

# POST-ISSUANCE COMPLIANCE WEBINAR 2024 UPDATES

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May 7, 2024



## CPE and MCLE Credits

- Responses to polling questions will be utilized to verify attendance
- You must respond to **all 3 polling questions** to be eligible for credits
- Email [csixtos@blxgroup.com](mailto:csixtos@blxgroup.com)
- Subject line -- put CPE and/or MCLE Credits
- Body of the email – state that you are requesting the applicable (CPE and/or MCLE) credits
- **FOR MCLE ONLY** – attendance sheet will be sent to you via email, please include code **COMP 0507**

# 2024 PIC Workshop Hybrid Event



A Comprehensive Overview of Post-Issuance Tax Law and SEC Secondary Market Disclosure for 501(c)(3) Organizations and State and Local Governments Who Utilize Tax-Exempt Financing

**November 21-22, 2024**  
**Austin Proper Hotel & Virtual**

Registration opens in late May

More details coming soon –  
<http://www.blxgroup.com/picworkshop2024>

## Disclaimer

This webinar is designed to provide Orrick and BLX clients and contacts with information they can use to manage their businesses and access Orrick and BLX resources. The contents of this webinar are for informational purposes only. None of the lawyers and financial professionals who are speaking today are rendering legal or other professional advice or opinions on specific facts or matters.

We encourage you to reach out to your Orrick attorney or BLX representative to discuss the particular facts of your situation.

# Discussion Outline

- I. Washington Update
- II. IRS Enforcement Update
- III. Managing Positive Arbitrage
- IV. Opportunities for Investing Bond Proceeds
- V. Change in Use of Bond Proceeds

# GFOA Looking Forward: DC Update 2024 and Beyond



Government Finance Officers Association



Looking ahead at the 119th

# Proverbial Sausage Making – A Tax Bill



- Led by Chairs of SFC and W&M, Roughly \$80 billion bipartisan framework
- Expanded child tax credit, business breaks, affordable housing subsidies, and more...
- Sunsets on TCJA 2025 (including SALT!)



# Unknown Unknowns



# Election 2024 Prompts Tax 2025



## Sunset 2017 Tax Cuts and Jobs Act TCJA

++Tax expenditures such as reduction of Corporate Minimum Tax (CMT) threshold

++Tax expenditures such as the Child Tax Credit (CTC)

-Revenue raisers such as State and Local Tax (SALT) deduction threshold, Advance Refunding and Tax Exemption

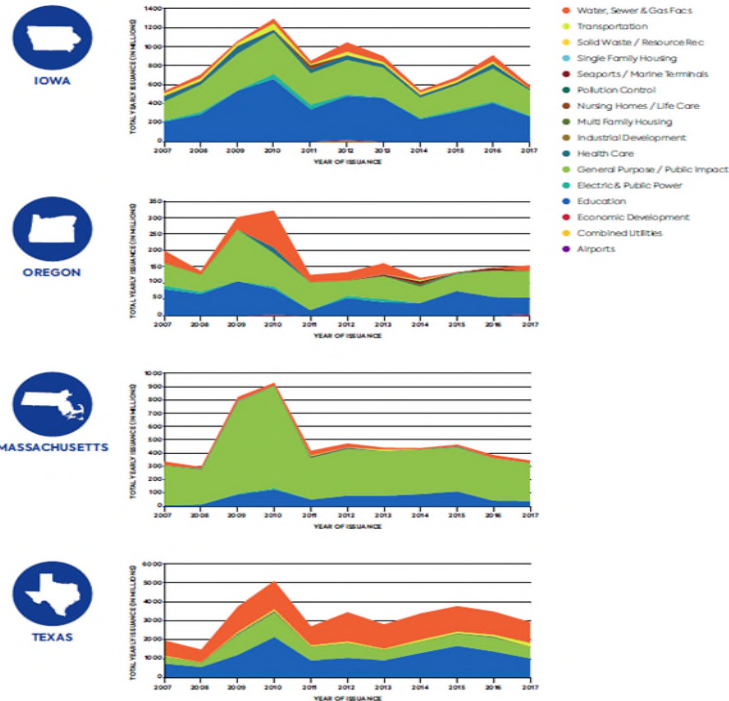
-Revenue raisers such as clawbacks of stimulus funds

=Total \$1.5T tax bill

# Refresher - Bank Qualified Debt (aka Small Issuer Exception)

TAX-EXEMPT MUNICIPAL BONDS & INFRASTRUCTURE

BQ BOND ISSUANCE BY GENERAL USE OF PROCEEDS: 2007-2017 (in millions)

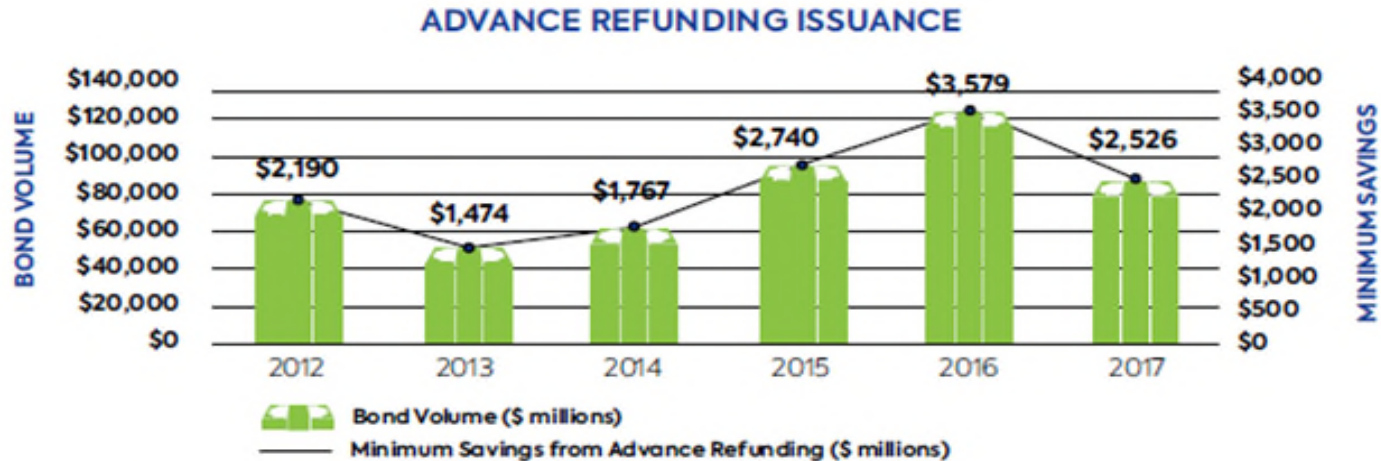


Source: GFOA analysis of Thomson Reuters data as of 11/28/18

- Small Issuer Exception allows smaller jurisdictions working with community banks to issue TE BQ debt
- Right now the cap is \$10m per issuer, we are asking to raise the cap to \$30m, pegged to inflation and based at the level of the borrower
  - Cost- NOMINAL!
- Reintroduce legislation similar to HR 2634 *LIFT Act (117<sup>th</sup>)*

# Refresher – Advance Refunding

- Savings of 3-8% of par foregone
- Reintroduce legislation similar to HR 2634 *LIFT Act* (AR, BQ, AIB)
- Reintroduce legislation similar to S479 *LOCAL Infrastructure Act* or HR 2288 *Investing in Our Communities Act* (bipartisan effort with 31 cosponsors from both parties)





So How do we Prepare?

# Prong 1: Storyboarding



- Title of project
- Project type (public gas, multifamily housing, general obligation)
- Address/Location of project
- 2-4 sentences about:
  - the importance of the project
  - how the tax-exemption made this project a reality
  - the impact to the project if it were financed at taxable rates
- Address/Location of project

# Prong 2: Market Data

- GO issuance
- Real effects of the loss of Advance Refunding
- Private Activity Bonds volume and caps
- Effect on taxpayers in the event of a ceiling or clawback
- Effect on Corporations of higher tax thresholds

Exhibit 2. Projects funded by bonds by type and five year average

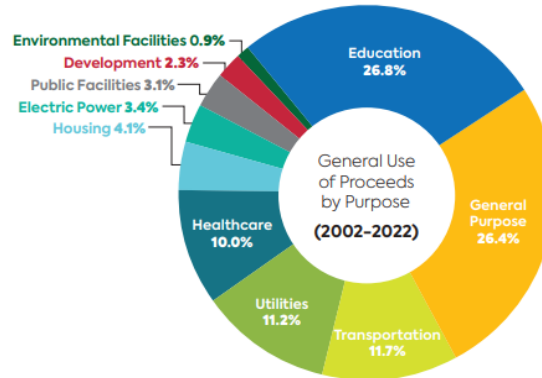
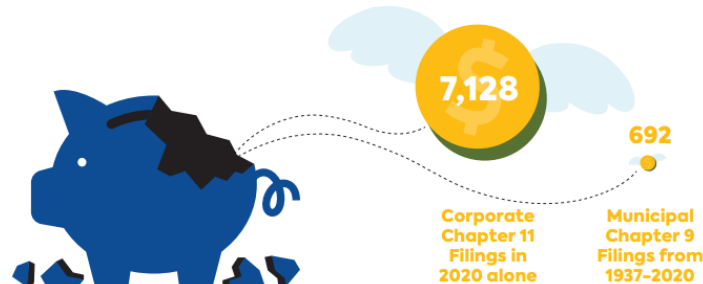


Exhibit 9. Comparison of Defaults between Corporations and Municipalities



SOURCE: GFOA ANALYSIS OF AACER DATA, 1/1/2021

Exhibit 7. 20 Year Average History of Holders of Municipal Securities

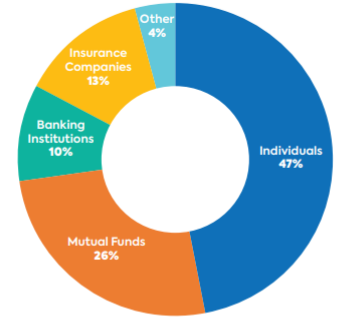
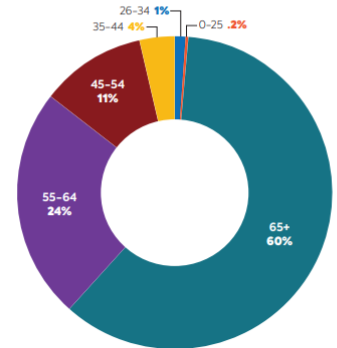


Exhibit 8. Retirees as Bond Holders



Number of Returns with Tax-Exempt Interest



## Prong 3: US Treasury Office of Tax Policy

- Treasury – well established Office of Recovery Programs
  - \$5T in stimulus funds managed and audits
  - Inflation Reduction Act
- No reference to the Tax Exemption in the Green Book
- Treasury needs a Tax Specialist in the Office of Tax Policy







# The Inflation Reduction Act

# Why Elective Pay? And Why is That Important?

- Direct payment in lieu of tax credits will allow tax-exempt entities to pursue renewable energy projects without relying on outside financing.
  - Tax credit claimed after project placed into service
- Projects may be 100% financed with tax-exempt bonds and receive a production tax credit (PTC) or investment tax credit (ITC).
  - If this combined financing is used, the tax credit will be reduced by up to 15%.
- Credits available for tax years beginning after December 31, 2022 and are effective through 2032
- The IRA is BOTH domestic energy and domestic labor
  - for construction that begins after January 29, 2023
- Requires internal controls monitoring policies and procedures

# Who Should You Have At the Table?

Sustainability shop/Project managers

Engineering shop

Legal shop

Finance shop

**Others:**

Leadership, Budget

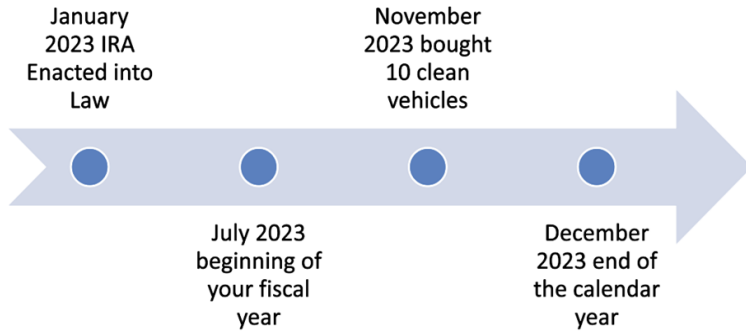
Bond/Tax Counsel

**Collaboration is KEY**



# Step 1: Pick a Tax Year

## You Can Use Your FY as your Tax Year



VS

## Calendar Year Filing - Optional



## Steps 2-5: Direct-Pay Process

“Pre-filing register” via online “portal” after property placed in service

IRS issues registration number

File Form 990-T annual return with appropriate attachments

IRS processes return and issues refund of credit

# Resources for your Journey

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Register to receive a unique ID for all of your eligible 2023 projects!

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[IRS Pre-Filing Registration Portal](#)

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**PRE-FILING REGISTRATION RESOURCES**

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[IRS video walk-through of Pre-Filing Registration Portal](#)

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[IRS Publication 5884](#) - “Pre-Filing Registration Tool User Guide” (with screenshots)

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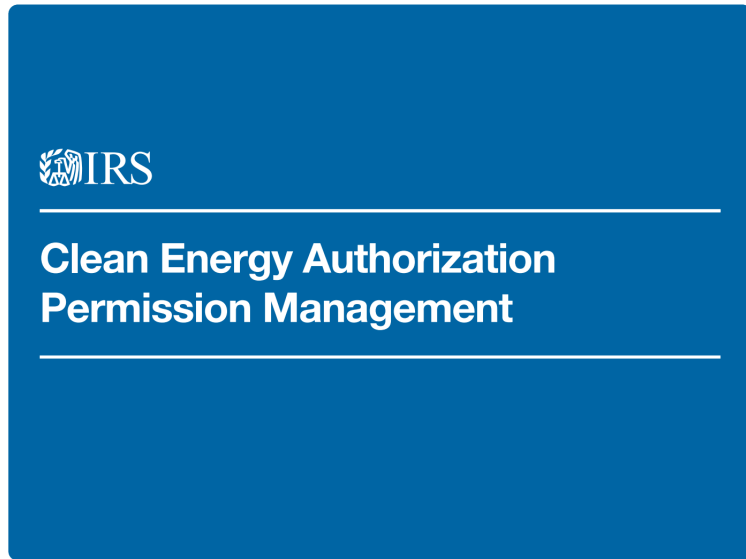
[IRS Publication 5902](#) - User ID and ID.me info

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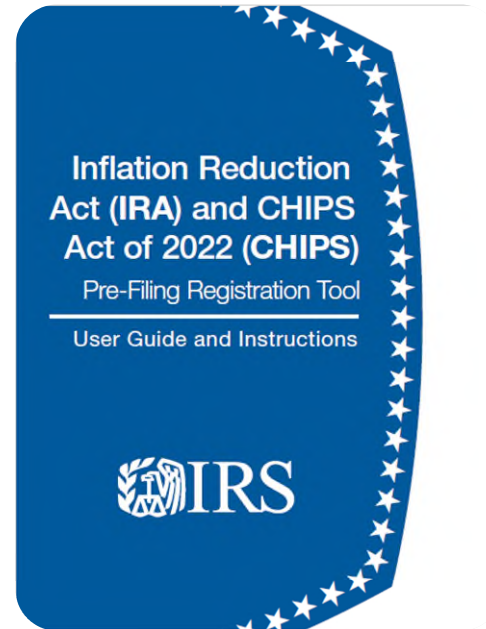
**NEW: IRS-Hosted Office Hours: EVERY OTHER WEEK IN JUNE**

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# Pre-Filing Registration

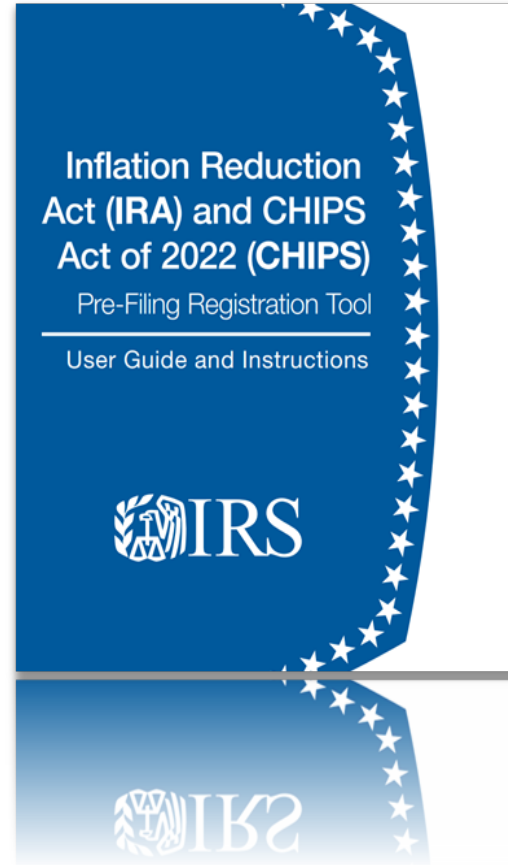


Publication 5902 (1-2024) Catalog Number 945650 Department of the Treasury Internal Revenue Service www.irs.gov



# Publication 5884

1. You may already have an ID.me account!
2. Things to have handy
  1. Login credentials (see [ID.me Help Center](#))
  2. Placed into service date
  3. EIN and tax filing period
  4. Banking information
  5. “Ownership” verification
  6. Facilit(ies) information
  7. [Census tract information](#)
3. Who was a part of the process?
4. Understanding the attestation
5. Considerations for tax year/fiscal year





For calendar year **Go**  
**Do not enter 8**

Department of the Treasury Internal Revenue Service

**A** Check box if address changed.  
**B** Exempt under section:  
 501(c)( )  
 408(e)  220(e)  
 408A  530(a)  
 529(a)  529A  
**C** Book value of:

**G** Check organization type  501(c)  6417

**H** Check if filing only to claim  C

**I** Check if a 501(c)(3) organization

**J** Enter the number of attached S

**K** During the tax year, was the corp If "Yes," enter the name and ider

**L** The books are in care of

**Part I Total Unrelated Busi**  
1 Total of unrelated business tax  
2 Reserved  
3 Add lines 1 and 2  
4 Charitable contributions (see  
5 Total unrelated business tax  
6 Deduction for net operating k  
7 Total of unrelated business  
Subtract line 6 from line 5  
8 Specific deduction (generally  
9 **Trusts**. Section 199A deduct  
10 **Total deductions**. Add lines  
11 **Unrelated business taxable**  
enter zero.

**Part II Tax Computation**

1 **Organizations taxable as cc**  
2 **Trusts taxable at trust rate**  
Part I, line 11, from:  Tax  
3 **Proxy tax**. See instructions.  
4 Other tax amounts. See instr  
5 Alternative minimum tax  
6 **Tax on noncompliant facilit**  
7 **Total**. Add lines 3 through 6

**Part III Tax and Payments**

1a Foreign tax credit (corporatio  
b Other credits (see instruction  
c General business credit. Atti  
d Credit for prior-year minimum  
e **Total credits**. Add lines 1a th  
2 Subtract line 1e from Part II, l  
3a Amount due from Form 4255  
b Amount due from Form 8611  
c Amount due from Form 8697  
d Amount due from Form 8866  
e Other amounts due (see instr  
f Total amounts due. Add lines  
4 **Total tax**. Add lines 2 and 3f  
section 1294. Enter tax amou  
5 Current net 965 tax liability p

**Part III Current Year General Business Cred**  
lines 4a through 4z, enter the number

	(a) Current year credits from:	(b) Elective payment or transfer registration number
1a	Form 3468, Part II	
b	Form 7207	
c	Form 6765	
d	Form 3468, Part III	
e	Form 8826	
f	Form 8835, Part II	
g	Form 7210	
h	Form 8820	
i	Form 8874	
j	Form 8881, Part I	
k	Form 8882	
l	Form 8864 (diesel)	
m	Form 8896	
n	Form 8906	
o	Form 3468, Part IV	
p	Form 8908	
q	Reserved (45Z)	
r	Form 8910	
s	Form 8911, Part II	
t	Form 8830	
u	Form 7213, Part II	
v	Form 3468, Part V	
w	Form 8932	
x	Form 8933	
y	Form 8936, Part II	
z	Reserved	
aa	Form 8936, Part V	
bb	Form 8904	
cc	Form 7213, Part I	
dd	Form 8881, Part II	
ee	Form 8881, Part III	
ff	Form 8864, line 8	
gg	Reserved (1gg)	
hh	Reserved (1hh)	
ii	Reserved (1ii)	
jj	Reserved (1jj)	
zz	Other credits	
2	Add lines 1a through 1zz	

Department of the Treasury Internal Revenue Service  
Name(s) shown on return

Attach to your tax  
Go to [www.irs.gov/Form8936](http://www.irs.gov/Form8936) for instruct

**Notes:** • Complete a separate Schedule A (Form 8936) for each clean v  
• Individuals completing Parts II, III, or IV, must also complete P

**Part I Modified Adjusted Gross Income Amount**

1a Enter the amount from line 11 of your 2023 Form 1040, 1040-SR,  
b Enter any income from Puerto Rico you excluded  
c Enter any amount from Form 2555, line 45  
d Enter any amount from Form 2555, line 50  
e Enter any amount from Form 4563, line 15  
2 Add lines 1a through 1e  
3a Enter the amount from line 11 of your 2022 Form 1040, 1040-SR,  
b Enter any income from Puerto Rico you excluded  
c Enter any amount from Form 2555, line 45  
d Enter any amount from Form 2555, line 50  
e Enter any amount from Form 4563, line 15  
4 Add lines 3a through 3e  
5 Enter the smaller of line 2 or line 4

**Part II Credit for Business/Investment Use Part of New Cr**

**Note:** Individuals can't claim a credit on line 6 if Part I, line 1, is a qualifying surviving spouse; \$225,000 if head of household).  
6 Enter the total credit amount figured in Part II of Schedule(s) A (F  
7 New clean vehicle credit from partnerships and S corporations (se  
8 **Business/investment use part of credit**. Add lines 6 and 7. Partn  
and report this amount on Schedule K. All others, report this amou

**Part III Credit for Personal Use Part of New Clean Vehicles**

**Note:** You can't claim the Part III credit if Part I, line 5, is a qualifying surviving spouse; \$225,000 if head of household).  
9 Enter the total credit amount figured in Part III of Schedule(s) A (F  
10 Enter the amount from Form 1040, 1040-SR, or 1040-NR, line 18  
11 Personal credits from Form 1040, 1040-SR, or 1040-NR (see instr  
12 Subtract line 11 from line 10. If zero or less, enter -0- and stop he  
13 **Personal use part of credit**. Enter the smaller of line 9 or line 10  
1040), line 6f. If line 12 is smaller than line 9, see instructions

**Part IV Credit for Previously Owned Clean Vehicles**

**Note:** You can't claim the Part IV credit if Part I, line 5, is a qualifying surviving spouse; \$112,500 if head of household).  
14 Enter the total credit amount figured in Part IV of Schedule(s) A (F  
15 Enter the amount from Form 1040, 1040-SR, or 1040-NR, line 18  
16 Personal credits from Form 1040, 1040-SR, or 1040-NR (see instr  
17 Subtract line 16 from line 15. If zero or less, enter -0- and stop he  
18 Enter the smaller of line 14 or line 17 here and on Schedule  
smaller than line 14, see instructions

**Part V Credit for Qualified Commercial Clean Vehicles**

19 Enter the total credit amount figured in Part V of Schedule(s) A (F  
20 Qualified commercial clean vehicle credit from partnerships and S  
21 Add lines 19 and 20. Partnerships and S corporations, stop here  
K. All others, report this amount on Form 3800, Part III, line 1aa

For Paperwork Reduction Act Notice, see separate instructions.

Department of the Treasury Internal Revenue Service  
Name(s) shown on return

Attach to your tax return.  
Go to [www.irs.gov/Form8936](http://www.irs.gov/Form8936) for instructions and the latest information.

**Part I Vehicle Details**

1 Year  
b Make  
c Model

2 Vehicle identification number (VIN) (see instructions) . . . . .

3 Enter date vehicle was placed in service (MM/DD/YYYY)

4 Was the vehicle used primarily outside the United States? Answer "No" if it was but an exception applies. See instructions.  
 **Yes. Stop here.** You can't claim a credit amount for a vehicle used primarily outside the United States.  
 **No.**

5 Does the VIN entered on line 2 belong to a **new clean vehicle** placed in service during the tax year? See instructions for definitions.  
 **Yes.** Go to Part II.  
 **No.** Go to line 6.

6 Does the VIN entered on line 2 belong to a **previously owned clean vehicle** acquired after 2022 and placed in service during the tax year? See instructions for definitions.  
 **Yes.** Go to Part IV.  
 **No.** Go to line 7.

7 Does the VIN entered on line 2 belong to a **qualified commercial clean vehicle** acquired after 2022 and placed in service during the tax year? See instructions for definitions.  
 **Yes.** Go to Part V.  
 **No. Stop here.** You can't use this schedule to figure a credit amount for a vehicle not described on line 5, 6, or 7.

**Part II Credit Amount for Business/Investment Use Part of New Clean Vehicle**

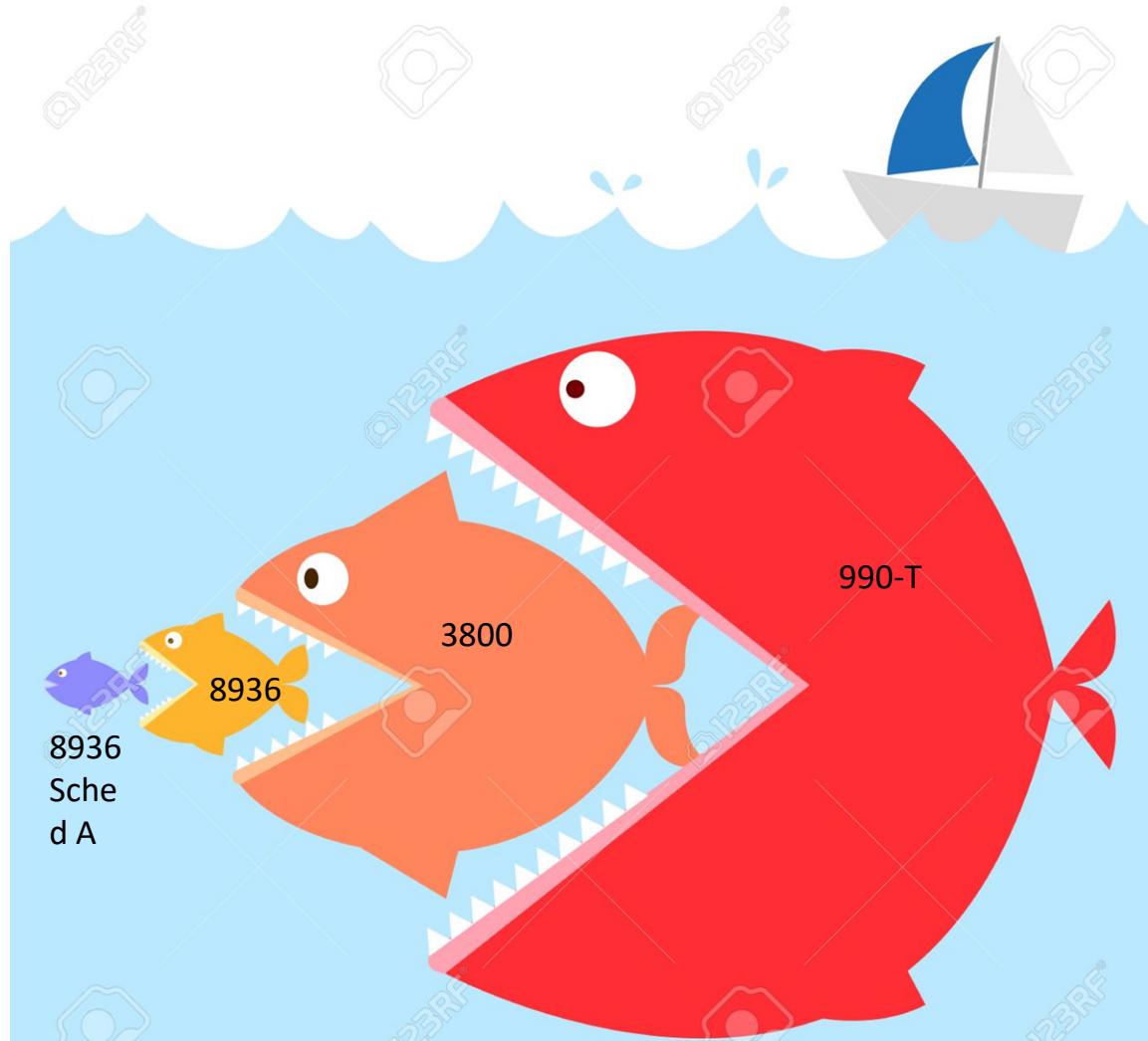
8 Did you acquire the vehicle for use or to lease to others, and not for resale? Answer "No" if you are leasing the vehicle from another person.  
 **Yes.**  
 **No. Stop here.** You can't claim a credit amount for a vehicle you didn't acquire for use or to lease to others, or acquired for resale.

9 Tentative credit amount (see instructions)	9	
10 Business/investment use percentage (see instructions)	10	%
11 Multiply line 9 by line 10. Include this credit amount on line 6 in Part II of Form 8936. If you entered 100% on line 10, stop here. Otherwise, go to Part III below	11	

**Part III Credit Amount for Personal Use Part of New Clean Vehicle**

12 Subtract line 11 from line 9 in Part II. Stop here and include this credit amount on line 9 in Part III of Form 8936	12
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Tax forms are FUN!



Government Finance Officers Association

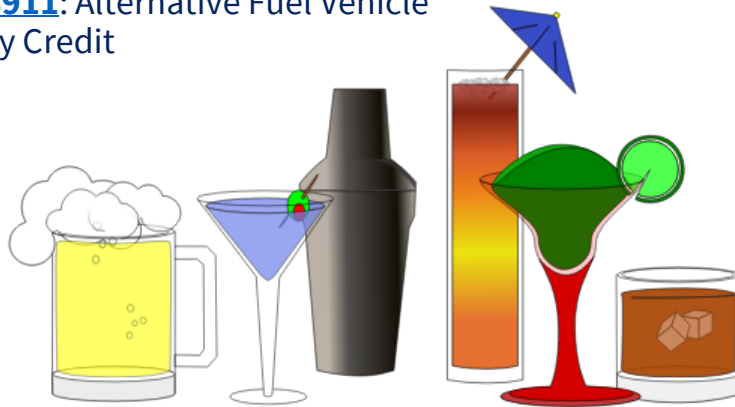
# The Elective Pay “Cocktails”

## Alternative Fuel Vehicle Refueling Property, Section 30C

- **One Part:** [Form 990-T](#): Exempt Organization Business Income Tax Return, or other applicable income tax return
- **One Part:** [Form 3800](#): General Business Credit
- **One Part:** [Form 8911](#): Alternative Fuel Vehicle Refueling Property Credit

## Investment Tax Credit, Section 48

- **One Part:** [Form 990-T](#): Exempt Organization Business Income Tax Return, or other applicable income tax return
- **One Part:** [Form 3800](#): General Business Credit
- **One Part:** [Form 3468](#): Investment Credit





# THANK YOU!

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Policy Associate

## Poll Question #1

**Statement:** I think tax-exempt advance refundings will get reinstated --

**A1:** True

**A2:** False

**A3:** Who knows....

# IRS ENFORCEMENT UPDATE



## IRS Enforcement Update

- Impact of IRS staffing changes and COVID-19 led to fewer total audits from 2020 - 2022
- The IRS enforcement staff is now growing given new increased funding
  - Goal of 60 TEB agents by the end of 2024 (5x the current workforce)

# IRS Enforcement Update

- Expect more tax-exempt bond audits
- Agents assigned will not specialize in sectors and may need "hands on" training, lengthening duration of audit
- Audits are technical and time consuming – outside expertise is practically required



**2023-2024  
Audit  
Priorities**

- Advance refundings
- Reimbursement financings
- 501(c)(3) bonds

## General Selection of Bond for Examination

- Random or targeted
- Referrals from outside the IRS
- Late rebate payments – important in the current interest rate and positive arbitrage environment
- Rebate refund and credit payment claims

## Sample List of Items to be Provided in an Audit

- Rebate reports
- Trustee statements
- Schedule of interest paid
- General ledger or other detailed schedule of use of proceeds
- Construction vouchers and requisitions
- Management / Service Contracts; Leases
- Research Agreements
- Calculation of annual average private use %s since the bonds were issued

# MANAGING POSITIVE ARBITRAGE



## What is Arbitrage?

- Borrow at tax-exempt rates and invest proceeds at higher taxable rates
  - Disparity between markets because of federal subsidy
  - Negative arbitrage for over a decade, many staffers unaware
  - Investment strategies and rebate compliance were moot point
- "Right-size" your issuance to limit over-burdening of tax-exempt market

# Arbitrage Rebate and Yield Restriction Requirements

- Two separate arbitrage monitoring requirements -- some overlap
- Arbitrage Rebate
  - Every investment for the life of the bond issue
  - Remitting the arbitrage as payment to the IRS
  - Cumulative computation required at five-year intervals
  - "Can earn arbitrage, can't keep it"

# Arbitrage Rebate and Yield Restriction Requirements

- Yield Restriction
  - Some of the investments, some of the time
  - Limiting the investment yield after certain periods
  - Yield reduction payment looks and acts like a rebate payment but only relates to yield restricted amounts
  - "Can't earn arbitrage"

## Retaining Positive Arbitrage

- Not having to remit positive arbitrage can mean real dollars (\$\$)
- Take advantage of exceptions to the rule – requires oversight
  - Spending exceptions
    - ✓ Difficult to meet and require advance planning
    - ✓ Communication amongst team members
    - ✓ Be aware of elections in tax documents



## Retaining Positive Arbitrage

- Take advantage of exceptions to the rule – requires oversight (cont.)
  - Bona fide debt service fund exception
    - ✓ Bring balance down below reasonable carryover amount each year
    - ✓ Up to \$100,000 income limit per bond year for short-term, variable rate or private activity issues

## Retaining Positive Arbitrage

- Invest the proceeds in tax-exempt securities
  - Liquidity?
  - U.S. Treasuries - Demand Deposit State and Local Government Series (SLGS) are considered tax-exempt securities
    - ✓ Exempt from rebate and yield restriction

## Yield Restriction Hot Topics

- Bulk of your proceeds get three-year temporary period
  - Reasonable expectation that 85% or more spent within 3 years
- Unexpended bond proceeds after three-year temporary period
  - Big issue for 2019, 2020 and 2021 bond issuances
  - Very low arbitrage thresholds
  - Can't offset negative arbitrage prior to 2022 rate increases

## Yield Restriction Hot Topics

- Excess accumulated in pledged accounts or debt service reserve fund – unaware that excess exists
- Amounts deposited to defeasance escrow
  - Limited to yield of defeased bonds
- Are the proceeds even eligible for yield reduction payments?

## Remitting Positive Arbitrage

- Procedures for managing the process and record accessibility
- Reporting frequency – auditors, set aside, etc.
- Make sure having installment computations done timely
  - Within 60 days of the fifth anniversary or bond year
  - Within 60 days of the final redemption date

## Remitting Positive Arbitrage

- Payment made to U.S. Treasury with Form 8038-T
- Late interest accruing at 8% underpayment rate
- Late payment explanation letter
  - details facts and circumstances causing delay
  - describes prior payment history

## Poll Question #2

**Statement:** My organization has positive arbitrage on at least one of our bond issues and we expect to have to make a rebate payment --

**A1:** True

**A2:** False

# OPPORTUNITIES FOR INVESTING BOND PROCEEDS





## Opportunities for Investing Bond Proceeds

- Investment yields remain high
  - Fed began raising rates in March 2022
  - Increases continued through July 2023
    - ✓ Reaching a peak target rate range of 5.25 – 5.50%
  - Short-term rates likely to remain at these levels until Fed decreases or increases the target rate
  - Tax-Exempt Bond arbitrage yields may be at or below these levels
  - Important to review investments and alternatives

# Opportunities for Investing Bond Proceeds

- Investment Options Matrix
  - Long-Term Investments
    - ✓ Structured Products
  - Short-Term Investments
    - ✓ Money Market Funds
    - ✓ Open Market Securities

# Common Investment Options for Municipal Bond Proceeds

MONEY MARKET FUND / LGIP	INVESTMENT AGREEMENT	PORTFOLIO OF SECURITIES <i>(Designed To Match Expected Drawdown Schedules)</i>
Very liquid	Liquid <i>(for permitted purposes)</i>	Liquid
Variable Rate <i>(inherent Reinvestment Rate Risk)</i>	Fixed rate or Variable Rate (index plus spread) <i>(no Reinvestment Rate Risk for Fixed)</i>	Fixed Rate <i>(Reinvestment Rate Risk if Securities Mature and Aren't Needed)</i>
Ratings Governed by Bond Documents <i>(Typically highest rating category)</i>	Ratings Governed by Bond Documents <i>(Typically three highest rating categories)</i>	Ratings Governed by Bond Documents <i>(Typically Tsy/Agy – highly rated)</i>
Par Value Withdrawals	Par Value Withdrawals <i>(for permitted withdrawals)</i>	Cost Based Accreted Value or Market Value
No Market Price Risk	No Market Price Risk	Market Price Risk <i>(if securities sold prior to maturity)</i>
Daily Withdrawals for MMF; Withdrawal Frequency Dictated by Pools	Frequency of Withdrawals Limited <i>(4 per month / 2 per year)</i>	Withdrawals Any Time <i>(may require security sale before maturity)</i>

*Information contained herein is general investment information and is only in reference to the investment of municipal bond proceeds. It is not intended to cover all investment situations..*

# Opportunities for Investing Bond Proceeds

- Balancing Yield and Potential Risk
  - Bond documents outline permitted investments
  - City / State codes & statutes may be relevant
  - Issuer/Borrower may be more or less risk averse
  - Issuer/Borrower should take into consideration:
    - ✓ All possible investment options
    - ✓ Yields available at the time of investment
    - ✓ Flexibility of the investment options
      - Good asset/liability match
    - ✓ Acceptable risk levels
      - Counterparty credit ratings
      - Accessibility to invested funds

# Opportunities for Investing Bond Proceeds

- Permitted Investments
  - Language Governed by:
    - ✓ Bond Documents
    - ✓ City / State Statutes
    - ✓ Rating Agencies / Bond Insurers
  - Guidelines for Language in Bond Documents

TOO BROAD / GENERAL / OFF THE MARK	GOOD LANGUAGE <i>(specific for securities / broad for structured products)</i>
US Treasury securities rated AAA/Aaa	US Treasury securities.
United States Government Obligations and bonds or securities issued or guaranteed as to principal and interest by a commission, board or other instrumentality of the federal government	Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America, including, but not limited to, Resolution Funding Corporation (REFCORP) interest only, Federal National Mortgage Association (FNMA), Federal Home Loan Banks (FHLB), Federal Farm Credit Banks (FFCB) and Federal Home Loan Mortgage Corporation (FHLMC). AID Bonds are / are not acceptable so long as they mature four (4) days prior to the date needed.
Guaranteed Investment Contracts with entities rated AAA/Aaa. Or language that is unusually long and specific	Investment Agreements with, or guaranteed by, an insurance company, domestic or foreign bank, corporation, financial institution or other entity, the long-term ratings of which are rated, at the time of execution, in the top three rating categories (without regards to modifiers) by at least two nationally recognized rating agencies.

# CHANGE IN USE OF BOND PROCEEDS



## Use of Bond Proceeds

- Specific details about how bond proceeds are to be used are provided in the tax certificate
  - In addition, for 501(c)(3) organizations, the TEFRA Notice provides a project description
- Over time, circumstances re: use may change
  - COVID-19 increased the frequency of this situation as organizations changed how they operate
- Some increase in organizations seeking to change the use of their facilities or sell bond financed facilities



## IRS Change in Use Rules

- IRS rules provide options to "cleanse" facilities of tax-exempt bonds in whole or in part
  - Defease or retire the "non-qualified bonds"
  - If all cash sale, "recycle" cash into other qualified projects
  - Rules are "self-help" – no need to involve the IRS
- Uncertainty – Change in Use rules can also apply to circumstances in which bond financed facilities or portions thereof may or might be sold or leased – an "anticipatory remediation"

## IRS Change in Use Rules

- Nonqualified bonds must be retired within 90 days of the "change in use" if the bonds are currently callable
- If not callable, a defeasance escrow must be funded to the first call date
  - e.g. if the first call date is in 6 years, must deposit principal plus 6 years of interest in the escrow fund
  - The cost of defeasing bonds can be expensive – escrow deposit must cover all the interest on the non-qualified bonds up until the call date

## IRS Change in Use Rules

- To apply the rules, if the bonds are not currently callable, the bonds must be optimally callable within 10.5 years of the issue date (which has become the industry standard)

## Change in Use - You Have Options!

- Current and accurate PBU calculations are required to ensure ongoing compliance
- A non-compliant management contract or lease of an asset creating high PBU may not present a compliance problem if...
  - You know how much PBU you currently have
  - You know how much PBU will arise from the proposed agreement
    - Do you have "qualified equity"?

## Poll Question #3

**Statement:** My organization plans to attend the 2024 Post-Issuance Compliance Workshop --

**A1:** True - In person

**A2:** True - Virtually

**A3:** False

**A4:** Unsure

**Additional BLX  
Educational  
Resources**

# **BLX & COMPLIANCE**

A monthly video series compliance topic relevant to public finance and tax-exempt bonds

## **THE BLX INSTITUTE**

Curated educational content supporting post-issuance compliance in the municipal and non-profit sectors

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