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IRS Helps Tribes Use TED Bond Volume Cap for Draw-Down Loans.

WASHINGTON – The Internal Revenue Service issued a notice Friday that will make it easier for Indian tribal governments to use tribal economic development bond volume cap for draw-down loans.

Notice 2015-83 "is very important" for financing new construction projects, said Townsend Hyatt, a partner at Orrick, Herrington & Sutcliffe in Portland, Ore.

"It's really designed to deal with the borrowing reality, which is that in most cases tribes borrow through loans rather than through bonds," he said.

Because tribal economic development bonds are not exempt from registration requirements under the federal securities laws, most tribal governments borrow from banks, according to Hyatt.

For new construction projects, tribal governments would typically draw down the loan money over time as needed to cover costs.

But draw-down loans were at odds with IRS requirements set forth in a previous notice published in 2012 (Notice 2012-48), under which a tribal government would have to use all of its allocated TED bond volume cap within 180 days of receiving it.

This requirement made it very difficult to obtain TED bond volume cap allocation for the total cost and the total amount of a tax-exempt draw-down loan needed for a project because typically the money would be drawn down over a period of time, sometimes two or three years.

Under the notice issued Friday, if a tribal government receives a TED bond allocation for a tax-exempt loan and spends at least 10% of the borrowed money within 180 days, it will have the rest of two-year period from the date of the allocation to spend the remaining amount.

If the tribal government spends at least 50% of the proceeds of the loan within two years, it will have the remaining amount of time in the three-year period since the allocation to spend the rest of the money.

The IRS, however, requires tribal governments to file several notices with it. The tribal government applying for an allocation of TED bond cap for a draw-down loan must file one or more notices with the IRS that includes: its name and taxpayer identification number; the issue price of any bonds issued, the issue date of the bonds, a description of the project being financed; and any amount of the allocation that is being forfeited.

The applicant also must submit a notice of issuance not later than 15 days after the final draw for the draw-down loan. Other notices are required as well.

"There are numerous notice requirements but the basic substance of the rule is good," Hyatt said.

The notice said the rule is effective for applications for TED bond volume cap submitted on or after Dec. 4, 2015. It also applies to applicants that have received TED bond cap that did not expired before Dec. 4, the IRS said.

The published volume cap for the period that began Dec. 1 is almost $1.365 billion and the maximum amount of cap that any single borrower can apply for is $272.90 million, according to the IRS.

The IRS and Treasury Department, in the notice, also asked for public comments on whether they should provide special volume cap allocation rules for New Clean Renewable Energy Bonds issued as draw-down bonds or loans.

THE BOND BUYER

By Lynn Hume

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