

**Breaking Developments in Indian Law**  
**07/06/09**

**Guidance and Applications Available for \$2 Billion in Tax-Exempt Bonds for Economic Development Projects in Indian Country**

The Internal Revenue Service ("IRS") recently published (and posted to its [website](#)) guidelines and applications for tax-exempt bonds for economic development projects in Indian Country. The guidelines, called "Notice 2009-51 (Tribal Economic Development Bonds)," indicate the first application deadline is August 15, 2009, for \$1 billion in bonds, which must be issued by December 31, 2010. This leaves tribes little time to compile the information needed to complete the 11-page application for the first round of financing. There is a second deadline of January 1, 2010, for tribes to apply for the second \$1 billion in bonds, which must be issued by December 31, 2011.

The bonds came out of President Obama's stimulus package and the American Recovery and Reinvestment Act, which greatly expand bonding opportunities for tribes. Tribes can use the bonds for any economic development project a state or local government could finance with tax-exempt bonds, except gaming activities and projects off the reservation. Previously, tribes could only use tax-exempt financing for projects that fulfilled an "essential governmental function."

\$2 billion is the total amount available to all tribes that apply for these new bonds, although each tribe can apply for up to \$30 million, regardless of the number of projects it proposes. If the total applications are less than \$2 billion (or \$1 billion per application cycle), then applicants will receive the full amount requested. If applications exceed the total amount available per application cycle, each applicant's award will be reduced on a pro rata basis or a percentage of the excess.

To apply, tribes must fill out the IRS application, which requires a description of the project or projects for which the tax-exempt financing will be used, a plan and status for financing the project(s), a statement of readiness to issue the bonds by the deadline, as well as a certification that the projects are within a reservation and that none of the proceeds will be used to finance any portion of a building or other property where gaming is conducted or housed.

Lobbyists who have long worked for more tax-exempt financing for tribes are urging tribes to apply for and use the full \$2 billion now available, to help build a case for continuing this expanded tribal tax-exempt bond authority when the American Recovery and Reinvestment Act sunsets in two years.

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