

# Tribal Economic Development Bonds

## Notice 2012-48

### SECTION 1. PURPOSE

This notice solicits applications for allocations of the available amount of national bond volume limitation authority (volume cap) for tribal economic development bonds (Tribal Economic Development Bonds). The available amount includes amounts that were previously allocated and subsequently forfeited under Notice 2009-51, 2009-28 I.R.B. 128 (July 13, 2009), Announcement 2010-88, 2010-47 I.R.B. 753 (November 22, 2010), and Announcement 2011-71, 2011-46 I.R.B. 770 (November 14, 2011). This notice also provides related guidance on the following: (1) application requirements and forms for requests for volume cap allocations; and (2) the method that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) will use to allocate the volume cap.

### SECTION 2. BACKGROUND

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), added § 7871(f) to the Internal Revenue Code (Code). In general, the purpose of § 7871(f) is to give Indian tribal governments greater flexibility than is allowable under the existing standard of § 7871(c) through the issuance of Tribal Economic Development Bonds to finance economic development projects. Section 7871(f)(1) provides that the Secretary shall allocate the \$2 billion volume cap among the Indian tribal governments in such manner as the Secretary, in consultation with the Secretary of the Interior, determines appropriate.

In Notice 2009-51, the Treasury and the IRS solicited applications for allocations of volume cap and addressed administrative procedures for the initial allocations of the \$2 billion volume cap. On September 15, 2009, the IRS announced allocations in an aggregate amount of approximately \$1 billion of volume cap for the first allocation (2009 First Allocation) of authority to issue Tribal Economic Development Bonds. On February 9, 2010,

the IRS announced allocations in an aggregate amount of approximately \$1 billion of volume cap in the second allocation (2010 Second Allocation) of authority to issue Tribal Economic Development Bonds.

Section 7.f. of Notice 2009-51 provides that if bonds were not issued by December 31, 2010, for any or all of the allocation received by an Indian tribal government from the 2009 First Allocation, or by December 31, 2011, for any or all of the allocation received by an Indian tribal government from the 2010 Second Allocation, then any or all of such allocation not used to issue bonds would be treated as forfeited.

In Announcement 2010-88, the IRS announced an automatic six-month extension of the administrative deadline to issue bonds under bonding authority from the 2009 First Allocation from December 31, 2010, to June 30, 2011, and a process by which Indian tribal governments could receive an additional six-month extension of the administrative deadline to issue bonds under bonding authority from the 2009 First Allocation from June 30, 2011, to December 31, 2011. Section 3 of Announcement 2010-88 provides that an allocation received pursuant to the 2009 First Allocation shall be treated as forfeited if bonds are not issued by the applicable deadline.

In Announcement 2011-71, the IRS notified eligible Indian tribal governments that they could request a three-month extension from December 31, 2011, to March 31, 2012, to issue Tribal Economic Development Bonds. Indian tribal governments eligible for such extension were (1) those that had received an allocation of volume cap from the 2009 First Allocation if an extension of the deadline to issue bonds from June 30, 2011, to December 31, 2011 had been granted pursuant to the process described in Announcement 2010-88, or (2) Indian tribal governments that had received an allocation from the 2010 Second Allocation. Section 4 of Announcement 2011-71 also provides that an allocation with respect to which the Indian tribal government received an extension pursuant to the process described in Announcement 2011-71 is treated as forfeited if bonds were not issued by March 31, 2012.

Notice 2009-51, Announcement 2010-88, and Announcement 2011-71 provide that any allocation amounts treated as forfeited may be available for allocation by the IRS. Indian tribal governments have reported to the IRS the issuance of Tribal Economic Development Bonds in the amount of \$197,153,357. Based on these reports and the passage of the deadlines described above for issuing Tribal Economic Development Bonds, the IRS has identified \$1,802,846,643 of volume cap that is available for reallocation.

In Announcement 2011-71, and pursuant to Executive Order 13175 on tribal consultation, the IRS announced that it was seeking public comment from Indian tribal governments and other interested members of the public on the reallocation of available volume cap in order to facilitate issuance of Tribal Economic Development Bonds by Indian tribal governments. Pursuant to the Announcement and the Executive Order, consultation sessions were held in person and by telephone with tribal organizations.

### SECTION 3. GENERAL APPLICATION REQUIREMENTS

Each application for an allocation of volume cap under § 7871(f)(1) submitted pursuant to this notice (Application) must be prepared and submitted in accordance with this section. By submitting an Application, the applicant agrees to comply with the requirements of this notice. For an Application to comply with this section, among other things, the Application must be prepared in substantially the same format as the form attached to this notice as Appendix A. This notice, including Appendix A, may be found electronically under the link "TEB Published Guidance" on the IRS web site at <http://www.irs.gov/tax-exemptbond/index.html>.

a. *Qualified issuer.* The Application must be submitted by an Indian tribal government (Applicant). See § 7701(a)(40)(A) of the Code and Revenue Procedure 2008-55, 2008-39 I.R.B. 768. The Application must identify the Applicant, including the Applicant'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 Federally Recognized Indian

Tribe List Act of 1994, Pub. L. 103–454, 108 Stat. 4791, or (2) provide a letter from the Department of the Interior stating that the Indian tribal government has been acknowledged as a Federally recognized Indian tribe. See section 4.e. of this notice for pool bond issuers and issuers of Tribal Economic Development Bonds other than the Indian tribal government that receives an allocation.

b. *Signatures.* The Application must be signed and dated by an authorized official of the Applicant. For purposes of the Application, the term “authorized official of the Applicant” means an officer, board member, employee, or other official of the Applicant who is duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt of the Applicant (for example, 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) of the Income Tax Regulations.

c. *Contact person.* The Application must designate one or more persons with knowledge of the project that the Applicant 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.* The Application must be submitted by hard copy accompanied by a copy of the Application in PDF format on a CD and sent by mail to the Internal Revenue Service (IRS), SE:T:GE:TEB:CPM, Attention: Mark Helfer, 1122 Town & Country Commons, St. Louis, MO 63017.

e. *Submission date.* Applications will be accepted by the IRS on an ongoing basis. See section 4 of this notice for further discussion of the general allocation process.

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

(i) *Qualified project.* The Application must describe in reasonable detail the project or projects (project) reasonably expected to be financed with the proceeds of the Tribal Economic Development Bonds (proposed bonds), including information regarding the type and use of the project and a certification that the project will qualify for Tribal Economic Development Bond financing under § 7871(f). Applicants receiving an allocation may use proceeds of the proposed bonds only to finance the project or permitted deviations as further provided in section 6 of this notice.

(ii) *Project cost.* The Application must describe the reasonably expected cost of the project, including the portion to be financed by the proposed bonds and any portion to be financed by other sources, if any.

(iii) *Location of project.* The Application must include a certification that the project’s location is entirely within the Applicant’s reservation. In the case of a joint project described in section 3.m. of this notice, the Application must include a certification that the joint project will be located entirely within one or more of the reservations of the Indian tribal governments receiving an allocation of volume cap for the joint project.

(iv) *Project not used for gaming purposes.* The Application must include a certification that no portion of the proceeds of the proposed bonds 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, Pub. L. 100–497, 102 Stat. 2475, codified at 25 U.S.C. § 2701–2721 (1988), is conducted or housed, or any other property actually used in the conduct of such gaming. For purposes of compliance with the limitation in § 7871(f)(3)(B) on the use of proceeds of Tribal Economic Development Bonds for these purposes, the safe harbor regarding certain determinations with respect to separate buildings under § 10(b) of Notice 2009–51 applies.

(v) *Approvals.* The Application must state that all required Federal, State, local, and tribal approvals (regulatory and otherwise) for the project, the proposed bonds, and any other required financing

for the project have been obtained or, if any approvals have not yet been obtained, the Application must include a certification that the Applicant reasonably expects to receive all required approvals in a timely manner sufficient to permit issuance of the proposed bonds within the 180-day period prior to the expiration of the volume cap allocation (see section 4.g. of this notice). The Application must identify any required approvals that have not been obtained and must describe the Applicant’s plan and expected time frame for obtaining such approvals.

g. *Plan of financing.* The Application must contain a reasonably detailed description of the plan of financing for the project including (1) the amount of Tribal Economic Development Bonds expected to be issued and the amount of proceeds of such bonds to be allocated to the project, (2) any reasonably expected other sources of financing for the project together with a description of how such financing will be allocated to the project, and (3) documentation from an independent third party who is knowledgeable about the marketability of tax-exempt bonds evidencing that the proposed bonds are reasonably expected to be marketable prior to expiration of the volume cap allocation set forth in section 4.g. of this notice. Documentation that may be used to meet this requirement includes, among other things, the following: a bond purchase commitment letter from an investor; a credit quality assessment evidencing the investment grade credit quality of the proposed bonds from an independent organization that is in the business of assessing credit quality; a credit enhancement commitment letter from a financial institution that will enable the proposed bonds to be investment grade quality; a letter from an underwriter or financial advisor to the effect that the sale of the proposed bonds is likely to be successful in a timely manner before expiration of the volume cap allocation for the bonds described in section 4.g. of this notice; or similar documentation or a combination thereof.

h. *Compliance with Federal tax laws.* The Application must include a certification that the Applicant reasonably expects that the proposed bonds will meet the applicable requirements of § 7871(f) and that the Applicant has engaged bond counsel to render an opinion to the effect that the proposed bonds will meet those requirements.

i. *Dollar amount of allocation requested.* The Application must specify the dollar amount of the volume cap requested, not to exceed the amount of the proposed bonds.

j. *Demonstration of readiness to issue.* The Application must include a certification that the Applicant reasonably expects to use the volume cap allocation by issuing the proposed bonds prior to expiration of the volume cap allocation described in section 4.g. of this notice. Based on its overall assessment of an Applicant's readiness to issue the proposed bonds, the IRS may require the Applicant to provide additional information or supporting documentation to demonstrate the Applicant's readiness to issue such bonds, and the Application will be treated as incomplete until the IRS receives the additional information or documentation.

k. *Certain forfeitures.* In determining an Applicant's readiness to issue the proposed bonds under section 3.j. of this notice, the IRS will not take into account or otherwise consider any prior forfeitures or expirations of volume cap that occurred with respect to the original allocations of volume cap received for Tribal Economic Development Bonds under the 2009 First Allocation or the 2010 Second Allocation. In determining such readiness to issue the proposed bonds, however, the IRS may consider any forfeitures or expirations of volume cap previously received under this notice. The Application must identify any allocation of volume cap (not including any allocations received in the 2009 First Allocation or the 2010 Second Allocation) previously received by the Applicant under this notice that was forfeited or expired and provide an explanation of the reasons for such forfeiture.

l. *Multiple projects.* Subject to other limitations and requirements described herein, an Applicant may submit a single Application for volume cap that covers multiple projects, provided that such Application includes sufficient information to satisfy the requirements of this notice for each project independently of any other project covered by the Application (for example, for each project covered by the Application, the Application must include a plan of financing, a description of the project including costs and location, and a description of the status of approvals for that project). Alternatively, an Applicant

may submit separate Applications for separate projects.

m. *Joint projects.* An Applicant may submit an Application for an allocation of volume cap to finance its 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.

n. *Perjury statement.* The Application must include the following declaration signed and dated by an authorized official of the Applicant: "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 the supporting documents, and (iii) to the best of my knowledge and belief, all of the facts contained in this Application and the supporting documents are true, correct and complete." If the Applicant subsequently submits any additional information or supporting documents with respect to the Application, such additional information or supporting documents must be accompanied by a declaration, signed and dated by an authorized official of the Applicant, in a form substantially identical to the declaration submitted with the Application pursuant to the preceding sentence.

#### **SECTION 4. GENERAL ALLOCATION PROCESS**

a. *Priority of Allocations.* Except as otherwise provided in this section 4, for Applications filed with the IRS that meet the requirements in this notice, the IRS will allocate an amount of available vol-

ume cap equal to the amount requested in the Application on a first-come, first-served basis by order of submission date (as defined in section 4.b. of this notice).

b. *Submission date and incomplete Applications.* Each Application will be treated as submitted on the day (submission date) the Application, and any additional information and supporting documents requested by the IRS, are received by the IRS and such Application, additional information, and supporting documents satisfy all of the applicable requirements of this notice, including being submitted as described in section 3 of this notice. The IRS may request additional information to support any of the requirements of this notice, including additional information and certifications to demonstrate that the proposed project will qualify for Tribal Economic Development Bond financing under § 7871(f) and to demonstrate the Applicant's readiness to issue the proposed bonds. The Application will not satisfy the requirements of this notice until the IRS receives such information.

c. *Limit on allocation to any one Indian tribal government.* No Indian tribal government will receive an allocation of volume cap that would cause the aggregate amount of volume cap allocated to that Indian tribal government pursuant to this notice (not including any allocations received in the 2009 First Allocation or the 2010 Second Allocation or amounts forfeited under section 4.g. or 4.i. of this notice) to exceed the Published Volume Cap Limit (as defined in the next sentence) in effect for the period that includes the submission date. The Published Volume Cap Limit for any period is the greater of: (1) 20% of the amount of available volume cap as of the first day of such period (determined by the IRS based on available information, including allocation data and reports of bonds issued); or (2) \$100 million. The Published Volume Cap Limit for the initial period beginning on the date of this notice is \$360,569,329 (20% of \$1,802,846,643). The IRS plans to publish updated Published Volume Cap Limits on the IRS website at <http://www.irs.gov/tax-exemptbond/index.html> or at such other location as the IRS may provide future public notice. Beginning no later than October 1, 2012, the IRS will publish these updates for successive two-month periods on or about the first business day of each pe-

riod. For purposes of this limitation, an Indian tribal government includes the Indian tribal government, together with any political subdivisions of the Indian tribal government, and any entities controlled by the Indian tribal government. An Application that requests an allocation of volume cap in an amount that would cause the Published Volume Cap Limit in effect on the date of submission to be exceeded will be treated as incomplete until the day the Applicant supplements the Application in a manner that complies with the requirements of the notice and does not cause such limit to be exceeded.

d. *Available volume cap limitation.* The IRS will not make an allocation that would cause the total amount of volume cap allocated (not including forfeited allocations) to exceed the \$2 billion statutory limit for Tribal Economic Development Bonds. In general, if the total amount of volume cap requested in an Application meeting the requirements of this notice exceeds the amount of available volume cap on the submission date (determined by the IRS based on available information, including allocation data and reports of bonds issued), then the Applicant will have the opportunity to receive a portion of the available volume cap. Further, if two or more Applications meeting the requirements of this notice are filed on the same submission date and the amount of available volume cap on that date is less than the total amount of requested volume cap under those Applications, then each Applicant will be given the opportunity to receive a portion of the available volume cap in proportion to their requested amount of volume cap. In any circumstance in which available volume cap is in an amount less than the amount requested, the IRS will notify the Applicant and the Applicant will be provided 30 days to notify the IRS (at the address specified in section 3.d. of this notice) of its decision to accept the allocation in the lesser amount or to delay the allocation for up to 180 days from the submission date to determine if future forfeitures of volume cap may allow the Applicant to receive the full amount requested.

If the Applicant decides to delay receiving its allocation, it will also notify the IRS of whether it will accept a lesser allocation if forfeitures of volume cap during the delay period are insufficient to allow the Applicant to receive the full amount requested. If the Applicant does not notify the IRS of its decision within 30 days of such IRS' notice to the Applicant, the Application will be treated as withdrawn. In any circumstance in which an allocation of volume cap may be in an amount less than the amount requested, the IRS may require the Applicant to supplement the Application to demonstrate that the requirements of this notice are satisfied if based on an Application for the reduced allocation.

e. *Section 17 corporations, subdivisions of Indian tribal governments, and pool bond issuers.*

(1) For purposes of issuing proposed Tribal Economic Development Bonds, an Applicant that receives an allocation may assign the allocation to an Indian tribal corporation organized under section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. section 477 (2012) (a Section 17 Corporation),<sup>1</sup> or to a subdivision of the Indian tribal government that satisfies the requirements of § 7871(d) to be treated as a political subdivision of a State, provided the assignment and use of the allocation conforms in all respects (other than with respect to the issuer of the bonds) to the Application of the assigning Applicant.

(2) An Applicant that receives an allocation may assign the allocation to a pool bond issuer to issue the proposed bonds provided that the proceeds of the proposed bonds are then loaned to the Applicant and provided that the pool bond issuer is itself an Indian tribal government, a subdivision of an Indian tribal government that satisfies the requirements of § 7871(d) for treatment as a political subdivision of a State, or a Section 17 Corporation. Pooled Tribal Economic Development Bonds will be subject to the provisions of § 149(f).

(3) Any bonds issued by a subdivision of an Indian tribal government, a Section 17 Corporation, or a pool bond issuer will be treated for purposes of a volume cap

allocation as if they were bonds issued by Applicant. Allocations will not be made to a pool bond issuer.

(4) The allocation limit of section 4.c. of this notice for any one Indian tribal government applies to the Applicant without regard to how the proposed bonds are issued (*i.e.*, whether the issuer is a subdivision of an Indian tribal government, a Section 17 Corporation, or a pool bond issuer).

f. *Confirmation of allocation.* The IRS will send the Applicant that receives a volume cap allocation a letter confirming the allocation (allocation letter).

g. *Expiration of allocation.* Applicants have 180 days from the date of the allocation letter to issue the proposed bonds. To the extent that the proposed bonds are not issued within 180 days of the date of the allocation letter, the portion of such allocation for which bonds have not been issued will be treated as forfeited and will be available for reallocation.

h. *Extensions and new Applications.* The IRS does not expect to grant extensions to the expiration date of the volume cap allocation as set forth in section 4.g. of this notice. An Indian tribal government that is unable to issue the proposed bonds within the 180-day period from the date of the allocation letter may reapply for an allocation. The new Application must comply with this notice, including by providing the information described in section 3.k. of this notice, and will be subject to the submission provisions of section 4.b. and the applicable limits set forth in section 4 of this notice.

i. *Voluntary forfeiture.* If an Applicant determines that it does not intend to use an allocation of volume cap to issue the proposed bonds (including circumstances in which the Applicant determines to finance the project with financing other than the proposed bonds), the Applicant should notify the IRS in writing at the address set forth in section 3.d. of this notice of its intention to forfeit the allocation. The notice will permit the IRS to treat the allocation as forfeited as of the date the IRS receives the notification, and the forfeited amount will be available to reallocate.

<sup>1</sup> Federally-chartered corporations organized and controlled by Indian tribal governments under section 17 of the Indian Reorganization Act of 1934 are eligible Indian tribal governmental issuers of tax-exempt bonds under § 7871 and eligible governmental users of proceeds of tax-exempt bonds for purposes of the private business restrictions on governmental bonds under § 141. See Treas. Reg. § 1.301.7701-1(a)(3) (Section 17 Corporations are integral parts of Indian tribal governments and are not recognized as separate entities apart from the Indian tribal governments for Federal tax purposes); Rev. Rul. 94-16, 1994-1 C.B. 19 (Section 17 Corporations are not separate taxable entities apart from the controlling Indian tribes and are not subject to Federal income taxation).

## **SECTION 5. CONSENT TO DISCLOSURE OF ALLOCATION**

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 certain data regarding the results of the allocation process. The data will be most useful to the public if it identifies the specific allocations awarded. Pursuant to § 6103, consent is required for the IRS to disclose identifying information with respect to Applicants awarded an allocation. Therefore, the IRS seeks the consent of Applicants to the disclosure by the IRS of the name of the issuer, the type of project to be financed by the Tribal Economic Development Bonds, the reservation on which the project is to be located, the reasonably expected cost of the project, and the amount of volume cap allocation awarded to that Applicant. To provide valid consent, the consent must be in the form set forth in Appendix B. This consent to disclosure of certain information about allocations, however, is optional for Applicants. An Applicant is not required to consent to disclosure to receive an allocation. The IRS will not publish identifying information on Applications that are not awarded an allocation of volume cap or pending Applications but may publish an aggregate amount of allocations for which no consent was received.

## **SECTION 6. INSUBSTANTIAL DEVIATIONS FROM INFORMATION IN APPLICATION; EFFECTS OF OTHER CHANGES**

a. *Insubstantial deviations.* In general, an allocation of volume cap is valid for purposes of § 7871(f)(1) if the proposed bonds are issued, and the proceeds of such bonds are allocated to expenditures, in a manner that does not substantially deviate from the information submitted in the Application. For this purpose, whether a deviation from the information submitted in the Application constitutes an insubstantial deviation is determined based on all the facts and circumstances using criteria similar to those used under § 5f.103-2(f)(2), as amended or supplemented from time to time, regarding insubstantial deviations in the information

required for public approval of tax-exempt private activity bonds under § 147(f) of the Code. No further approval is necessary from, and requests for approvals should not be submitted to, the IRS with respect to such insubstantial deviations. Nevertheless, the Applicant must give the IRS notice of the deviation. If the insubstantial deviation occurs before the submission of the Notice of Issuance described in section 7.a. of this notice, the Notice of Issuance must include a description of the insubstantial deviation. If the insubstantial deviation occurs after the submission of the Notice of Issuance, the Applicant must submit a supplement to the Notice of Issuance which describes the insubstantial deviation. The supplement should contain a copy of the notice of Issuance as well as the details of the deviation and should be sent to the same address as the Notice of Issuance.

b. *Substantial deviations—In general.* (1) Other than as described in section 6.b.(2) below, an allocation of volume cap under an Application is invalid for purposes of § 7871(f) if there is a change relating to the issuance of the proposed bonds or the allocation of the proceeds of such bonds to expenditures that substantially deviates from the information submitted in the Application. In the event of such a change prior to the issuance of its proposed bonds, the Applicant may notify the IRS that it does not intend to use the original allocation of bond volume cap as described in section 4.i. of this notice and submit a new Application reflecting the modified information. The new Application must comply with this notice, including by providing the information described in section 3.k. of this notice, and will be subject to the submission provisions of section 4.b. and the applicable allocation limits in section 4 of this notice.

(2) *Certain post-issuance deviations.* A substantial deviation that occurs after the proposed bonds are issued and prior to the allocation of gross proceeds of such bonds to expenditures under the general rule set forth in § 1.148-6(d)(1)(iii) will not invalidate the allocation of volume cap under the Application if the Applicant submits a supplement to the Notice of Issuance (as defined in section 7.a. of this notice) to the IRS. The supplement must (1) be sent to the address set forth in section 7.a. of this notice, (2) describe the substantial deviation

between the information submitted in the Application and the actual information subsequent to the bond issuance, and (3) include a certification that the Applicant has received an opinion from bond counsel to the effect that the change will not cause the bonds to fail to meet all applicable requirements of § 7871(f) and the applicable requirements of §§ 103 and 141 and the regulations under such sections.

## **SECTION 7. INFORMATION REPORTING**

a. *Notice of issuance.* Not later than 15 days after issuance of the proposed bonds, the Applicant shall send to the IRS a notice of issuance (Notice of Issuance) of such bonds, which 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; and (4) a description of the project financed with the bonds. If the Applicant fails to respond within 15 days to an IRS request for confirmation that either the Notice of Issuance has been submitted or that the Applicant has voluntarily forfeited the allocation, the IRS, in its discretion, may treat allocations as forfeited and available for reallocation. The Applicant shall send the Notice of Issuance to the IRS at the following address: Internal Revenue Service, SE:T:GE:TEB:CPM, Attention: Mark Helfer, 1122 Town & Country Commons, St. Louis, MO 63017. Further, in the case of the issuance of any Tribal Economic Development Bonds that involves an insubstantial deviation under section 6.a. of this notice that occurs before submission of the Notice of Issuance, the Notice of Issuance shall include a description of the insubstantial deviation. For insubstantial deviations that occur after submission of the Notice of Issuance, see section 6.a. of this notice.

b. *Regular 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 mean-

ing used for tax-exempt bond purposes in § 1.150-1(c).

## **SECTION 8. PAPERWORK REDUCTION ACT**

The information collection contained in this notice 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.

Sections 3 and 7 of this notice contain the collections of information. That information is required in order to inform the

IRS of an Applicant's desire to receive an allocation of volume cap for Tribal Economic Development Bonds and to determine the amount of volume cap that may be allocated to each Applicant. The collections of information are mandatory for any Applicant that wishes to receive an allocation of volume cap for Tribal Economic Development 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 7 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 9. DRAFTING INFORMATION**

The principal authors of this notice are Debbie Cho of the IRS Office of Tax Exempt Bonds and Timothy L. Jones of the Office of Chief Counsel. However, other personnel from the Treasury and the IRS participated in its development. For further information regarding this notice, contact Timothy L. Jones at (202) 622-3701 (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, MO 63017

Dear Sir or Madam:

The following constitutes the application (Application) of (Name) (Applicant) for allocation of tribal economic development bond (Tribal Economic Development Bond) volume cap under § 7871(f) of the Internal Revenue Code (Code) (unless otherwise noted, section references herein are to the Code).

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 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), as demonstrated by the attached documents included as Exhibit A.

(ii) an Indian tribal government that 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. **Description of the project.** A description of the project to be financed (Project), including information regarding the type and use of the Project and a certification that the Project will qualify for Tribal Economic Development Bond financing under § 7871(f), is set forth below or in attached Exhibit B.

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

If the Project is a jointly owned Project, please describe the other owners of the Project and the Applicant’s ownership interest in the Project.

If the Application relates to multiple Projects, the Applicant must include separate project-specific information in all relevant portions of the Application for each separate project (for example, for each separate project, the Application must separately include a plan of financing, describe the project including costs and location, and describe the status of the project’s approval).

4. **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.

**Location of the Project.**

Reservation where the Project will be located: \_\_\_\_\_

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

5. **Not used for gaming purposes.**

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

6. **Individual to contact for more information about the Project.**

Individual Name and Title

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.

7. **Approvals.** Include in the attached Exhibit E a certification that all required Federal, State, local, and tribal approvals (regulatory and otherwise) for the Project, the proposed Tribal Economic Development Bonds, and any other required financing for the Project have been obtained or, if any approvals have not yet been obtained, a certification that the Applicant reasonably expects to receive all required approvals in a timely manner sufficient to permit issuance of the proposed Tribal Economic Development Bonds within the 180-day period allowed for issuance of bonds under an allocation. In addition, include in the attached Exhibit E which required approvals have not been obtained and describe the Applicant's plan and expected time frame for obtaining such approvals.
8. **Plan of financing.** Include in the attached Exhibit F a plan of financing for the Project which includes: a reasonably detailed plan of financing which includes (1) the amount of Tribal Economic Bonds expected to be issued and the amount of proceeds of such bonds to be allocated to the project, (2) any reasonably expected other sources of financing for the project together with a description of how such financing will be allocated to the project, and (3) documentation from an independent third party who is knowledgeable about the marketability of tax-exempt bonds evidencing that the proposed bonds are reasonably expected to be marketable prior to expiration of the volume cap allocation set forth in section 4.g. of the notice. Documentation that may be used to meet this requirement for the proposed bonds includes, among others, the following: a bond purchase commitment letter from an investor; a credit quality assessment evidencing the investment grade credit quality of the proposed Tribal Economic Development Bonds from an independent organization that is in the business of assessing credit quality; a credit enhancement commitment letter from a financial institution that will enable the Tribal Economic Development Bonds to be investment grade credit quality; or a letter from an underwriter or financial advisor to the effect that the sale of the proposed bonds is likely to be successful in a timely manner before expiration of the volume cap for the allocation; or similar documentation or a combination thereof.
9. **Compliance with federal tax laws.** Include in the attached Exhibit G a certification that the Applicant reasonably expects that the proposed bonds will meet all applicable requirements of § 7871(f) and that the Applicant has engaged bond counsel to render an opinion to the effect that the proposed bonds will meet those requirements.
10. **Certification of readiness to issue.** Include in the attached Exhibit H a certification that the Applicant reasonably expects to use the volume cap allocation by issuing Tribal Economic Development Bonds prior to the expiration of the volume cap allocation.
11. **Certain forfeitures.** If the Applicant previously received an allocation of Tribal Economic Development Bond volume cap (not including any allocations received in allocations announced by the IRS on September 15, 2009 and February 9, 2010) that was forfeited, then the Applicant must identify any such forfeited allocation and include an explanation of the reasons for such prior forfeiture.
12. **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.)*



13. **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.
14. **Dollar amount of allocation requested for the Project.** The Applicant hereby requests a Tribal Economic Development Bond allocation in the amount of \$
15. **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.

16. **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 the supporting documents, and (iii) to the best of my knowledge and belief, all of the facts contained in this Application and the supporting documents 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 3 OF THE APPLICATION)**  
(Attached hereto)

**Exhibit C**  
**PROJECT LOCATION ON INDIAN TRIBAL GOVERNMENT RESERVATION**  
**(RESPONSE TO QUESTION 5 OF THE APPLICATION)**

**EXHIBIT D**  
**STATEMENT WITH RESPECT TO GAMING**  
**(RESPONSE TO QUESTION 6 OF THE APPLICATION)**

**Exhibit E**  
**APPROVALS**  
**(RESPONSE TO QUESTION 8 OF THE APPLICATION)**  
(Attached hereto)

**Exhibit F**  
**PLAN OF FINANCING**  
**(RESPONSE TO QUESTION 9 OF THE APPLICATION)**  
(Attached hereto)

**EXHIBIT G**  
**COMPLIANCE WITH FEDERAL TAX LAWS**  
**(RESPONSE TO QUESTION 10 OF THE APPLICATION)**  
(Attached hereto)



**EXHIBIT H**  
**STATEMENT OF READINESS TO ISSUE**  
**(RESPONSE TO QUESTION 11 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. I certify that the Applicant reasonably expects to issue the Tribal Economic Development Bonds pursuant to the allocation of volume cap for those bonds to be received pursuant to the Application prior to the expiration date of the volume cap allocation.

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

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

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

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

**APPENDIX 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): \_\_\_\_\_] (Applicant) for an allocation of authority to issue tribal economic development bonds (Tribal Economic Development Bonds) under § 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 other public release of the name of Applicant (issuer), the type of project to be financed by the Tribal Economic Development Bonds, the reservation on which the project is to be located, the reasonably expected cost of the project, and the amount of the allocation, if any, of volume cap authority to issue Tribal Economic Development Bonds awarded to the Applicant. 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.

\_\_\_\_\_

**2012 Section 43 Inflation Adjustment**

**Notice 2012-49**

Section 43(b)(3)(B) of the Internal Revenue Code requires the Secretary to publish an inflation adjustment factor. The enhanced oil recovery credit under § 43 for any taxable year is reduced if the "reference price," determined under § 45K(d)(2)(C), for the calendar year

preceding the calendar year in which the taxable year begins is greater than \$28 multiplied by the inflation adjustment factor for that year. The credit is phased out in any taxable year in which the reference price for the preceding calendar year exceeds \$28 (as adjusted) by at least \$6.

The term "inflation adjustment factor" means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990.

Because the reference price for the 2011 calendar year (\$95.73) exceeds \$28 multiplied by the inflation adjustment factor for the 2011 calendar year (\$43.92) by \$51.81, the enhanced oil recovery credit for qualified costs paid or incurred in 2012 is phased out completely.

Table 1 contains the GNP implicit price deflator used for the 2012 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2011 calendar years.