

# **Bond Case Briefs**

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## **Orrick: Increasing Frequency of Incorrect IRS Notices to Tax-Exempt Bond Issuers Raises Concerns**

In recent months, issuers of tax-exempt bonds have been facing an unexpected challenge: incorrect notices from the Internal Revenue Service (IRS) claiming that their Forms 8038 are being filed without the required signature. This issue, which has persisted for several months, appears to be escalating in frequency, causing confusion and concern among bond issuers and their legal advisors.

Issuers of tax-exempt bonds must file a version of Form 8038 with the IRS after every tax-exempt bond issue. The form is required to be filed to establish the tax-exempt status of the bonds. The erroneous notices suggest that the form was submitted without a signature, a critical error that could jeopardize the bond's tax status and result in substantial fines for late filing.

These notices have caused additional confusion and frustration among issuers and their bond counsel, as they often refer to time periods that cannot be matched to any specific return. Moreover, many issuers have filed multiple Form 8038s around the time indicated on the notice, yet the IRS fails to specify which form the notice pertains to. Generally, issuers and bond counsel have been able to confirm that all filed forms submitted around that time period were indeed signed when submitted, indicating a systemic error on the part of the IRS.

Efforts to resolve the issue have proven challenging. Issuers and bond counsel have attempted to contact the IRS using the customer service number provided on the notices but have found little success resolving their issue. When multiple forms were filed in the same period, customer service agents have been largely unable to assist and are unable to identify the specific Form 8038 for which the notice was generated.

The increasing frequency of these erroneous notices has raised concerns about the IRS's processing systems and the potential impact on issuers' operations. For many, the notices have resulted in additional administrative burdens, requiring them to verify their submissions and, in some cases, resubmit forms to ensure compliance.

Orrick has been in communication with IRS personnel regarding these incorrect notices. During phone conversations, IRS representatives acknowledged awareness of the issue but indicated that there is currently no estimate for when it will be resolved and requested the patience of the bond community while its works towards a resolution.

In the meantime, issuers who receive an IRS notice stating that their Form 8038 or Form 8038-G was received without a signature should send the notice to their bond or tax counsel for assistance responding to the notice (or not).

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