QFR regarding 180 day limitation on allocations for issuance of Tribal Economic Development Bonds under IRC § 7871(f)

This responds to questions for the record submitted after a congressional hearing in July 2015. The questions were sent to the IRS office of Tax Exempt Bonds on November 5, 2015. The questions are:

1. What is the IRS doing to ensure that the TED Bond rules are applied in a manner that provides appropriate protections and guidelines for prompt issuance yet ensures that tribes will be able to more efficiently access these bonds to spur new on-reservation development?

2. Further, is the IRS looking at ways to ensure that its timing rules take into account the type of loans typically utilized by tribes in conjunction with their allocation?

RESPONSE: IRS NOTICE 2015-83 PERMITS USE OF ADDITIONAL FINANCING STRUCTURES:

1. In response to concerns raised by Indian tribal governments, the IRS recently modified the issue date requirements for Tribal Economic Development Bonds issued as “draw-down” bonds. Specifically, on December 4, 2015, we released Notice 2015-83, which provides flexible rules that allow tribes up to three years to issue these bonds upon meeting certain eligibility and timing requirements. This guidance is publicly available at https://www.irs.gov/pub/irs-drop/n-15-83.pdf.

Prior to the issuance of Notice, 2015-83, the general guidance on allocation of volume cap for Tribal Economic Development Bonds was set forth in Notice 2012-48. One requirement under Notice 2012-48 is that bonds be issued within 180 days of the date the IRS allocated volume cap to the issuer. Any allocation for bonds not issued within that time is forfeited. Indian tribal governments commented that "draw-down” bonds often are a preferred method of financing for economic development in private financing arrangements and may offer more potential access to capital for Indian tribal governments than the public bond market. Further, Indian tribal governments indicated that they had difficulty meeting the 180-day issuance requirement in these draw-down bond structures. Bonds associated with each “draw” have a separate issue date, and therefore draws occurring after the 180 day period ends are not issued within the required period. We appreciated the difficulties tribes experienced with the 180-day requirement and we worked with the Treasury Department to modify Notice 2012-48 by issuing Notice 2015-83 to better accommodate draw-down bonds.

2. Recently, as discussed in our response to Question 1 above, we issued Notice 2015-83 to provide additional public guidance and give Indian tribal governments more flexibility to issue Tribal Economic Development Bonds using draw-down bond structures. Moreover, the IRS and the Treasury Department developed the bond volume cap allocation and issuance requirements for Tribal Economic Development Bonds in Notice 2012-48, including the 180-day requirement, after consultation with Indian tribal governments. If a similar concern regarding other particular finance structures is brought to our attention in the future, we again will consider whether modifications can be made to accommodate that financing structure while ensuring full use of the Tribal Economic Development Bond volume cap.