



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.81.12

JULY 3, 2023

EFFECTIVE DATE

(07-03-2023)

PURPOSE

- (1) This transmits revised IRM 4.81.12, Procedures for Compliance Review of Form 8038-CP.

MATERIAL CHANGES

- (1) IRM 4.81.12.1, Program Scope and Objectives: Revised to indicate the transfer of the Compliance Review of the Form 8038-CP from Government Entities Compliance Services to Compliance Planning & Classification, Field Assistance Support Team. This document is being updated because Compliance Planning & Classification, Field Assistance Support Team is using a Desk Guide to record the details of the procedures for compliance review of the Form 8038-CP. The IRM will be used to cover the FAST's interactions with taxpayers.
- (2) IRM 4.81.12.1, Program Scope and Objectives, Policy Owner: Updated to remove Director, Indian Tribal Governments/Tax Exempt Bonds and add Director, Compliance Planning and Classification.
- (3) IRM 4.81.12.2.1.5 – 4.81.12.9 is obsolete.
- (4) IRM 4.81.12.2 is being added to detail FAST interactions with taxpayers.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 4.81.12 dated October 1 2019 and Interim Guidance Memorandum TEGE-04-0621-0011, Memorandum for Tax Examiners Working 8038-CP Compliance Review, dated June 4, 2021.

AUDIENCE

Tax Exempt and Government Entities

Compliance Planning & Classification
Field Assistance Support Team (FAST)

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Tax Exempt and Government Entities

4.81.12

Compliance Review of Form 8038-CP

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4.81.12.1
(07-03-2023)
**Program Scope and
Objectives**

- (1) **Purpose:** This IRM section provides procedures for the Field Assistance Support Team's review of the refundable credit payments claimed on Form 8038-CP.
- (2) **Audience:** These procedures apply to employees responsible for Form 8038-CP compliance review.
 - FAST Tax Examiners (TE)
 - FAST Lead TE
 - FAST Manager
- (3) **Policy Owner:** Director, Compliance Planning and Classification
- (4) **Program Owner:** Director, Compliance Planning & Classification
- (5) **Authority:** Direct Pay Bonds (DPBs) are obligations that meet applicable requirements for credits allowed under IRC 6431.

Note: The credit on DPBs is treated as an overpayment of tax and under IRC 6431(b) is to be paid (contemporaneously with each interest payment date under such bonds) to the Issuer of such bonds (or to any person who makes interest payments on behalf of the Issuer). IRC 6431 was repealed by section 13404(b) of the Tax Cuts and Jobs Act of 2017, P.L. 115-97, 131 Stat. 2054, 2138 (2017), effective for bonds issued after December 31, 2017.

4.81.12.1.1
(10-01-2019)
Background

- (1) State and local governments, and other qualified issuers of DPBs use Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds, to claim:
 - The direct credit payments allowed under the Build America Bonds (BABs) provisions of the American Recovery and Reinvestment Act of 2009 (ARRA).
 - Specified tax credit bonds provisions of the Hiring Incentives to Restore Employment Act (HIRE) of 2010.
- (2) This law is codified as IRC 6431. The refundable credits are:
 - a. Payable to the issuer of qualified obligations, or at the issuer's option, to the designated person who pays interest on behalf of the issuer.
 - b. Based on a percentage (from 35 to 100 percent) of the interest payable under the obligation.
 - c. Designed to lower the issuer's cost of borrowing as a replacement of the federal tax benefit provided to bondholders by traditional tax-exempt bonds under IRC 103.
 - d. These qualified obligations are collectively known as **direct pay bonds**:
 - Build America bonds
 - Recovery zone economic development bonds
 - Specified tax credit bonds
- (3) Due to the potential for fraud, TEGE, in cooperation with the Wage and Investment (W&I) operating division, established a compliance review of all Form 8038-CP returns during their initial processing. This review is done in two parts:
 - a. CP&C reviews the return for conformity with TEB records of the direct pay bonds transaction.

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- b. Ogden Submission Processing Center (OSPC) processes the refund return (Form 8038-CP).

4.81.12.1.2
(10-01-2019)
Authority

- (1) The table below outlines the authorities for direct pay bonds.

Type of Bond	Statute/Authority
Build America bonds (BABs) and recovery zone economic development bonds (RZEDBs)	American Recovery and Reinvestment Act of 2009 (ARRA) introduced Build America Bonds (BABs) and included a special type of BABs eligible for an increased credit amount called recovery zone economic development bonds (RZEDBs). The authority to issue these bonds expired after December 31, 2010.
<ul style="list-style-type: none"> • New clean renewable energy bonds (NCREBs) • Qualified energy conservation bonds (QECBs) • Qualified Zone academy bonds issued under the 2009 and 2010 volume caps (QZABs) • Qualified school construction bonds (QSCBs) 	Hiring Incentives to Restore Employment Act (HIRE) of 2010 extended the refundable tax credit option to four types of previously authorized qualified tax credit bonds, defined as specified tax credit bonds (STCB) in IRC 6431(f). The authority to issue QZABs as STCBs only applied for bonds issued with the national zone academy bond limitation for 2009 and 2010 and carryforward of such allocation. Carryforward must be used within two calendar years. Thus, no direct pay QZABs could be issued after December 31, 2012.

Type of Bond	Statute/Authority
DPBs and tax credit bonds	The Tax Cuts and Jobs Act (P.L. 115-97) repealed the authority to issue tax credit bonds, including specified tax credit bonds. The repeal applies to qualified forestry conservation bonds, new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds issued after December 31, 2017. The authority to issue recovery zone economic development bonds and build America bonds expired on January 1, 2011. See special rule for QZABs above.

4.81.12.1.3
(07-03-2023)
Responsibilities

- (1) The Director, CP&C is responsible for the administration, procedures and policies contained in this IRM.
- (2) Tax Exempt Bonds, as the primary stakeholder, will be consulted before making any changes to the procedures used by FAST.
- (3) The CP&C IRM Coordinator is responsible for updating this IRM.
- (4) Management officials are responsible for:
 - a. Providing internal controls relating to the compliance review of Form 8038-CP.
 - b. Ensuring the instructions are communicated to and carried out by the employees completing the compliance review.
- (5) Lead TE updates the IRM for changes in FAST interactions with taxpayers.
- (6) FAST employees complete the compliance review and interact with taxpayers as set forth in IRM 4.81.12.2.

4.81.12.1.4
(07-03-2023)
Acronyms and Terms

- (1) Acronyms and terms used throughout IRM 4.81.12:

Acronym	Definition
BABs	Build America Bonds
CP&C	Compliance Planning & Classification
CRX	Correspondex
DPB	Direct Pay Bonds
FAST	Field Assistance Support Team

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Acronym	Definition
HIRE	Hiring Incentives to Restore Employment Act
Lead TE	Lead Tax Examiner
NCREBs	New Clean Renewable Energy Bonds
OSPC	Ogden Submission Processing Center
QECBs	Qualified Energy Conservation Bonds
QSCBs	Qualified School Construction Bonds
QZABs	Qualified Zone Academy Bonds
RZEDBs	Recovery Zone Economic Development Bonds
STCB	Specified Tax Credit Bonds
TE	Tax Examiner
TEB	Tax Exempt Bonds
TEGE	Tax Exempt Government Entities
W & I	Wage and Investment

4.81.12.2
(07-03-2023)

FAST Interactions with Taxpayers

- (1) Lead TE may call the contact person on Part I or Part II of Form 8038-CP concerning information needed for a processable return such as the interest payment date, Line 18 of Form 8038-CP.
- (2) FAST TEs prepare IRS CORRESPONDEX (CRX) letters, including Letter 6245-C, sent to the issuer. Letter 6245-C is sent to issuer address shown in Part II Lines 7, 9 and 11 of the Form 8038-CP. Other CRX letters may be sent to the issuer address shown in Part II Lines 7, 9 and 11 of the Form 8038-CP, the issuer address shown in Part II Lines 7, 9 and 11 of a previously processed Form 8038-CP of the issuer, and/or the address of the issuer on Master File.
- (3) FAST TEs may send IRS Form 5260 Quick Note to the issuer concerning report numbers, Line 10 of Form 8038-CP. The Quick Note is sent to the issuer address shown in Part II Lines 7, 9 and 11 of the Form 8038-CP.
- (4) Lead TE will be responsible for returning any voice mail messages left by taxpayers when a FAST phone line is listed in a CRX Letter or Form 5260 Quick Note.