

GOOD NEWS THIS WEEK FOR BUSINESS IN INDIAN COUNTRY!

This week brings good news if you are doing, or want to do, business Indian country.

- On Monday, July 16, 2012 the Treasury Department issued its new guidelines (Guidelines) (Notice 2012-48; <http://www.irs.gov/pub/irs-drop/n-12-48.pdf>) for reallocating the remaining \$1.8 billion of tax exempt Tribal Economic Development Bond (TEDB) authority. The Guidelines allow Tribes to apply to issue up to \$360,000,000 of tax exempt bonds for projects that the tribe wishes to develop either alone or with a non-tribal party.
- On Tuesday, July 17, 2012 the Senate passed and sent to the President for signature the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011 (the HEARTH Act; <http://www.gpo.gov/fdsys/pkg/BILLS-112hr205rfs/pdf/BILLS-112hr205rfs.pdf>). The HEARTH Act allows tribes to assume authority for virtually all surface leasing of tribal land. BIA's approval no longer will be required.

Both the TEDB reallocation guidelines and the HEARTH Act open the door for significant project development and for expedited leasing of tribal lands. Great news for tribes and their business partners!

TAX EXEMPT DEVELOPMENT BONDS: The TEDB program was established by the American Recovery and Rehabilitation Act (ARRA), which authorized tribes to issue up to \$2 billion in tax exempt bonds for projects for a broader range of projects than are covered under the "essential governmental function" test to which tribes generally are subject. The intent was to encourage job creation and promote economic growth in Indian country by permitting tax exempt bond financing for activities similar to those available to state and local governments.

Much of the TEDB authority that was allocated originally was brought back into the program because tribes who received allocations were not fully prepared to launch the projects for which the TEDBs were authorized. As a result, the Treasury Department currently has \$1.8 billion still remaining in TEDB authority. The Guidelines address how the remaining \$1.8 billion will be allocated.

Under the Guidelines, tribes may receive TEDB allocations for projects that are on the tribe's reservation and that are in the final states of going to the bond market. Once the tribe receives the allocation, it will have 6 months to close on the bonds. If the tribe is unable to close within 6 months, its allocation will be returned to Treasury for redistribution.

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Bond proceeds may be used for projects being developed by a joint venture in which the tribe is a party, subject to the Treasury's private activity rules. Bond proceeds may not be used for gaming projects.

The maximum allocation, or "volume cap," is 20% of the remaining amount of the authority (currently \$1.8 billion). As of today, then, the maximum allocation is \$360,000,000. That amount will reduce as the \$1.8 billion is allocated. When there is less than \$500,000,000 in TEDB authority remaining, the maximum allocation will be \$100,000,000. In any case, the tax exempt authority is vastly greater than under the original program (\$30,000,000) and presents opportunities for favorable financing for large tribal projects and for the tribe's business partners.

The Guidelines, including a copy of the application, can be accessed at <http://www.irs.gov/pub/irs-drop/n-12-48.pdf>.

LEASES: The HEARTH Act amends the existing Long Term Leasing Act, 25 U.S.C. 415, for tribal land. Currently, 25 U.S.C. 415 permits only one tribe -- the Navajo Nation -- to assume authority for approval of surface leases of Navajo land. The HEARTH Act expands that authority to any other tribe that receives the BIA's approval of the tribe's leasing regulations. Once the tribe has its regulations in place, it may assume authority for approving any surface lease by the tribe for business, agricultural, public, religious, educational, recreational or residential purposes. The Act does not apply to leases for the exploration, development or extraction of mineral resources or to leases of allotted land. Additionally, the Act limits lease terms to 25 years (with two 25 year renewal options) for business and agricultural leases and to 75 years for public, religious, educational, recreational or residential purposes; and requires that the tribe's regulations provide for an environmental review process. Notwithstanding its limitations, it is a great step forward in streamlining tribal surface leasing.

It is too early to tell how many tribes will avail themselves of the opportunity to eliminate BIA from much of tribal leasing. It also is too early to tell whether tribes will adopt regulations that enable leases to be reviewed and processed more efficiently than currently is the case with the BIA. Nonetheless, I see the passage of the HEARTH Act as a positive step, having the potential for creating a more business-friendly environment in Indian country and shortening the pre-development timelines for projects on tribal land.

