

## **IRS Seeks Public Comment on Bond Volume Cap Allocation Method for Tax-exempt Tribal Economic Development Bonds**

The Internal Revenue Service seeks public comment regarding how best to allocate the \$2 billion in national authorized bond volume cap for tribal economic development bonds under the American Recovery and Reinvestment Tax Act of 2009 (ARRA). This tribal economic development bond authorization generally allows Indian tribal governments to issue tax-exempt bonds under the same program limitations as State or local governments may issue tax-exempt bonds under section 103 of the Internal Revenue Code, provided that these bonds may not be used for Class II or Class III gaming facilities or for facilities located outside Indian reservations.

ARRA delegates to the Secretary of the Treasury the authority to allocate this \$2 billion in national bond volume cap for tribal economic development bonds in such manner as the Secretary of the Treasury determines appropriate.

The IRS seeks public comment from Indian tribal governments and other interested members of the public regarding what would be the most appropriate method to employ and what criteria appropriately should be considered in allocating this bond volume cap, based on all the facts and circumstances affecting Indian tribal governments. The public comment deadline is March 30, 2009.

There are two basic potential kinds of methods of allocating bond volume cap: a formula-based method and a project-based method.

A formula-based method would involve allocation of bond volume cap among Indian tribal governments based on objective formula criteria, such as population, poverty or unemployment levels, other measures of economic need, or other criteria, but without consideration of individual projects.

A project-based method would involve allocation of bond volume cap among individual projects seeking allocations, based on a solicitation of project applications and allocation of bond volume cap among project applicants using specified criteria, such as a pro rata allocation method in proportion to bond amounts sought, a first-come first-served method, a subjective evaluation method, or a method involving consideration of other stipulated criteria. A project-based allocation method would require Indian tribal governments to apply for bond volume cap allocations for specific projects. Applications may require information such as project descriptions, project size, bond amounts sought, other sources of financing, credit information, expected dates of bond sales, and expected time for project completions. Other information may be required based on the criteria set forth.

Once an allocation method is determined, the Treasury Department and the IRS will publish a public notice regarding the bond volume cap allocation method that either allocates the bond volume cap based on a selected formula or that solicits applications for specific projects, with a prescribed deadline for applications and with further information regarding criteria to be considering in allocating bond volume cap to individual projects.

Please submit comments to the IRS to the attention of William Jegl via email, fax or mail:

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