



TAX EXEMPT AND
GOVERNMENT ENTITIES DIVISION

**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Office of Indian Tribal Governments**

**Results of Joint Research Effort by the Internal Revenue Service
and the University of Michigan School of Information**

In April, 2006, researchers from the University of Michigan met with officials and researchers from the Tax-Exempt Bond division of the Internal Revenue Service to discuss the issue of tribal tax-exempt bonds. Recent enforcement activity by the IRS had created the perception in Indian Country that the IRS was being overly aggressive against tribal issuers relative to their state and local counterparts.

Section 103(c) of Tax Code treats all obligations as “bonds” even if they are bank loans, finance leases, or installment purchases, or in fact bond indentures. This treatment is the same for tribal debt under Section 7871(c) of the tax code. Thus, while the debt markets differentiate substantially between bank debt and bond indentures, the Tax Code does not.

When tribes enter into debt obligations, if the interest paid by the tribe is tax-exempt, then a form needs to be filed with the IRS. If the obligation is for an amount greater than \$100,000, then a form 8038G is filed, otherwise a form 8038GC is filed.

In response to inquiries from the University of Michigan researchers, IRS researchers determined that 88 tribes had filed one or more informational returns between January 1, 2002 and December 31, 2005 (note that this data reflects direct tribal issues only; conduit issues are not included in these figures):

Form 8038G	136
Form 8038GC	169

On either form, Line 20 allows the tribe to check a box to indicate whether the obligation is a lease or installment purchase. The data was then broken down into the following:

Form 8038GC	
Leases or Installment Sales	105
Bank Loans or Bond Indentures	64
Form 8038G	
Leases or Installment Sales	46
Bank Loans or Bond Indentures	90

The following was also determined, however, in the course of the research:

- While some tribal debt examinations were initiated from referrals, the majority of tribal debt examination cases were initiated by the IRS through its normal case selection process.
- Of the 305 filings (issues), slightly less than 1% are being examined
- Of the 88 tribes that filed, approximately 3% have bonds under examination.
- The total dollar amount of issues during this time period is around \$700,000,000.