

**Office of Chief Counsel  
Internal Revenue Service  
Memorandum**

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to: Director, Tax-Exempt Bonds

from: Associate Chief Counsel  
(Financial Institutions & Products)

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subject: On-Behalf-Of Issuers of Tribal Economic Development Bonds

This advice may not be used or cited as precedent.

**ISSUE**

Can an Indian tribal government that receives an allocation of volume cap to issue tribal economic development bonds designate an “on behalf of issuer” to issue those bonds?

**LAW AND ANALYSIS**

Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b) provides in part that § 103(a) shall not apply to any private activity bond which is not a qualified bond. Section 103(c)(1) defines the term “State or local bond” as an obligation of a State or political subdivision thereof. Section 103(c)(2) defines the term State to include the District of Columbia and any possession of the United States. Section 1.103-1(b) of the Income Tax Regulations provides in part that obligations issued by or on behalf of any State or local governmental unit by constituted authorities empowered to issue such obligations are the obligations of such a unit.

Section 7871(a)(4) provides that, subject to § 7871(c), an Indian tribal government shall be treated as a State for purposes of § 103. Section 7871(c)(1) provides that § 103(a) shall apply to any obligation issued by an Indian tribal government (or subdivision thereof) only if such obligation is part of an issue substantially all of the proceeds of

which are to be used in the exercise of any essential governmental function. Section 7871(c)(2) generally provides that, with very limited exception, § 103(a) shall not apply to any private activity bond (as defined in section 141(a)) issued by an Indian tribal government (or subdivision thereof).

Section 7871(f)(2) provides in part that, in the case of a tribal economic development bond, notwithstanding § 7871(c), such bond shall be treated for purposes of the Code in the same manner as if such bond were issued by a State, and the Indian tribal government issuing such bond and any instrumentality of such Indian tribal government shall be treated as a State for purposes of section 141. Section 7871(f)(3)(A) defines a “tribal economic development bond” in relevant part as any bond issued by an Indian tribal government, the interest on which would be exempt from tax under section 103 if issued by a State or local government.

An Indian tribal government that receives an allocation of volume cap to issue tribal economic development bonds may designate an “on behalf of issuer”, within the rules applicable to bonds issued under § 103, that is formed under the laws of that tribal government to issue those bonds. The proceeds of any bonds issued by such an “on behalf of” issuer will be treated as if they were proceeds of bonds issued by the Indian tribal government that received the allocation. See Notice 2009-51, 2009-28 I.R.B. 128.

Please call (202) 317-6980 if you have any further questions.

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