

# Part III. Administrative, Procedural, and Miscellaneous

## Tribal Economic Development Bonds

### Notice 2009–51

#### SECTION 1. PURPOSE

This notice solicits applications for allocations of the \$2 billion national bond volume limitation authority (“volume cap”) to issue tribal economic development bonds (“Tribal Economic Development Bonds”) under new § 7871(f) of the Internal Revenue Code (the “Code”). This notice also provides related guidance on the following: (1) eligibility requirements that a project must meet to be considered for a volume cap allocation, (2) application requirements, deadlines, and forms for requests for volume cap allocations, (3) the method that the Internal Revenue Service (“IRS”) and the Department of the Treasury (“Treasury”) will use to allocate the volume cap, and (4) certain interim guidance in this area.

#### SECTION 2. INTRODUCTION

Section 1402 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, 123 Stat. 115 (2009) (the “Act”), added new § 7871(f) to the Code. In general, the purpose of new § 7871(f) is to 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). The more restrictive standard under § 7871(c) generally limits the use by Indian tribal governments of tax-exempt bonds to the financing of certain activities that constitute essential governmental functions customarily performed by State and local governments with general taxing powers and certain manufacturing facilities. The more flexible standard under new § 7871(f) generally allows Indian tribal governments to use tax-exempt bonds under the new \$2 billion volume cap to finance any economic development projects (excluding certain gaming facilities and projects located outside of Indian reservations as provided in § 7871(f)(3)(B)) or other activities for which State or local

governments could use 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.

In addition, State and local governments can use tax-exempt qualified private activity bonds to finance certain specified types of projects and activities without regard to the level of private involvement. State and local governments can issue qualified tax-exempt private activity bonds under § 141(e) and related provisions for projects and activities, including the following: (1) airports, (2) docks and wharves, (3) mass commuting facilities, (4) facilities for the furnishing of water, (5) sewage facilities, (6) solid waste disposal facilities, (7) qualified low-income residential rental multifamily housing projects, (8) facilities for the local furnishing of electric energy or gas, (9) local district heating or cooling facilities, (10) qualified hazardous waste facilities, (11) high-speed intercity rail facilities, (12) environmental enhancements of hydroelectric generating facilities, (13) qualified public educational facilities, (14) qualified green buildings and sustainable design projects, (15) qualified highway or surface freight transfer facilities, (16) qualified mortgage bonds or qualified veterans mortgage bonds for certain single-family housing mortgage loans, (17) qualified small issue bonds for certain manufacturing facilities, (18) qualified student loan bonds, (19) qualified redevelopment bonds, and (20) qualified 501(c)(3) bonds for the exempt charitable and educational activities of § 501(c)(3) nonprofit organizations.

Finally, State and local governments can use tax-exempt bonds in “refunding is-

ues,” as defined in § 1.150–1(d) of the Income Tax Regulations, to refinance prior bonds, subject to certain restrictions, including a restriction under § 149(d) against not more than one “advance refunding issue,” as defined in § 1.150–1(d)(4), for tax-exempt governmental bonds, and a prohibition against any advance refunding issue for tax-exempt qualified private activity bonds.

Thus, subject to the restrictions of § 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, as well as projects involving certain qualified private activities, to the same extent and subject to the same limitations imposed on State and local governments. The Tribes can also, subject to the limitations of § 7871(f)(3)(B), use the Bonds for refunding issues, to the same extent as State and local governments.

#### SECTION 3. BACKGROUND

Section 7871(a)(4) provides that, subject to § 7871(c), an Indian tribal government is to be treated as a State for purposes of § 103 (relating to State and local bonds). Section 7871(c)(1) provides generally that, except for obligations for certain manufacturing facilities described in § 7871(c)(3), § 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(e) provides that for purposes of § 7871 the term “essential governmental function” shall not include any function which is not customarily performed by State and local governments with general taxing power.

New § 7871(f)(1) added by the Act provides that the Treasury Department shall allocate the \$2 billion national volume cap for Tribal Economic Development Bonds among the Indian tribal governments in such manner as the Treasury Department, in consultation with the Secretary of the Interior, determines appropriate. Section 7871(f)(2)(A) provides that, notwithstanding the provisions of § 7871(c), Tribal Eco-

conomic Development Bonds are treated for purposes of the Code as if they were issued by a State. Section 7871(f)(2)(B) provides that with respect to Tribal Economic Development Bonds, the Indian tribal government issuing such bonds and any instrumentality of such Indian tribal government are to be treated as a State for purposes of § 141. Section 7871(f)(2)(C) provides that the § 146 volume cap limitations on private activity bonds do not apply to Tribal Economic Development Bonds.

Section 7871(f)(3)(A) defines a Tribal Economic Development Bond generally to mean 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 for purposes of § 7871(f).

Section 7871(f)(3)(B) further provides that the term Tribal Economic Development Bond shall not include any bond issued as part of an issue if any portion of the proceeds of such issue are used to finance: (1) 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 (2) any facility located outside the Indian reservation (as defined in § 168(j)(6)). Section 168(j)(6) provides that the term “Indian reservation” means a reservation as defined in § 3(d) of the Indian Financing Act of 1974, 25 U.S.C. § 1452(d) applied by treating the term “Indian reservations in Oklahoma” as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and which are recognized by the Secretary of the Interior as eligible for trust land status under 25 CFR Part 151 (as in effect on the date of the enactment of this sentence) or a reservation defined in § 4(10) of the Indian Child Welfare Act of 1978, 25 U.S.C. 1903(10).

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) may not exceed the amount of national Tribal Economic Development Bond volume cap allocated to such Indian tribal government under § 7871(f)(1).

#### SECTION 4. APPLICATION REQUIREMENTS IN GENERAL

Each application for an allocation of the Tribal Economic Development Bond volume cap under § 7871(f)(1) (“Application”) must be prepared and submitted in accordance with this section. In order for an Application to comply with this section, among other things, the Application must be prepared in substantially the form attached to this notice as Appendix A, subject to such minor changes or variations as the IRS and the Treasury Department may approve in their discretion. This notice, including Appendix A, may be found on the IRS web site at <http://www.irs.gov/taxexemptbond/index.html> or <http://www.irs.gov/pub/irs-drop/>. By submitting an Application, the applicant agrees to comply with the requirements of this notice.

a. *Qualified issuer.* An Application must be submitted by an Indian tribal government. Section § 7701(a)(40)(A) defines an Indian tribal government as the governing body of any tribe, band, community, village, or group of Indians, or Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions. Section 2.01 of Revenue Procedure 2008–55, 2008–39 I.R.B. 768, provides that an Indian tribal entity that appears on the most recent list published by the Department of the Interior in the Federal Register pursuant to the Federally Recognized Indian Tribe List Act of 1994, Pub. L. 103–454, 108 Stat. 4791 (“List Act”), is designated an Indian tribal government for purposes of § 7701(a)(40). Section 2.03 of Rev. Proc. 2008–55 further provides that a tribe that does not appear on the most recent list published by the Department of the Interior in the Federal Register pursuant to the requirements of the List Act nonetheless will be treated as an Indian tribal government for purposes of § 7701(a)(40) if the tribe has been acknowledged as a federally recognized Indian tribe, as stated in a letter from the Department of the Interior. An Application must identify the Indian tribal government, including the Indian tribal government’s Federal tax identification number, and either: (1) state that the entity is included on the most recent list published by the Department of the Interior in the

Federal Register pursuant to the List Act, or (2) provide the letter from the Department of the Interior stating that the tribe has been acknowledged as a federally recognized Indian tribe.

b. *Signatures.* An Application must be signed and dated by, and must include the printed name and title of, an authorized official of the Indian tribal government. For purposes of this notice, the term “authorized official of the Indian tribal government” means an officer, board member, employee, or other official of the Indian tribal government who is duly authorized to execute legal documents on behalf of the Indian tribal government in connection with incurring debt of the Indian tribal government (e.g., a tribal chairperson, chief executive officer, or chief financial officer), similar to the kind of duly authorized official of an Indian tribal government who would be authorized to execute documents in connection with an Indian tribal government’s declaration of official intent to reimburse expenditures from the proceeds of a borrowing under § 1.150–2(e).

c. *Contact person.* An Application must designate one or more persons with knowledge of the project that the qualified issuer duly authorizes to discuss with the IRS any information relating to the Application. The designation must include the designee’s name, title, telephone number, fax number, and mailing address. If a designee is not an official or officer of the issuer, the Application must include an executed Form 8821 (*Taxpayer Information Authorization*) or Form 2848 (*Power of Attorney and Declaration of Representative*) authorizing the disclosure of taxpayer information specifically relating to the Application.

d. *Addresses.* An Application must be submitted by hard copy in duplicate accompanied by a copy of the Application in electronic format on compact disc (“CD”) sent by mail to the Internal Revenue Service (IRS), SE:T:GE:TEB:CPM, Attention: Mark Helfer, 1122 Town & Country Commons, St. Louis, Missouri 63017.

e. *Due date.* To receive an allocation from the first \$1 billion of volume cap being allocated (“First Allocation”), an Application must be filed with the IRS on or before the Application deadline of August 15, 2009 (“First Allocation Deadline”). To

receive an allocation from the remaining volume cap (“Second Allocation”), an Application must be filed with the IRS after August 15, 2009, and on or before January 1, 2010 (“Second Allocation Deadline”). See section 7 for further discussion of the two allocations.

f. *Project description.* Each Application must contain the information required by this subsection f.

(i) *Qualified project.* Each Application must describe in reasonable detail the project to be financed with the proceeds of the Tribal Economic Development Bonds. The Application must indicate the expected date that the acquisition and construction of the project will commence and the expected date that the project will be placed in service.

(ii) *Location of project.* The Application must include a certification that the project’s location is within the Indian tribal government’s reservation.

(iii) *Project not used for gaming purposes.* The Application must contain a certification that no portion of the proceeds of any Tribal Economic Development Bonds issued pursuant to the application will be used 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. For a safe harbor standard regarding certain determinations with respect to separate buildings, see section 10 of this notice.

(iv) *Regulatory approvals.* The Application must state whether all necessary Federal, State and local regulatory approvals for the project have been obtained and, if those approvals have not yet been obtained, the Application must describe the Indian tribal government’s plan for obtaining them and the time frame during which the Indian tribal government expects to receive them.

g. *Plan of financing.* The Application must contain (1) a reasonably detailed description of the plan of financing for the project, including all reasonably expected sources (e.g., a public offering through a named underwriter or a private placement to a named institution) and uses of financing, including financing from the Tribal Economic Development Bonds and from other sources, (2) the status of all financing, including the name and addresses of

all entities expected to provide any financing, (3) the anticipated date of issuance of the Tribal Economic Development Bonds and any expected purchasers of the Tribal Economic Development Bonds, (4) the sources of security and repayment for the Tribal Economic Development Bonds, (5) the aggregate face amount of Tribal Economic Development Bonds expected to be issued for the project, and (6) the issuer’s reasonably expected schedule for spending proceeds of the Tribal Economic Development Bonds. If the Indian tribal government intends to use the proceeds of Tribal Economic Development Bonds to reimburse amounts paid with respect to a qualified project, the Application must demonstrate that the requirements under § 1.150–2 of the Income Tax Regulations will be met.

h. *Dollar amount of allocation requested.* The Application must specify the dollar amount of the volume cap requested for the project.

i. *Statement of readiness to issue.* An Application for an allocation of volume cap from the First Allocation must contain the statement that the issuer reasonably expects to issue any Tribal Economic Development Bonds, pursuant to the requested allocation of volume cap, on or before December 31, 2010. An Application for an allocation of volume cap from the Second Allocation must contain a statement that the issuer reasonably expects to issue any Tribal Economic Development Bonds pursuant to the requested allocation of volume cap on or before December 31, 2011.

## **SECTION 5. REQUIRED DECLARATIONS IN APPLICATIONS**

Each Application submitted under this notice must include the following declaration signed and dated by an authorized official of the Indian tribal government: “Under penalties of perjury, I declare that I have examined this document and, to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete.”

## **SECTION 6. CONSENT TO DISCLOSURE OF ALLOCATION**

In order to provide the public with information on how the volume cap has been allocated and to facilitate oversight of the

Tribal Economic Development Bond program, the IRS intends to publish the results of the allocation process. The information will be most useful to the public if it identifies the specific allocations awarded. Pursuant to § 6103, consent is required in order for the IRS to disclose identifying information with respect to applicants awarded an allocation. Therefore, the IRS requests that each applicant submit with the Application a declaration, consenting to the disclosure by the IRS of the name of the issuer, the type and location of the project that is the subject of the Application, and the amount of the Tribal Economic Development Bond volume cap allocation awarded to that applicant if the Applicant receives an allocation. To provide valid consent, the declaration must be in the form set forth in Appendix B. An applicant is not required to provide a declaration consenting to disclosure in order to receive an allocation. The IRS will not publish identifying information with respect to applications that are not awarded an allocation of volume cap or while applications are pending.

## **SECTION 7. VOLUME CAP ALLOCATIONS AND METHODOLOGY**

a. *First Allocation.* Tribal Economic Development Bond volume cap under § 7871(f) will be allocated in at least two tranches. The first \$1 billion in volume cap will be allocated in accordance with this section for qualified projects for which Applications meeting the requirements of this notice have been filed with the IRS on or before the First Allocation Deadline. If the total amount of volume cap requested in all applications received on or before the First Allocation Deadline does not exceed \$1 billion then each qualified project will be allocated the amount of volume cap requested, and any amount of the first \$1 billion in volume cap remaining will be available for allocation as part of the Second Allocation. If the total amount of volume cap requested in all applications received on or before the First Allocation Deadline exceeds \$1 billion, then each qualified project will be allocated the amount of volume cap requested reduced pro rata such that the total amount allocated as part of the First Allocation does not exceed \$1 billion. Applicants

receiving a reduced allocation may submit an application requesting the remainder of the allocation before the Second Allocation Deadline.

b. *Second Allocation.*

(1) The Second Allocation will allocate the second \$1 billion plus any portion of the first \$1 billion not allocated as part of the First Allocation (the "Second Allocation Amount"). The Second Allocation will be allocated in accordance with this section for qualified projects for which applications meeting the requirements of this notice have been filed with the IRS on or before the Second Allocation Deadline set forth in this notice. If the total amount of volume cap requested in all applications received on or before the Second Allocation Deadline does not exceed the Second Allocation Amount, then each applicant will be allocated the amount of volume cap requested and any volume cap remaining may be available for allocation by the IRS as part of an allocation process to be announced by the IRS at some future date. If the total amount of volume cap requested in all applications received on or before the Second Allocation Deadline exceed the Second Allocation Amount then each applicant will be allocated the amount of volume cap requested reduced *pro rata* such that the total amount allocated as part of the Second Allocation does not exceed the Second Allocation Amount.

(2) Applicants for any subsequent allocation other than the First Allocation must include a description of the project, or any related project, for which a prior allocation was made, as well as the name of the applicant that received the allocation. For this purpose, related projects include facilities that are owned by the same Indian tribal government, a political subdivision of the Indian tribal government, or an entity controlled by the Indian tribal government, which are (i) located at or near the same site, and (ii) are integrated, interconnected, or directly or indirectly dependent on each other based on all the facts and circumstances

c. *Limit on amounts awarded to any one Indian tribal government.* No Indian tribal government will be awarded allocations from the First Allocation for a total amount exceeding \$30 million. For purposes of this limitation, an Indian tribal government includes the Indian tribal government, as well as political subdivisions

of, and other entities controlled by, the Indian tribal government. Although the IRS expects that a similar limitation will apply to amounts allocated as part of the Second Allocation, or any subsequent allocation, the IRS reserves the right to raise or lower the limitation or abolish it entirely.

d. *Joint projects.* An Indian tribal government may submit an application for an allocation to finance the Indian tribal government's share of a joint project all of which will be owned by Indian tribal governments or which will, in part, be owned by an entity that is not an Indian tribal government, provided that the joint project will be located entirely on one or more of the reservations of any of the Indian tribal governments receiving an allocation with respect to such project. For this purpose, the type of joint ownership of facilities to be financed with Tribal Economic Development Bonds include only those recognized under the private activity bond restrictions on tax-exempt bonds under § 141.

e. *On behalf of issuers.*

(1) An Indian tribal government that receives an allocation may designate an "on behalf of issuer," within the rules applicable to bonds issued under § 103, to issue the Tribal Economic Development Bonds on its behalf.

(2) An Indian tribal government that receives an allocation may assign the allocation to a pool bond issuer who is otherwise an Indian tribal government for the purpose of issuing Tribal Economic Development Bonds the proceeds of which will be loaned to the Indian tribal government who received the allocation. Pooled Tribal Economic Development Bonds will be subject to the provisions of § 149(f).

(3) The proceeds of any bonds issued by an "on behalf of" issuer or a pool issuer will be treated as if they were proceeds of bonds issued by the Indian tribal government that received the allocation.

f. *Forfeiture of allocation.* If bonds are not issued by December 31, 2010, for any or all of the allocation received by an issuer pursuant to the First Allocation, then such allocation is treated as forfeited. If bonds are not issued by December 31, 2011, for any or all of the allocation received by an issuer pursuant to the Second Allocation, then such allocation is treated as forfeited. Any allocation amounts treated as forfeited may be available for allocation

by the IRS as part of an allocation process to be announced by the IRS at some future date. Issuers must notify the IRS at least 30 days before the expiration of the period during which bonds may be issued pursuant to an allocation if they do not intend to issue bonds pursuant to such allocation.

## SECTION 8. INSUBSTANTIAL DEVIATIONS FROM APPLICATION PROVISIONS

Generally, any allocation of Tribal Economic Development Bond volume cap is valid for purposes of § 7871, if bonds are issued pursuant to an allocation and are used to finance the project described in the Application. An allocation of Tribal Economic Development Bond volume cap is also valid notwithstanding insubstantial deviations from the information submitted in the Application. Whether a deviation with respect to the information submitted in the Application is insubstantial is determined based on all the facts and circumstances using criteria similar to those used under § 5f.103-2(f)(2) and Prop. Reg. § 1.147(f)-1(b)(6), as amended from time to time, relating to the insubstantial deviation in the information required for public approval of an issue of tax-exempt bonds under § 147(f) of the Code. Applications for approval of specific insubstantial deviations must be submitted by hard copy and in electronic format on CD sent by mail to Internal Revenue Service (IRS), SE:T:GE:TEB:CPM, Attention: Mark Helfer, 1122 Town & Country Commons, St. Louis, Missouri 63017. An Application for approval of a specific insubstantial deviation must include: (a) a detailed description of the proposed deviation, (b) facts establishing the continued technical viability of the project and that no other taxpayer, State or local government or Indian tribal government will be prejudiced, (c) a copy of the allocation letter issued by the IRS, and (d) a declaration pursuant to section 5 of this notice signed by an authorized person in accordance with section 4.b. of this Notice.

## SECTION 9. INFORMATION REPORTING

Subject to updated IRS information reporting forms or procedures, an issuer

of Tribal Economic Development Bonds should complete Part II of Form 8038-G by checking the box on Line 18 (Other), writing “Tribal Economic Development Bonds” in the space provided for the bond description, and entering the issue price of the Tribal Economic Development Bonds in the Issue Price column. For purposes of this notice, the term “issue” has the meaning used for tax-exempt bond purposes in § 1.150-1(c).

#### **SECTION 10. RELIANCE ON NOTICE AND INTERIM GUIDANCE**

(a) *Generally*

Pending the promulgation and effective date of applicable future regulations or other public administrative guidance, tax-

payers may rely on the interim guidance provided in this notice.

(b) *Safe Harbor Definition of Building*  
Section 7871(f)(3)(B) provides that the term Tribal Economic Development Bond does not include any bond issued as part of an issue if any portion of the proceeds of the issue are used 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 those classes of gaming. As a safe harbor, a structure will be treated as a separate building if it has an independent foundation, independent outer walls and an independent roof. Connections (*e.g.*, doorways, covered walkways or other enclosed common area connections) between two adja-

cent independent walls of separate buildings may be disregarded as long as such connections do not affect the structural independence of either wall.

#### **SECTION 11. DRAFTING INFORMATION**

The principal authors of this notice are Aviva M. Roth and Timothy L. Jones of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury participated in its development. For further information regarding this notice, contact Aviva M. Roth or Timothy L. Jones at (202) 622-3980 (not a toll-free call). For further information about submitted Applications, contact Mark Helfer at (636) 255-1201 (not a toll-free call).

**APPENDIX A**  
**APPLICATION FOR ALLOCATION OF**  
**TRIBAL ECONOMIC DEVELOPMENT BOND VOLUME CAP**

Internal Revenue Service  
SE:T:GE:TEB:CPM  
Attention: Mark Helfer  
1122 Town & Country Commons  
St. Louis, Missouri 63017

Dear Sir or Madam:

The following constitutes the application (“Application”) of (Name) (the “Applicant”) for allocation of tribal economic development bond (“Tribal Economic Development Bond”) volume cap under § 7871(f) of the Internal Revenue Code (the “Code”) (unless otherwise noted, section references herein are to the Code) to finance the project described below. *(If a single Application is used to request Tribal Economic Development Bond volume cap for more than one project, then all of the required information in the Application must be provided separately for each project.)*

1. **Name of Applicant/Issuer** \_\_\_\_\_  
Street Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_  
EIN \_\_\_\_\_

2. **Status of Issuer** — *(Select as appropriate)*

The Applicant/Issuer is a “qualified issuer” under § 7871(f) because it is —

(i) an Indian tribal entity that appears on the most recent list published by the Department of Interior in the Federal Register pursuant to the Federally Recognized Indian Tribe List Act of 1994, Pub. L. 103–454, 108 Stat. 4791 (“List”), as demonstrated by the attached documents included as Exhibit A.

(ii) an Indian tribal government which is acknowledged as a federally recognized Indian tribe, as stated in a letter from the Department of the Interior, as demonstrated by the attached documents included as Exhibit A.

3. **Name of Project** \_\_\_\_\_

4. **Detailed Description of the Project.** A reasonably detailed description of the facility to be financed (the “Project”) is set forth below or in attached Exhibit B.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*If the Project is a joint Project, please describe in detail the other owners of the project and the applicant’s ownership interest in the project.*

5. **Construction Commencement Date and Placed in Service Date.** The Applicant begun or expects to begin the construction, installation and equipping of the Project on \_\_\_\_\_. The Applicant expects that the Project will be placed into service on or before \_\_\_\_\_.

6. **Pool Issuances.** Does the Applicant expect to have the Tribal Economic Development Bonds issued by a pool issuer or an “on behalf of issuer”? \_\_\_\_\_

If the answer above is yes, please describe the pool issuer or on behalf of issuer and provide a statement that the pool issuer is an Indian tribal government or that the “on behalf of issuer” meets the requirements to be such an issuer under the rules applicable to bonds issued under § 103.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. **Location of the Project:**

Project address or physical location (do not include postal box numbers or mailing address) \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Reservation where Project will be located: \_\_\_\_\_

Include in the attached Exhibit C, a certification that the Project will be located on the Applicant's reservation. If the Tribal Economic Development Bonds will be issued for a joint project please include in attached Exhibit C a certification that the Project will be located on a reservation of at least one of the Indian tribal governments receiving an allocation with respect to such Project.

8. **Information with respect to gaming.**

Include in the attached Exhibit D a certification that no portion of the proceeds of any bonds issued pursuant to the requested application will be used 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.

9. **Individual to contact** for more information about the Project:

Individual Name \_\_\_\_\_  
Company Name \_\_\_\_\_  
Street Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Fax Number \_\_\_\_\_  
Email Address \_\_\_\_\_

*(Include as appropriate)* The contact person is not an authorized official or officer of the Applicant and a properly executed Form 8821 (or Form 2848) is included with this Application that authorizes the disclosure by the IRS of information that relates to this Application and the Project(s) described above to the contact person.

10. **Regulatory Approvals.** Identify each regulatory body, the action that must be taken, status of any pending action and the remaining timeframe required to obtain each required approval. The plan of the Applicant for obtaining such approvals is as follows: *(or attach an Exhibit)*

11. **Plan of Financing.** Include a reasonably detailed description of the plan of financing for the Project, including all reasonably expected sources and uses of financing and other funds, the status of such financing, the anticipated date of bond issuance, the sources of security and repayment for the bonds, the aggregate face amount of bonds expected to be issued for the Project, and the issuer's reasonably expected schedule for spending proceeds of the Tribal Economic Development Bonds. Attached as Exhibit E is a plan of financing for the Project.

12. **Statement of Readiness.**

a. Application for volume cap from the First Allocation. Include in Exhibit F a statement signed under penalties of perjury that the Issuer reasonably expects to issue bonds pursuant to the requested allocation by December 31, 2010.

b. Application for volume cap from the Second Allocation. Include in Exhibit F a statement signed under penalties of perjury that the Issuer reasonably expects to issue bonds pursuant to the requested allocation by December 31, 2011.

13. **Reimbursements.** *(For reimbursements, include the following statement.)* The Applicant intends to use the proceeds of Tribal Economic Development Bonds to reimburse costs of the Project in accordance with § 1.150-2. *(In addition, the Applicant must demonstrate that the requirements of § 1.150-2 will be met.)*

14. **Refundings.** *(For refundings or refinancings, include the following statement.)* The Applicant intends to use the proceeds of Tribal Economic Development Bonds to refund or refinance prior debt in circumstances that would qualify for a refunding or refinancing with tax-exempt bonds by a State or local government under § 103. *(In addition, the Applicant must demonstrate that applicable requirements for such a refunding or refinancing issue will be met.)*

15. **Dollar Amount of Allocation Requested for the Project.** To finance the Project, the Applicant hereby requests a Tribal Economic Development Bond allocation in the amount of \$\_\_\_\_\_.

16. **Prior Allocations for the Project.** *(If the Project or any Related Project (as defined in section 7.b.(2) of this Notice) previously received an allocation of Tribal Economic Development Bond volume cap under § 7871(f) of the Code, then this paragraph must include a statement to that effect.) [If applicable, include the following statement: On (Insert date), the Project previously received a Tribal Economic Development Bond volume cap allocation in the amount of \$\_\_\_\_\_. A copy of the IRS allocation letter for that allocation is attached.]*

17. **Assignment of allocations to another issuer.** *(If the applicant expects to assign its allocation to another qualified issuer of Tribal Economic Development Bonds as authority for the Tribal Economic Development Bond issuer to issue bonds for the project on behalf of the applicant, the applicant should provide the following statement:)*

The Applicant expects to assign the requested allocation for Tribal Economic Development Bonds volume cap to a qualified issuer of Tribal Economic Development Bonds as authority for the Tribal Economic Development Bond issuer to issue bonds for the project on behalf of the Applicant. Applicant agrees to obtain a written commitment from the assignee Tribal Economic Development Bond issuer that it is a qualified issuer of Tribal Economic Development Bonds and that it will issue Tribal Economic Development Bonds for the project within the time frame specified in the Application for the Applicant's bonds.

18. **Penalty of Perjury Statement and Signatures**

I hereby certify that I am an authorized officer or official of the Applicant, that I am duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt, and that I am duly authorized to execute legal documents on behalf of the Applicant in making this Application. Under penalties of perjury, I declare that (i) I have knowledge of the relevant facts and circumstances relating to this Application and the Project(s), (ii) I have examined this Application, and (iii) to the best of my knowledge and belief, all of the facts contained in this Application are true, correct and complete.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A**  
**DOCUMENTS REGARDING ISSUER STATUS AS AN INDIAN TRIBAL GOVERNMENT**  
**(RESPONSE TO QUESTION 2 OF THE APPLICATION)**

(Attached hereto)

**EXHIBIT B**  
**DESCRIPTION OF THE PROJECT**  
**(RESPONSE TO QUESTION 4 OF THE APPLICATION)**  
(Attached hereto)

**EXHIBIT C**  
**PROJECT LOCATION ON INDIAN TRIBAL GOVERNMENT RESERVATION**  
**(RESPONSE TO QUESTION 7 OF THE APPLICATION)**

**EXHIBIT D**  
**STATEMENT WITH RESPECT TO GAMING**  
**(RESPONSE TO QUESTION 8 OF THE APPLICATION)**

**EXHIBIT E**  
**PLAN OF FINANCING**  
**(RESPONSE TO QUESTION 11 OF THE APPLICATION)**  
(Attached hereto)

**EXHIBIT F**  
**STATEMENT OF READINESS TO ISSUE**  
**(RESPONSE TO QUESTION 12 OF THE APPLICATION)**

I hereby certify that I am an authorized officer or official of the Applicant, that I am duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt, and that I am duly authorized to execute legal documents on behalf of the Applicant in making this Application. Under penalties of perjury, I declare that the Applicant reasonably expects that bonds issued pursuant to the Tribal Economic Development Bond allocation to be received will be issued by [*enter either: December 31, 2010, or December 31, 2011, as applicable*]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**  
**CONSENT TO PUBLIC DISCLOSURE**  
**OF CERTAIN TRIBAL ECONOMIC DEVELOPMENT BOND**  
**APPLICATION INFORMATION**

In the event that the Application of [(Insert name of applicant here): \_\_\_\_\_] (the "Applicant") for an allocation of authority to issue tribal economic development bonds ("Tribal Economic Development Bonds") under section 7871(f) of the Internal Revenue Code is approved, the undersigned authorized representative of the Applicant hereby consents to the disclosure by the Internal Revenue Service through publication of a Notice in the Internal Revenue Bulletin or a press release of the name of Applicant (issuer), the type and location of the facility that is the subject of the Application, and the amount of the allocation, if any, of volume cap authority to issue Tribal Economic Development Bonds for such facility. The undersigned understands that this information might be published, broadcast, discussed or otherwise disseminated in the public record.

This authorization shall become effective upon the execution hereof. Except to the extent disclosure is authorized herein, the returns and return information of the undersigned taxpayer are confidential and are protected by law under the Internal Revenue Code.

I certify that I have the authority to execute this consent to disclose on behalf of the taxpayer named below.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Name of Applicant-Taxpayer: \_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

Taxpayer's Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Note: Treasury Regulations require that the Internal Revenue Service must receive this consent within 60 days after it is signed and dated.

\_\_\_\_\_

**Reliance Criteria for Private Foundations and Sponsoring Organizations**

**Rev. Proc. 2009-32**

**SECTION 1. PURPOSE**

This Revenue Procedure provides reliance criteria for private foundations and sponsoring organizations that maintain donor advised funds in determining whether a potential grantee is an organization described in section 509(a)(1), (2) or (3) of the Internal Revenue Code (Code).

**SECTION 2. BACKGROUND**

The Pension Protection Act of 2006, Pub. L. No. 109-208, 120 Stat. 780

(2006) (PPA) enacted new rules regarding grants by private foundations to certain types of supporting organizations. Under section 4942(g)(4) of the Code, as added by the PPA, the term "qualifying distribution" does not include any amount paid by a private nonoperating foundation to either (1) a Type III supporting organization (as defined in § 4943(f)(5)(A)) that is not functionally integrated, or (2) a Type I, Type II, or functionally integrated Type III supporting organization if a disqualified person of the private foundation directly or indirectly controls such supporting organization or a supported organization of the supporting organization. In addition, under § 4945(d)(4)(A), as amended by the PPA, a private foundation grant to a supporting organization described in either (1) or (2) is a taxable expenditure under § 4945, unless the private foundation exercises expenditure responsibility with

respect to the grant in accordance with § 4945(h).

The PPA also added § 4966 to the Code, which imposes an excise tax on a sponsoring organization (as defined in § 4966(d)(1)) for taxable distributions (as defined in § 4966(c)). Section 4966(c)(1) defines the term "taxable distribution" to include any distribution from a donor advised fund (as defined in § 4966(d)(2)) to a disqualified supporting organization, unless the sponsoring organization exercises expenditure responsibility with respect to the distribution in accordance with § 4945(h). Section 4966(d)(4) defines the term "disqualified supporting organization" as: (1) a Type III supporting organization that is not functionally integrated, and (2) a Type I, Type II, or functionally integrated Type III supporting organization if the donor, donor advisor, or related parties of the donor or donor advisor directly or indirectly controls a