these regulations will not have a significant economic impact on a substantial number of small entities.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

The data is used by the IRS to verify that issuers of tax exempt bonds are properly associating an interest rate hedging transaction with an issue of tax exempt bonds for purposes of the arbitrage restrictions. The consequences are that the IRS will have to spend more taxpayer assistance resources to collect this data through other means. This will compromise the Agency's ability to enforce tax compliance. Tax compliance is a vital part of the government's ability to meet its' mission and serve the public.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON

AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

The notice of proposed rulemaking was published in the *Federal Register* on November 6, 1992. A public hearing was held on February 2, 1993. After consideration of the comments, the proposed regulations were modified and adopted in final form. The final regulations (58 FR 33510) were published in the *Federal Register* on June 18, 1993. FI-7-94 amended section 1.148-4 in a notice of proposed rulemaking (59 FR 24094) and temporary regulation (59 FR 24039) in the *Federal Register* on May 10, 1994. The final regulations for FI-7-94 were published in the *Federal Register* on May 9, 1997 (62 FR 25502).

This document contains amendments to the Income Tax Regulations (26 CFR part 1) on the arbitrage investment restrictions under section 148 of the Code and related provisions. On June 18, 1993, the Department of the Treasury (the Treasury Department) and the IRS published comprehensive final regulations in the Federal Register (TD 8476, 58 FR 33510) on the arbitrage investment restrictions and related provisions for tax-exempt bonds under sections 103, 148, 149, and 150, and, since that time, those final regulations have been amended in certain limited respects (the regulations issued in 1993 and the amendments thereto collectively are referred to as the Existing Regulations). A notice of proposed rulemaking was published in the Federal Register (72 FR 54606; REG-106143-07) on September 26, 2007 (the 2007 Proposed Regulations). The 2007 Proposed Regulations proposed amendments to the Existing Regulations. Comments on the 2007 Proposed Regulations were received and a public hearing was held on January 30, 2008.

Another notice of proposed rulemaking was published in the Federal Register (78 FR 56842; REG-148659-07, (TD 9777)) on September 16, 2013 (the 2013 Proposed Regulations). The 2013 Proposed Regulations proposed additional amendments to the Existing Regulations (the 2007 Proposed Regulations and the 2013 Proposed Regulations collectively are referred to as the Proposed Regulations). Comments on the 2013 Proposed Regulations were received and a public hearing was held on February 5, 2014. The 2013 Proposed Regulations addressed the definition of issue price, among other topics.

A partial withdrawal of notice of proposed rulemaking and notice of proposed rulemaking was published in the Federal Register (80 FR 36301; REG-138526-14) on June 24, 2015, re-proposing amendments to the definition of issue price. After consideration of all the comments, the remaining portions of the Proposed Regulations are adopted as amended by this Treasury decision (the Final Regulations TD 9801).

On December 9, 2016, we finalized the proposed regulations in TD 9801. The collection of information in TD 9801 is the underwriter's certificate required in the definition of the issue price.

In response to the *Federal Register* notice dated January 14, 2016 (81 FR 1996), we received no comments during the comment period regarding TD 8801.

In response to the *Federal Register* notices dated November 17, 2016 (81 FR 81242), we received no comments during the comment period regarding TD 8718, TD 8476, TD 9777 and TD 9801(REG-138526-14).

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the "Business Master File (BMF)" system and a Privacy Act System of Records notice (SORN) has been issued for this system under: IRS 24.046-Customer Account Data Engine Business Master File. The Internal Revenue Service PIA's can be found at:

<https://www.irs.gov/uac/Privacy-Impact-Assessments-PIA> .

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Treasury Decision	Section of Code	Description	#Respondents	#Responses Per Respondent	#Annual Responses	Hours Per Response	Total Burden
TD 8718	1.148-2(b)(2)	Permits an issuer to certify its reasonable expectations regarding the use of bond proceeds	3000	1	3000	1.5	4500
TD 8801	1.148-5(d)(6)(iii) (E)	The issuer is required to retain records with the bond documents until three years after the last outstanding bond is redeemed	1400	1.357	1900	.75	1425
TD 8476	1.148-7(f)(2)	Permits an issuer to use an "actual fact" analysis rather than one based on reasonable expectations for some purposes	3000	1	3000	1.5	4500
TD 8476	1.148-7(i)(2)	Permits an issuer to elect to exclude earnings on a reasonably required reserve or replacement fund from the definition of available construction proceeds	3000	1	3000	1.5	4500
TD 8476	1.148-7(j)	Permits an issuer to elect to treat the different purposes of a multipurpose issue as separate issues for purposes of the 2-year exception	3000	1	3000	1.5	4500
TD 8476	1.148-7(k)	Permits the issuer to elect to pay a penalty in lieu of arbitrage rebate	3000	1	3000	1.5	4500
TD 8476	1.148-7(l)	Permits an issuer to elect to terminate application of the penalty provision	3000	1	3000	1.5	4500
TD 8476	1.148-7(b)(6)(ii)	Permits an issuer to elect to treat each loan of a pooled financing issue as a separate issue for purposes of applying the spending exception	3000	1	3000	1.5	4500
TD 8476	1.148-11(b)	Permits issuers to elect to apply certain provisions of the regulation before the effective date	3000	1	3000	1.5	4500
TD 8476	1.148-4(h)(5)(iv)	Permit an issuer of tax-exempt bonds to identify a hedge so that the hedge may be included in yield calculations, which are necessary to compute arbitrage profits. Under this regulation, hedges can be entered into prior to the sale date	1500	1	1500	2	3000
TD 8476	1.150-1(c)(4)(iii)	Permits an issuer to elect to treat certain bonds secured by a pledge of the issuer's full faith and credit as part of the same issue. The election must be made in writing and should be kept with the bond documents	100	1	100	.5	50
TD 9777	1.148-4(h)(2)(viii)	Requirement that the hedge provider give the issuer a certificate attesting to certain things about the price of the hedge.	130	1	130	1.75	228

Treasury Decision	Section of Code	Description	#Respondents	#Responses Per Respondent	#Annual Responses	Hours Per Response	Total Burden
TD 9801	1.148-1(f)(2)(ii)	Requires that the issuer obtain certifications and supporting documentation regarding the underwriter's sales of the issuer's bonds.	12546	1.6667	20910	2.5	52275
Total Burden			39676				92978

13 ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no annual start-up costs associated with this collection.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no annualized cost to the federal government.

15 REASONS FOR CHANGE IN BURDEN

There are changes to the burden estimates that were previously approved by OMB. Burden increased with the addition of TD 9801 and TD 8801 (under OMB No. 1545-1490) due to related regulations, but were offset by the revised estimates, which resulted in an overall decrease of (1348) burden hours, and also an increase in the number of responses by 24030 responses. Also, we corrected the mathematical errors in the regulations listed in the chart.

Following approval of this ICR, OMB No. 1545-1490 will be discontinued.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

