

# TEB Phase II - Lesson 12

## Tribal Bonds

### Overview

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#### Introduction

In Lesson 11 you learned about qualified tax credit bonds. This lesson covers the general rules applicable to tax-exempt bonds issued by Indian tribal governments (tribal bonds) including tribal economic development bonds, which were created by the American Recovery and Reinvestment Act of 2009. Indian tribal governments that received allocations of volume cap to issue tribal economic development bonds also had the option to elect to issue such bonds as taxable build America bonds if additional eligibility requirements were met.

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#### Statutory History

At the end of this lesson, you will be able to:

- Identify and define each type of tribal bond and the relevant Code sections
  - Describe the requirements applicable to tribal bonds
  - Describe the “essential governmental function” requirement as it relates to tribal bonds
  - Describe the qualified manufacturing facilities exception as it relates to tribal bonds
  - Explain the rules applicable to tribal economic development bonds
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## Overview, Continued

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## Sources of Law

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**Statutory  
History**

The Indian Tribal Government Tax Status Act of 1982 added new §§ 7701(a)(40) and 7871 to the Code pertaining to the status of Indian tribal governments. For 2 years beginning in 1983, Indian tribal governments (or subdivisions thereof) were to be treated as states (or political subdivisions thereof) for specified federal tax purposes, including for purposes of the tax-exempt bond interest provisions of IRC § 103. The Tax Reform Act of 1984 made permanent the rules treating Indian tribal governments, or subdivisions thereof, as states (or political subdivisions thereof).

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**Treas. Regs.**

Treas. Reg. § 305.7701-1 provides a definition of Indian tribal governments effective after December 31, 1982. Treas. Reg. § 305.7871-1 describes how Indian tribal governments are treated as states for certain purposes.

**Note:** These regulations were issued before certain amendments to IRC § 7871 were made, specifically with regard to the “essential governmental function” requirement which is discussed later in this lesson.

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## General Rules

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**General Rules** IRC § 7871(a)(4) provides that Indian tribal governments are treated as states for purposes of issuing valid debt obligations under § 103, subject to the limitations of § 7871(c).

IRC § 7871(c)(1) provides that § 103(a) applies 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.”

**Note:** The American Recovery and Reinvestment Act of 2009, which amended IRC § 7871, created the new category of “tribal economic development bonds” which are not subject to the essential governmental function restriction. See the section on “Tribal Economic Development Bonds” later in this lesson. See PLR 200911001 for a discussion of “essential governmental function.”

IRC § 7871(c)(2) provides that in general, Indian tribal governments may not issue tax-exempt private activity bonds. However, IRC § 7871(c)(3) provides an exception for tax-exempt bonds issued to finance the acquisition, construction, reconstruction, or improvement of qualified manufacturing facilities that meet certain use, location, ownership, and employment requirements.

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## General Rules, Continued

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### **Indian Tribal Government Defined**

IRC § 7701(a)(40) defines the term “Indian tribal government” as the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives that is determined by the Secretary of the Treasury, after consultation with the Secretary of the Interior, to exercise governmental functions.

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### **Federal Recognition**

Treas. Reg. § 305.7701-1(a) provides that before an Indian tribal government can be treated as a state for purposes of issuing tax-exempt bonds under IRC § 103, they must be federally recognized by revenue procedure. The regulation further provides that if a governing body is not currently designated by revenue procedure as an Indian tribal government and believes that it qualifies for such designation, it may apply for a ruling from the Internal Revenue Service.

Rev. Proc. 2008-55 contains a listing of federally recognized Indian tribal governments. It designates that those tribal entities that appear on the current or future lists of federally recognized Indian tribes published annually by the Department of the Interior, Bureau of Indian Affairs, as Indian tribal governments for purposes of section 7701(a)(40).

**Note:** In general, an Indian tribal entity that appears on the most recent list published by the Department of the Interior in the Federal Register is designated an Indian tribal government for purposes of IRC § 7701(a)(40).

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## General Rules, Continued

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**Subdivisions of Tribes** IRC § 7871(d) provides that for purposes of § 7871(a), a subdivision of an Indian tribal government will be treated as a political subdivision of a state if (and only if) the Secretary of the Treasury determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government. The most recent list of recognized political subdivisions of Indian tribal governments is found in Rev. Proc. 84-36.

Rev. Proc. 84-37, as modified by Rev. Proc. 86-17, provides guidance as to how a governmental unit of an Indian tribe or a political subdivision of an Indian tribal government not included among those listed in previously published revenue procedures can request a determination qualifying it for treatment as a state or a political subdivision of a state. Such a request should be submitted in an application for a private letter ruling.

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**Indian Tribal Corporations** Rev. Rul. 94-16 holds that an Indian tribal corporation organized under Section 17 of the Indian Reorganization Act of 1934 shares the same tax status as the tribe. See PLR 9847018.

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## Essential Governmental Function

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### **Essential Governmental Function Requirement**

IRC § 7871(c)(1) provides that § 103(a) applies to any obligation, other than, generally, private activity bonds, issued by an Indian tribal government (or a 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.

**Note:** this restriction does not apply to tribal economic development bonds, which were introduced under the American Recovery and Reinvestment Act of 2009, and are covered under the section “Tribal Economic Development Bonds” below. See PLR 200911001 for a discussion of “essential governmental function.”

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### **Definition**

IRC § 7871(e) provides that the term “essential governmental function” does not include any function which is not customarily performed by state and local governments with general taxing powers.

IRC § 7871(e) was added to the statute by The Omnibus Budget Reconciliation Act of 1987, and applies to obligations issued after October 13, 1987.

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## Essential Governmental Function, Continued

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### Legislative History

The essential governmental function limitation has been in place since the original enactment of IRC § 7871 as a temporary provision of the Code by the Indian Tribal Government Tax Status Act in 1982. In the legislative history to that Act, the Senate Finance Committee indicated that tax-exempt bond financing was not intended to be available to Indian tribal governments for “commercial or industrial activities (or other activities other than essential governmental functions).” S. Rep. No. 97-646, at 13-14 (1982). The House Conference Report provided that schools, streets, and sewers are specific examples of functions that are essential governmental functions. H.R. Rep. No. 97-984, at 16-17 (1982).

When IRC § 7871(e) was added by the Omnibus Budget Reconciliation Act of 1987, the legislative history shows that the House Ways and Means Committee expressed that the issuance of bonds to finance commercial or industrial facilities (e.g., private rental housing, cement factories, or mirror factories) which bonds technically may not be private activity bonds is not included within the scope of the essential governmental function exception. The Committee added that only those activities that are customarily financed with governmental bonds (e.g., schools, roads, governmental buildings, etc.) are intended to be within the scope of the essential governmental function exception, notwithstanding that isolated instances of a state or local government issuing bonds for another activity may occur. H.R. Rep. No. 100-391, at 1139 (1987).

The 1987 Conference Committee noted that a facility which does not qualify as a manufacturing facility for purposes of IRC § 7871(c)(3)(A) may be financed with tax-exempt bonds issued by a tribal government provided that the facility satisfies the essential governmental function standard. As examples, they noted a building used for offices for a tribal government, and a lodge owned and operated by a tribal government if it is comparable to lodges customarily owned and operated by state park or recreation agencies. H.R. Rep. No. 100-495, at 1012 n. 5.

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## Essential Governmental Function, Continued

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### Prior Law

Before the current definition of “essential governmental function” in § 7871(e) was added to the Code in 1987, Treas. Reg. § 305.7871-1(d) was issued in 1984 and is determinative as to what constitutes an essential governmental function for periods on and before October 13, 1987.

Treas. Reg. § 305.7871-1(d) provides that an essential governmental function of an Indian tribal government is a function of a type which is:

- Eligible for funding under 25 U.S.C. 13 and the regulations thereunder, or
- Eligible for grants or contracts under 25 U.S.C. 450 (f), (g), and (h) and the regulations thereunder, or
- An essential governmental function under § 115 and the regulations thereunder when conducted by a state or political subdivision thereof.

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## Essential Governmental Function, Continued

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**Prior Law**  
(continued)

Under 25 U.S.C. 13, these functions included:

- General support and civilization, including education
- For relief of distress and conservation of health
- For industrial assistance and advancement and general administration of Indian property
- For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies
- For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects
- For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees
- For the suppression of traffic in intoxicating liquor and deleterious drugs
- For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use
- For general and incidental expenses in connection with the administration of Indian affairs

Section 115 provides that income derived from any public utility or the exercise of any essential governmental function and accruing to any state or any political subdivision thereof is excluded from gross income

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## Essential Governmental Function, Continued

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**Substantially  
All**

Treas. Reg. § 305.7871-1(c) provides that in applying the rules governing tribal bond proceeds, the “substantially all” test is the same as that provided in Treas. Reg. § 1.103-8(a)(1)(i).

Treas. Reg. § 1.103-8(a)(1)(i) provides that substantially all of the proceeds are used to provide an exempt facility if 90 percent or more of such proceeds are so used.

To determine “substantially all,” two rules apply:

- The proceeds are reduced by amounts properly allocable on a pro rata basis between providing the exempt facility and other uses of the proceeds, and
- Amounts used to provide an exempt facility include amounts paid or incurred which are properly chargeable to the facility’s capital account.

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## Essential Governmental Function, Continued

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### Example 1

In PLR 200911001, the prospective Issuer was a county electrical district, the Tribe was a federally recognized Indian tribal government, and the Borrower was a recognized political subdivision of the Tribe. The Borrower was established to provide utility services to the tribal population. Tribal law required that the Borrower furnish such services on a nonprofit basis and at reasonable costs to all areas of the Tribe's Reservation. A committee of the Tribal council appointed the board governing the Borrower. The Issuer intended to issue Bonds to finance the costs of the Project, which was an electric generating facility. The Borrower would enter into a contract with the Issuer under which the Borrower would acquire an undivided ownership interest in the Project and pay its pro rata share of the principal and interest of the Bonds.

The Service concluded that an activity is considered to be an essential governmental function customarily performed by state and local governments only if: (1) there are numerous state and local governments with general taxing powers that have been conducting the activity and financing it with tax-exempt governmental bonds; (2) state and local governments with general taxing powers have been conducting the activity and financing it with tax-exempt governmental bonds for many years; and (3) the activity is not a commercial or industrial activity. For purposes of applying this analysis where the activity is the ownership and operation of a facility, the Service stated that only comparable facilities owned and operated by state and local governments may be taken into account.

The Service concluded that the first two prongs of the three-part analysis were met. In looking at the third step, the Service framed the issue as "whether ownership and operation of" an interest in a power plant "is a commercial or industrial activity." The Service proceeded to look to the body of law under IRC § 501(c)(3) for guidance. The Service examined the relevant factors, which included whether the Borrower would operate the power plant (1) to earn a profit for the Tribe; (2) in competition with for-profit entities; and (3) in a commercial manner.

The Service concluded that ownership and operation of Borrower's interest in the Project met the essential governmental function test, and thus the Borrower would be treated as a political subdivision of a state for purposes of applying §§ 103 and 141 to the Bonds.

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## Essential Governmental Function, Continued

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### Example 2

In TAM 200603028, a qualifying municipal issuer issued bonds and loaned the proceeds to a federally recognized Tribe to be used for the construction of hotel and convention facilities on the Tribe's reservation. The Service concluded that the Tribe could only be treated as a governmental unit for purposes of § 103 if the loan proceeds were used for an essential governmental function. See also TAM 200705027.

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### Example 3

In TAM 200704019, the Tribe used bond proceeds to finance the construction of hotel and convention facilities on the Tribe's reservation. The Service found that ownership and operation of hotels with comparable size and amenities as the one financed by the Tribe was not sufficiently prevalent or longstanding among state and local governments to be considered an essential governmental function customarily performed by state and local governments.

The Service concluded that an activity is considered an essential governmental function customarily performed by state and local governments only if: (1) there are numerous state and local governments with general taxing powers that have been conducting the activity and financing it with tax-exempt governmental bonds; (2) state and local governments with general taxing powers have been conducting the activity and financing it with tax-exempt governmental bonds for many years; and (3) the activity is not a commercial or industrial activity. For purposes of applying this analysis where the activity is the ownership and operation of a facility, only comparable facilities owned and operated by states and local governments are taken into account.

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### Example 4

In PLR 200648024, the Service found that ownership and operation of a government office building, emergency services building, cultural center and museum, and infrastructure improvements constituted essential government functions. The Service noted that infrastructure improvements are essential governmental functions even though they may be used primarily by a casino because an activity does not become a commercial or industrial activity merely because that activity benefits a commercial or industrial operation. Whether an activity is a commercial or industrial activity requires consideration of all the facts and circumstances.

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## Qualified Manufacturing Facilities

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**General Rule** Although under § 7871(c)(2) Indian tribal governments generally cannot issue tax-exempt private activity bonds, § 7871(c)(3) provides that Indian tribal governments can issue tax-exempt bonds to finance the acquisition, construction, reconstruction, or improvement of property which is of a character subject to the allowance for depreciation and which is part of a manufacturing facility (as defined in § 144(a)(12)(C)), provided that certain use, location, ownership, and employment requirements are satisfied.

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**Use of Proceeds** Under § 7871(c)(3)(B), in order for the qualified manufacturing facilities exception to the prohibition against the issuance of tax-exempt private activity bonds to apply, at least 95 percent of the net proceeds of the issue must be used to finance the manufacturing facility.

Section 144(a)(12)(C) defines “manufacturing facility” as any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property).

A qualified manufacturing facility must satisfy the following requirements:

- Will be located on land which is part of the qualified Indian lands of the Indian tribal government issuer throughout the 5-year period ending on the date of issuance of such issue
- The facility must be owned and operated by such issuer

In addition, the issuer must reasonably expect at the time of issuance that the facility to be financed will meet the employment requirements of §7871(c)(3)(D)(i), which are discussed below, and no principal user of the facility can be a person described in § 144(a)(6)(B).

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## Qualified Manufacturing Facilities, Continued

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### Use of Proceeds (continued)

Section 144(a)(6)(B) defines a principal user of a facility as a person (or a group of related persons that includes such person, but excludes a governmental unit) who :

- Guarantees, arranges, participates in, or assists with the issuance (or pays any portion of the costs of issuance) of any bond the proceeds of which will be used to finance the facility, and
- Provides any property, or any franchise, trademark, or trade name (within the meaning of § 1253), which is to be used in connection with such facility.

**Note:** Because § 7871(c)(3)(A)(ii) provides that these types of bonds are to be treated as qualified small issue bonds, many of the requirements under §144(a) must also be satisfied.

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### Employment Requirements

Under § 7871(c)(3)(D), the employment requirements applicable to qualified manufacturing facilities are met with respect to a facility financed by the net proceeds of an issue if, as of the close of each calendar year in the testing period, the aggregate face amount of all outstanding tax-exempt private activity bonds issued to finance the facility is not more than 20 times greater than the aggregate wages paid during the preceding calendar year to enrolled members (or their spouses) of the Indian tribe issuing the bonds for services rendered at the facility.

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## Qualified Manufacturing Facilities, Continued

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### **Failure to Meet Employment Requirements**

If the employment requirements are not met with respect to a facility as of the close of any calendar year in the testing period, § 103 shall no longer apply to interest received or accrued on all private activity bonds issued to provide financing for the facility after the close of such calendar year. Section 7871(c)(3)(D)(ii)(I).

An exception to the loss of tax-exemption under § 7871(c)(3)(D)(ii)(I) for failure to meet the employment requirements does not apply if such requirements are met with respect to a facility financed by the net proceeds of an issue if, at the close of the 90th day after the close of the calendar year in the testing period, the aggregate face amount of all outstanding tax-exempt private activity bonds issued to finance the facility is not more than 20 times greater than the aggregate wages paid during the preceding calendar year to enrolled members (or their spouses) of the Indian tribe issuing the bonds for services rendered at the facility. Section 7871(c)(3)(D)(ii)(II).

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### **Definitions**

“Qualified Indian lands” means land which is held in trust by the United States for the benefit of an Indian tribe. Section 7871(c)(3)(E)(i).

“Indian tribe” means any Indian tribe, band, nation, or other organized group of community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Section 7871(c)(3)(E)(ii).

“Net proceeds” means the proceeds of the issue reduced by amounts in a reasonably required reserve or replacement fund. Section 7871(c)(3)(E)(iii).

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# Tribal Economic Development Bonds

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## **Introduction**

Tribal economic development bonds are a category of tax-exempt bonds that were created by the American Recovery and Reinvestment Act of 2009, and codified in § 7871(f). Tribal economic development bonds give Indian tribal governments greater flexibility to use tax-exempt bonds to finance economic development projects than is allowable under the existing standard of § 7871(c), which generally limits the use of tax-exempt financing by Indian tribal governments to finance activities that constitute essential governmental function and certain manufacturing facilities.

**Note:** Indian tribal governments that received an allocation of volume cap to issue tribal economic development bonds may elect under § 54AA(d)(1)(C) to issue those bonds as build America bonds instead of tax-exempt bonds if additional eligibility requirements are met. This will be discussed in further detail below under “Issuance as build America bonds.”

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## **Essential Governmental Function Restriction Does Not Apply**

Tribal economic development bonds issued pursuant to § 7871(f) are expressly exempted from the restriction that such bonds must be issued for essential governmental functions. Subject to the restrictions under § 7871(f)(3)(B), Indian tribal governments can use tribal economic development bonds to finance a broad range of governmental projects, including hotels, convention centers or golf courses.

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## **Refunding Issues**

Subject to the restrictions of § 7871(f)(3)(B), Indian tribal governments can use tribal economic development bonds in “refunding issues,” as defined in Treas. Reg. § 1.150-1(d), to the same extent and subject to the same restrictions as state or local governments.

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## Tribal Economic Development Bonds, Continued

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**Elimination of Prohibition Against Private Activity Bonds**

Subject to the restrictions under § 7871(f)(3)(B), Indian tribal governments can use tribal economic development bonds to finance any projects or activities for which state or local governments could issue tax-exempt bonds under § 103.

State and local governments generally can use tax-exempt governmental bonds to finance an unspecified broad range of projects and activities so long as (1) not more than 10 percent of the bond proceeds are used for private business use and (2) the debt service on no more than 10 percent of bond proceeds is payable or secured from payments or property used for private business use. In addition, special rules under § 141(b)(3) and § 141(c) further limit the use of tax-exempt governmental bonds in certain circumstances involving disproportionate or unrelated private business use and private loans.

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## Tribal Economic Development Bonds, Continued

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**Elimination of Prohibition against Private Activity Bonds**  
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State and local governments can issue qualified tax-exempt private activity bonds under § 141(e) for projects including:

- Airports
- Docks and wharves
- Mass commuting facilities
- Facilities for the furnishing of water
- Sewage facilities
- Solid waste disposal facilities
- Qualified low-income residential rental multifamily housing projects
- Facilities for the local furnishing of electric energy and gas
- Local district heating or cooling facilities
- Qualified hazardous waste facilities
- High-speed intercity rail facilities
- Environmental enhancements of hydroelectric generating facilities
- Qualified public educational facilities
- Qualified green buildings and sustainable design projects
- Qualified highway or surface freight transfer facilities
- Qualified mortgage bonds or qualified veterans mortgage bonds for certain single-family housing mortgage loans
- Qualified small issue bonds for certain manufacturing facilities
- Qualified student loan bonds
- Qualified redevelopment bonds
- Qualified 501(c)(3) bonds

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## Tribal Economic Development Bonds, Continued

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- Definition** “Tribal economic development bond” means any bond issued by an Indian tribal government:
- The interest on which would be exempt from tax under § 103 if issued by a state or local government, and
  - Which is designated by the Indian tribal government as a tribal economic development bond.

Section 7871(f)(3)(A)

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**Restrictions** Although § 7871(f) provides Indian tribal governments with more flexibility in the types of projects they can finance with tax-exempt bonds, tribal economic development bonds may not be issued to finance any:

- Portion of a building in which class II or class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act) is conducted or housed or any other property actually used in the conduct of such gaming, or
- Facility located outside the Indian reservation (as defined in § 168(j)(6)).

Section 7871(f)(3)(B)

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**Safe Harbor Definition of Building** Notice 2009-51 provides an interim safe harbor for determining if a bond financed facility would be independent from a gaming facility. Structures will be treated as separate if they have independent foundations, outer walls, and roofs. A building could be connected to a gaming facility by doorways, covered walkways, or other enclosed common area connections as long as such connections do not affect the structural independence of either building.

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## Tribal Economic Development Bonds, Continued

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### **Issuance as Build America Bonds**

The American Recovery and Reinvestment Act of 2009 added new § 54AA to the Code, providing authority to issue build America bonds. Build America bonds are taxable bonds that state and local governments can issue to finance any capital expenditures for which they otherwise could issue tax-exempt governmental bonds. Build America bonds must have been issued before January 1, 2011, and the issuer must have irrevocably elected to have § 54AA apply. Build America bonds may be issued as tax credit bonds or direct pay bonds. See Phase 1, Lesson 10 for a more detailed discussion of build America bonds.

An Indian tribal government that has received an allocation of volume cap pursuant to § 7871(f)(1) to issue tribal economic development bonds can elect under § 54AA(d)(1)(C) to issue such bonds as build America bonds instead of issuing the bonds as tax-exempt bonds under § 103. The other requirements of tribal economic development bonds covered earlier in this lesson must also be satisfied. In addition, such bonds must also satisfy all the applicable requirements for issuance as build America bonds under § 54AA, including the requirement that the bonds must be issued before January 1, 2011, and that the bonds not be private activity bonds within the meaning of § 141.

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## Tribal Economic Development Bonds, Continued

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### **Limitations on Bond Issuance**

The total national bond volume cap of \$2 billion for tribal economic development bonds was initially allocated by the Secretary of the Treasury among the Indian tribal governments in accordance with the allocation process described in Notice 2009-51.

Section 7871(f)(3)(c) provides that the maximum aggregate face amount of bonds which may be designated by any Indian tribal government under §7871(f)(3)(A) must not exceed the amount of national tribal economic development bond volume cap allocated to such issuer.

Allocation of the \$2 billion volume cap was made in two tranches of \$1 billion each. No Indian tribal government received an allocation of more than \$30 million pursuant to the first allocation. Notice 2009-51 provided that if bonds were not issued by certain administrative deadlines for any or all of the allocation received by an Indian tribal government then any or all of such allocation not used to issue bonds would be treated as forfeited and would be available for allocation by the IRS. Based on the passage of the deadlines for issuing Tribal Economic Development Bonds the IRS identified volume cap that was available for reallocation.

Notice 2012-48 was issued to solicit applications for the allocation of the available amount of national bond volume limitation authority for Tribal Economic Development Bonds that was allocated under the prior Notices and subsequently forfeited. Under 2012-48 no Indian tribal government can receive an allocation of volume cap that would cause the aggregate amount of volume cap allocated to that Indian tribal government to exceed the Published Volume Cap Limit. The Published Volume Cap Limit is the greater of (1) 20 percent of the amount of available volume cap as of the first day of the published period or (2) \$100 million. The Volume Cap Limit is published on the IRS website every 2 months.

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## Tribal Economic Development Bonds, Continued

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### **Additional Guidance**

Notice 2012-48 provides guidance on the following:

- Application requirements, deadlines, and forms for requests for volume cap allocations
  - The method that the Internal Revenue Service and the Department of the Treasury used to allocate the volume cap
  - The validity of allocations generally and the effect on allocation awards of insubstantial deviations from the information submitted to the Internal Revenue Service
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### **Issuance Deadlines and Extensions**

Under Notice 2009-51, Indian tribal governments that received an allocation to issue tribal economic development bonds in the first tranche were required to have issued such bonds by December 31, 2010, or forfeited the allocation. However, such issuers received an automatic 6-month extension of time to June 30, 2011, to issue tribal economic development bonds pursuant to those allocations. In addition, issuers had the option to submit a written request for an additional 6-month extension of time from June 30, 2011 to December 31, 2011 pursuant to Announcement 2010-88.

Issuers that received an allocation in the second tranche must have issued such bonds by December 31, 2011, or forfeited the allocation. Announcement 2010-88 did not modify provisions relating to this deadline and did not modify the statutory requirement that tribal economic development bonds issued as build America bonds must have been issued before January 1, 2011.

Issuers that receive an allocation under Notice 2012-48 have 180 days from the date of their allocation letter to issue the proposed bonds. The portion of allocation not used within 180 days of the date of the allocation letter is treated as forfeited and available for reallocation. Notice 2015-83 provides for special rules for bonds issued under a “draw-down” loan structure in which the lender advances funds for the loan on different dates.

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## Tribal Economic Development Bonds, Continued

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### **Reporting Requirements**

Issuers of tribal economic development bonds are subject to the information reporting requirements of § 149(e). Issuers must complete Part II of Form 8038-G by checking the box on Line 18 (Other), writing “Tribal Economic Development Bonds” as the bond description, and entering the issue price of the transaction in the Issue Price column on Line 18.

Under Notice 2012-48, not later than 15 days after issuance of the proposed bonds, the volume cap recipient is required to send the IRS notice of issuance that includes their name and TIN, the issue price of the bonds issued, the issue date of the bonds and a description of the project financed with the bonds.

Notice 2015-83 provides special notice requirements for bonds issued under a draw-down structure. These rules require additional notices must be sent to the IRS including a Notice of Final Draw, a 180-Day Draw-down Notice and the 2-year Draw-down Notice.

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# Summary

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## Review

This lesson discussed the requirements applicable to tax-exempt bonds issued by Indian tribal governments, and the modified requirements applicable to tribal economic development bonds.

Generally, tribal bonds are subject to the following rules:

- Issuer must be a federally recognized Indian tribal government or subdivision thereof.
- Substantially all of the proceeds must be used in the exercise of any “essential governmental function” which does not include any function not customarily performed by state and local governments with general taxing powers.
- Generally issuers cannot issue tax-exempt private activity bonds, except to finance the construction of qualified manufacturing facilities that meet certain use, location, ownership, and employment requirements.

Generally, tribal economic development bonds are subject to the following rules:

- The essential governmental function requirement does not apply.
- The prohibition against the issuance of private activity bonds, other than for certain qualified manufacturing facilities, does not apply.
- May not be issued to finance certain gaming facilities and projects located outside of Indian reservations.
- May be used for refunding issues, to the same extent as state and local governments.
- Issuers may elect to issue such bonds as taxable build America bonds, subject to certain additional requirements.

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## Summary, Continued

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**Preview of  
Lesson 13**

Lesson 13 covers the rules applicable to targeted revitalization bonds, including Gulf Opportunity Zone bonds, Midwestern disaster area bonds, Hurricane Ike disaster area bonds, and New York Liberty bonds under §§1400L, 1400 M, 1400 N, and 1400 T.

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