

Part III - Administrative, Procedural, and Miscellaneous

Tribal Economic Development Bonds: Use of Volume Cap for Draw-down Loans

Notice 2015-83

SECTION 1. PURPOSE

This Notice modifies Notice 2012-48, 2012-31 I.R.B. 102, regarding the process for allocation of the available amount of national bond volume limitation authority (volume cap) for tax-exempt tribal economic development bonds under § 7871(f) of the Internal Revenue Code (Tribal Economic Development Bonds). This Notice provides special rules for bonds issued under a “draw-down” loan structure in which the lender advances funds for the loan on different dates (Draw-down Bonds). This Notice allows additional time to use allocated volume cap for issuance of Draw-down Bonds if an issuer meets certain requirements.

SECTION 2. BACKGROUND

Notice 2012-48 solicited applications for allocation of volume cap for Tribal Economic Development Bonds, and provided guidance on the application requirements, the application forms, the allocation method, and the time period for issuance before

forfeiture of allocated volume cap. For previous guidance on this process, see Notice 2009-51, 2009-28 I.R.B. 128; Announcement 2010-88, 2010-47 I.R.B. 753; and Announcement 2011-71, 2011-46 I.R.B. 770.

Generally, under section 4.g. of Notice 2012-48, an applicant seeking an allocation of volume cap (Applicant) must demonstrate a readiness to issue the bonds. Once an Applicant is allocated volume cap, the Applicant has 180 days from the date of the allocation letter to issue the bonds (the 180-day period). Volume cap allocated for those bonds that are not issued within such 180-day period is forfeited and available for reallocation. Also, an Applicant is required to send the Internal Revenue Service (IRS) notice of issuance of Tribal Economic Development Bonds not later than 15 days after issuance.

Questions have arisen regarding when Tribal Economic Development Bonds are considered “issued” for purposes of the 180- day period for issuance pursuant to an allocation of volume cap. Under the statutory framework, the general rules for State and local bonds issued by States and political subdivisions under § 103 apply with modifications to Tribal Economic Development Bonds issued by Indian tribal governments under §7871(f). In general, Notice 2010-81, 2010-50 I.R.B. 825, provides that a State or local bond is considered issued on the “issue date” of the “bond” under §1.150-1(b) of the Treasury Regulations. Section 1.150-1(b) defines the “issue date” of a “bond” to mean the date on which the issuer receives the purchase price in exchange for that bond, provided that in no event is the issue date of a bond earlier than the first

day on which interest begins to accrue on such bond for Federal income tax purposes. For bonds issued under a “draw-down” loan structure under §1.150-1(c)(4)(i) in which draws of funds occur on different dates, while the “issue” has a single issue date, each draw or bond within the issue may have a separate issue date. Specifically, when the issuer draws down under the loan, it receives the purchase price and interest begins to accrue on the draw, resulting in the date of the draw constituting the issue date of the bond associated with the draw. Therefore, under the general rules for State and local bonds in Notice 2010-81, for Draw-down Bonds, only amounts that are drawn (and for which interest begins to accrue for Federal income tax purposes) within the 180-day period meet the timing requirement for issuance under section 4.g. of Notice 2012-48. Applicants have informed the IRS that this general rule for issuance has created administrative difficulties which have precluded the use of Draw-down Bonds.

In Notice 2011-63, 2011-34 I.R.B 172, the IRS provided certain special rules for determining issuance of State or local bonds in draw-down loan structures for purposes of allocation and administration of private activity bond volume cap under §146. Similarly, this Notice provides special rules regarding the issuance of Tribal Economic Development Bonds for purposes of allocation and administration of bond volume cap under §7871(f) in the context of Draw-down Bonds.

SECTION 3. MODIFICATION TO NOTICE 2012-48

Notice 2012-48 is modified by adding section 10 to Notice 2012-48 to read as follows:

SECTION 10. SPECIAL RULES FOR TRIBAL ECONOMIC
DEVELOPMENT BONDS ISSUED AS DRAW-DOWN BONDS

a. In general. In addition to the general provisions of this Notice and notwithstanding any provision of this Notice to the contrary, if an Applicant expects to use any part of its allocation of volume cap to issue Tribal Economic Development Bonds under a “draw-down” loan structure in which the lender advances funds for the loan on different dates expected to occur both within 180 days from the date of the allocation letter (the 180-day period) and after the 180 day period (together, for purposes of this section, the Draw-down Bonds), the special rules of this section 10 shall apply.

b. Plan of financing. For purposes of section 3.g. of this Notice, an Applicant that expects to use any part of its Tribal Economic Development Bond volume cap allocation to issue Draw-down Bonds after the 180-day period will meet the requirement of item (3) of section 3.g. of this Notice (regarding documentation from an independent third party about the marketability of the bonds) if the Applicant submits a commitment letter from a financial institution stating that the institution reasonably expects to advance the total principal amount of the Draw-down Bonds no later than three years after the date of the allocation letter.

c. Expiration of allocation. For purposes of section 4.g. of this Notice (regarding expiration of allocations), if the proposed bonds associated with the

allocation are Draw-down Bonds and the Applicant has submitted the commitment letter required by section 10.b. of this Notice, the rules in section 10.c.1 and 10.c.2 of this Notice, as applicable, apply for purposes of determining the time period for issuing the proposed bonds pursuant to the volume cap allocation. A volume cap allocation for Draw-down Bonds is forfeited to the extent of any Draw-down Bonds that are not issued within the allowable time period for issuance under the allocation.

1. Except as provided in section 10.c.2 of this Notice, if the Applicant issues Draw-down Bonds in an amount equal to at least 10 percent of its volume cap allocation within the 180-day period, the unused portion of the allocation amount will remain valid for two years from the date of the allocation letter (the 2-year period) to issue Draw-down Bonds under that allocation.

2. If the Applicant meets the requirements in section 10.c.1 of this Notice and also issues Draw-down Bonds in an amount equal in the aggregate to at least 50 percent of its volume cap allocation within the 2-year period, the unused portion of the allocation amount will remain valid for three years from the date of the allocation letter (the 3-year period) to issue the Draw-down Bonds under that allocation.

d. Notice of issuance. 1. In general. For purposes of section 7.a. of this Notice (regarding notice of issuance), if the proposed bonds are Draw-down Bonds, an Applicant must submit to the IRS one or more notices of issuance

(Notice of Issuance) under the rules set forth in sections 10.d.2. and 10.d.3 of this Notice, as applicable, to the address set forth in section 3.d. of this Notice. All Notices of Issuance shall include the following information: (1) the Applicant's name and taxpayer identification number; (2) the issue price of the bonds issued; (3) the issue date of the bonds; (4) a description of the project financed with the bonds; and (5) the amount of allocation that is being forfeited. Any Notice of Issuance that provides for an amount of allocation that is being forfeited will serve as a notice of voluntary forfeiture under section 4.i. of this Notice with respect to that allocation amount.

2. Notice of final draw. The Applicant must submit a Notice of Issuance not later than 15 days after the final draw for the Draw-down Bonds (the Notice of Final Draw).

3. Additional notices of issuance. The Applicant must submit additional Notices of Issuance using the following rules, as applicable.

A. Unless the Applicant has submitted the Notice of Final Draw as provided in section 10.d.2. of this Notice, the Applicant shall submit a Notice of Issuance within 15 days after the 180-day period. This Notice of Issuance shall state at the top that it is a "180-Day Draw-down Notice" and include the percentage of the allocation used to issue Draw-down Bonds under that allocation within the 180-day period.

B. Unless the Applicant has submitted a Notice of Final Draw as

provided in section 10.d.2. of this Notice, for Draw-down Bonds issued after the 180-day period, Applicant shall submit a Notice of Issuance within 15 days after the end of the 2-year period following the date of the allocation letter. This Notice of Issuance shall state at the top that it is the “2-year Draw-down Notice” and include the total percentages of the allocation used to issue Draw-down Bonds under that allocation within both the 180-day period and the 2-year period.

C. Unless the Applicant has submitted a Notice of Final Draw as provided in section 10.d.2. of this Notice, for Draw-down Bonds issued after the 2-year period, the Applicant shall submit a Notice of Issuance within 15 days after the end of the 3-year period. This Notice of Issuance shall state at the top that it is the “Final Draw-down Notice” and include the total percentages of the allocation used to issue Draw-down Bonds under that allocation within each of the following periods: the 180-day period, the 2-year period, and the 3-year period.

SECTION 4. REQUEST FOR COMMENTS ON RULES ON ISSUING NEW CLEAN RENEWABLE ENERGY BONDS AS DRAW-DOWN BONDS

The Department of the Treasury and the IRS seek comments regarding whether to consider providing special volume cap allocation rules for New Clean Renewable Energy Bonds issued as Draw-down Bonds similar to the rules in this Notice.

Comments should be submitted in writing and can be e-mailed to

notice.comments@irs.counsel.treas.gov (include “Notice 2015-83” in the subject line) or

mailed to Office of Associate Chief Counsel (Financial Institutions and Products), Re: Notice 2015-83, CC:FIP:Branch 5, Room 3547, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments that are submitted will be made available to the public.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2012-48 is modified.

SECTION 6. EFFECTIVE/APPLICABILITY DATE

This Notice is effective for an application for allocation of Tribal Economic Development Bond volume cap that is submitted on or after December 4, 2015. In addition, an Applicant that has received an allocation that has not expired before December 4, 2015, may rely on this Notice, provided that such Applicant meets the applicable requirements of Notice 2012-48, as modified by this Notice, on or before the expiration date of the allocation.

SECTION 7. PAPERWORK REDUCTION ACT

The information collection contained in Notice 2012-48 has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35) under control number 1545–2233. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

This Notice modifies Notice 2012-48. Certain modifications to Notice 2012-48 change the collection of information requirements contained in Notice 2012-48, as

approved under control number 1545-2233. The modified collection of information requirements are contained in section 3 of this Notice. The information is required in order to inform the IRS of an Applicant's readiness to receive an allocation of volume cap for Tribal Economic Development Bonds as Draw-down Bonds, the Applicant's timely use of such allocation, and the amount of such volume cap that may be allocated to each Applicant. The collections of information are required for any Applicant that wishes to receive an allocation of volume cap for Tribal Economic Development Bonds as Draw-down Bonds. The likely respondents will be eligible issuers of Tribal Economic Development Bonds.

We estimate the total number of respondents to be 143 and the total annual responses to be 143. We estimate it will take 8 hours to comply. Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

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 return information are confidential, as required by § 6103.

SECTION 8. DRAFTING INFORMATION

The principal authors of this Notice are Darrell Smelcer and Marie Sullivan of the IRS Office of Tax Exempt Bonds and Zoran Stojanovic of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this Notice, contact Ms. Sullivan at 225-923-4168 or Mr. Stojanovic at 202-317-6980

(not toll-free numbers).