

## **HIGHLIGHTS OF THIS ISSUE**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### **INCOME TAX**

#### **Notice 2012-39, page 95.**

This notice provides guidance under section 367(d) of the Code addressing transactions that raise significant policy concerns involving transfers of intangible property by a domestic corporation to a foreign corporation in certain corporate reorganizations.

#### **Notice 2012-48, page 102.**

This notice solicits applications for the allocation of available amounts of national bond issuance authority limitation (volume cap) for Tribal Economic Development Bonds under section 7871(f) of the Code. The notice provides guidance on: (1) the application requirements and forms for requests for volume cap allocations, (2) the general process that will be used by the IRS to allocate the volume cap, and (3) information reporting to the IRS concerning various aspects of the allocation process and the issuance of Tribal Economic Development Bonds pursuant to an allocation of volume cap.

#### **Notice 2012-49, page 119.**

**2012 section 43 inflation adjustment.** This notice announces the inflation adjustment factor and phase-out amount for the enhanced oil recovery credit for taxable years beginning in the 2012 calendar year. The format of the notice is identical to the format of previously published notices on this issue. The notice concludes that because the reference price for the 2011 calendar year (\$95.73) exceeds \$28 multiplied by the inflation adjustment factor for the 2011 calendar year (\$43.92) by \$51.81, the enhanced oil recovery credit for qualified costs paid or incurred in 2012 is phased out completely. The notice also contains the previously published figures for taxable years beginning in the 1991 through 2011 calendar years.

#### **Notice 2012-50, page 121.**

**2012 marginal production rates.** This notice announces that under section 613A(c)(6)(C) of the Code, the applicable percentage for purposes of determining percentage depletion on marginal properties for calendar year 2012 is 15 percent. The format of the notice is identical to the format of notices previously published on this issue.

### **EMPLOYEE PLANS**

#### **Notice 2012-47, page 98.**

**Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates.** This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in July 2012; the 24-month average segment rates; the funding transitional segment rates applicable for July 2012; and the minimum present value transitional rates for June 2012. However, the notice does not reflect changes to segment rates required under the Moving Ahead for Progress in the 21st Century Act (MAP-21).

Finding Lists begin on page ii.  
Index for July begins on page iv.



# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and en-

force the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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# Part III. Administrative, Procedural, and Miscellaneous

## Regulations Under Section 367(d) Applicable to Certain Outbound Asset Reorganizations

### Notice 2012-39

#### SECTION 1. OVERVIEW

This notice provides guidance under section 367(d) of the Internal Revenue Code (Code). The guidance addresses transactions that raise significant policy concerns involving certain transfers of intangible property by a domestic corporation to a foreign corporation in an exchange described in section 361(a) or (b) (section 361 exchange). The Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) will issue regulations that incorporate the guidance described in this notice. The regulations will apply to transfers occurring on or after July 13, 2012.

#### SECTION 2. BACKGROUND

Subject to certain exceptions, section 367(a) generally applies to the transfer of property by a United States person to a foreign corporation in an exchange described in section 332, 351, 354, 356, or 361. Section 367(d)(1) provides that, except as provided in regulations, if a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B)) to a foreign corporation in an exchange described in section 351 or 361, section 367(d) (and not section 367(a)) applies to such transfer. Accordingly, income or gain attributable to the transfer of property by a U.S. person to a foreign corporation in an exchange described in section 351 or 361 is taken into account either in accordance with section 367(d)(2)(A)(ii)(I) or (II) (as described below), or in accordance with section 367(a).

Section 367(d)(2)(A) provides that the United States person transferring the intangible property is treated as having sold the property in exchange for payments that are contingent upon the productivity, use, or disposition of such property. The transferor is treated as receiving amounts that reasonably reflect the amounts that

would have been received: (1) annually in the form of such payments over the useful life of such property (section 367(d)(2)(A)(ii)(I)), or (2) in the case of a disposition of the intangible property following such transfer (whether direct or indirect), at the time of the disposition (section 367(d)(2)(A)(ii)(II)). For this purpose, an indirect disposition of the intangible property following the transfer includes a disposition of the transferor's interest in the transferee corporation. S. Rep. No. 169, 98th Cong., 2d Sess., at 367 (1984). The amounts taken into account under section 367(d)(2)(A)(ii) must be commensurate with the income attributable to the intangible. Section 367(d)(2)(A) (flush language).

Section 367(d)(2)(B) provides that for purposes of chapter 1 of the Code the earnings and profits of a foreign corporation to which the intangible property was transferred are reduced by the amount required to be included in the income of the transferor of the intangible property. Section 367(d)(2)(C) provides that for purposes of chapter 1 of the Code any amount included in gross income pursuant to section 367(d) is treated as ordinary income. For purposes of applying section 904(d), any amount included in income under section 367(d) is treated in the same manner as if such amount were a royalty. Section 367(d)(2)(C).

Section 1.367(d)-1T(c)(1) provides that if a U.S. person transfers intangible property that is subject to section 367(d) to a foreign corporation (transferee foreign corporation) in an exchange described in section 351 or 361, then such person is treated as having transferred that property in exchange for annual payments contingent on the productivity or use of the property. The regulation further provides that such person shall, over the useful life of the property, annually include in gross income an amount that represents an appropriate arm's-length charge for the use of the property. §1.367(d)-1T(c)(1). For this purpose, the appropriate charge is determined under section 482 and the regulations thereunder. *Id.*

Section 1.367(d)-1T(d)(1) provides rules that apply when a U.S. person transfers intangible property that is subject to

section 367(d) to a transferee foreign corporation in an exchange described in section 351 or 361 and, within the useful life of the intangible property, that U.S. transferor subsequently disposes of the stock of the transferee foreign corporation to a person that is not a related person (within the meaning of §1.367(d)-1T(h)). The rules generally provide that the U.S. transferor is treated as having simultaneously sold the intangible property to the unrelated person acquiring the stock of the transferee foreign corporation. §1.367(d)-1T(d)(1). The U.S. transferor recognizes gain (but not loss) in an amount equal to the difference between the fair market value of the transferred intangible property on the date of the subsequent disposition and the U.S. transferor's former adjusted basis in that property. *Id.*

Section 1.367(d)-1T(e)(1) provides rules that apply when a U.S. person transfers intangible property that is subject to section 367(d) to a transferee foreign corporation in an exchange described in section 351 or 361 and, within the useful life of the transferred intangible property, the U.S. transferor subsequently transfers the stock of the transferee foreign corporation to U.S. persons that are related to the transferor (within the meaning of §1.367(d)-1T(h)). These rules generally provide, in part, that the related U.S. persons, over the useful life of the property, annually include in gross income a proportionate share of the contingent annual payments that would otherwise be deemed to be received by the U.S. transferor under §1.367(d)-1T(c). §1.367(d)-1T(e)(1).

Section 1.367(d)-1T(g)(1)(i) provides that if a U.S. person is required to recognize income under certain provisions of the regulations under section 367(d), including §1.367(d)-1T(c), and the amount deemed to be received is not actually paid by the transferee foreign corporation, then the U.S. person may establish an account receivable from the transferee foreign corporation equal to the amount deemed paid that was not actually paid. Such account receivable may be established and paid without further U.S. income tax consequences to the U.S. transferor or the transferee foreign corporation. §1.367(d)-1T(g)(1)(i).

## SECTION 3. TRANSACTIONS AT ISSUE

The IRS and the Treasury Department are aware that certain taxpayers are engaging in transactions intended to repatriate earnings from foreign corporations without the appropriate recognition of income. In one such transaction, USP, a domestic corporation, owns 100 percent of the stock of UST, a domestic corporation. USP's basis in its UST stock equals its value of \$100x. UST's sole asset is a patent with a tax basis of zero. UST has no liabilities. USP also owns 100 percent of the stock of TFC, a foreign corporation. UST transfers the patent to TFC in exchange for \$100x of cash and, in connection with the transfer, UST distributes the \$100x of cash to USP and liquidates.

The taxpayer takes the position that neither USP nor UST recognizes gain or dividend income on the receipt of the \$100x of cash. USP then applies the section 367(d) regulations to include amounts in gross income under §1.367(d)-1T(c)(1) in subsequent years. USP also applies the 367(d) regulations to establish a receivable from TFC in the amount of USP's aggregate income inclusion. USP takes the position that TFC's repayment of the receivable does not give rise to income (notwithstanding the prior receipt of \$100x in connection with the reorganization). Accordingly, under these positions, the transactions have resulted in a repatriation in excess of \$100x (\$100x at the time of the reorganization and then through repayment of the receivable in the amount of USP's income inclusions over time) while only recognizing income in the amount of the inclusions over time.

The IRS and the Treasury Department understand that other transactions may be structured to have the same or similar effect, including, for example, transactions that involve TFC's assumption of liabilities of UST. Similar results may also be achieved in cases in which a controlled foreign corporation uses deferred earnings to fund an acquisition of all or part of the stock of a domestic corporation from an unrelated party for cash, followed by an outbound asset reorganization of the domestic corporation to avoid an income inclusion under section 956. The IRS and the Treasury Department believe that these transactions raise significant policy con-

cerns, and accordingly, intend to revise the regulations under section 367(d) in the manner described in this notice.

## SECTION 4. REGULATIONS TO BE ISSUED

### *.01 In General*

The IRS and the Treasury Department will issue regulations addressing the transfer by a domestic corporation (U.S. transferor) of section 367(d) property in a section 361 exchange to a transferee foreign corporation (outbound section 367(d) transfer) that incorporate the rules described in this notice. The regulations will ensure that, with respect to all outbound section 367(d) transfers, the total income to be taken into account under section 367(d) is either included in income by the U.S. transferor in the year of the reorganization or, where appropriate, over time by one or more qualified successors. Any income taken into account under this notice must be commensurate with the income attributable to the section 367(d) property transferred in the outbound section 367(d) transfer. Section 367(d)(2)(A) (flush language). Except as provided below, the rules described in this notice, rather than §1.367(d)-1T(c), (d), (e), and (g), will govern outbound section 367(d) transfers. For purposes of this notice, references to "stock received" include stock deemed received in a transaction.

### *.02 U.S. Transferor Takes into Account Income under Section 367(d)(2)(A)(i)(I)*

In an outbound section 367(d) transfer, the U.S. transferor will take into account income under section 367(d)(2)(A)(i)(I) with respect to each qualified successor, if any, by treating as a prepayment of such income the product of the section 367(d) percentage multiplied by the sum of: (i) the money and fair market value of other property (within the meaning of section 356) received by the qualified successor in exchange for, or with respect to, stock of the U.S. transferor, reduced by the portion of any U.S. transferor distributions received by the qualified successor; and (ii) the product of the qualified successor's ownership interest percentage multiplied by the amount of non-qualifying liabilities that are either assumed (within the meaning of section 357(d)) by the transferee for-

eign corporation in the reorganization or satisfied by the U.S. transferor with money or other property (within the meaning of section 361) provided by the transferee foreign corporation. As a prepayment of such income, the amount is included in income by the U.S. transferor in the year of the outbound section 367(d) transfer, regardless of the productivity of the transferred section 367(d) property in the year of the transfer or in subsequent years.

### *.03 U.S. Transferor Takes into Account Income under Section 367(d)(2)(A)(ii)(II)*

In an outbound section 367(d) transfer, the U.S. transferor will also take into account income under section 367(d)(2)(A)(ii)(II) in an amount equal to the product of: (i) the sum of the ownership interest percentages of all non-qualified successors, if any, multiplied by (ii) the amount of gain realized on all of the section 367(d) property transferred in the section 361 exchange.

### *.04 Treatment of Qualified Successors*

Consistent with the principles of §1.367(d)-1T(e)(1)(ii) and (iii), except as provided in this paragraph 4.04, each qualified successor will take into account the income attributable to a proportionate share of the contingent annual payments that the U.S. transferor would have been treated as receiving under section 367(d)(2)(A)(ii)(I) and §1.367(d)-1T(c) had the U.S. transferor remained in existence and retained the qualified stock (or, in the case of certain distributions under section 355, had the U.S. transferor retained the qualified stock) received in the reorganization (assuming for this purpose that the transfer continues to qualify as an exchange described in section 361), and had the U.S. transferor not recognized any income under section 4 of this notice. A qualified successor's proportionate share of such contingent annual payments is the product of the contingent annual payments multiplied by the qualified successor's ownership interest percentage. The income attributable to a qualified successor's proportionate share of the contingent annual payments is excluded from gross income to the extent of the income included by the U.S. transferor under section 4.02 of this notice that is attributable to the qualified successor (credit amount).

A qualified successor may, in accordance with §1.367(d)-1T(g)(1), establish an account receivable for any contingent annual payments included in gross income by the qualified successor under this notice.

Qualified successors are subject to the rules of §1.367(d)-1T, as modified by this paragraph 4.04. Thus, for example, if a qualified successor subsequently transfers qualified stock received in the reorganization to a U.S. person that is related (within the meaning of §1.367(d)-1T(h)) to the qualified successor, §1.367(d)-1T(e) will apply to such transfer. In this case, a proportionate amount of any remaining credit amount attributable to the qualified successor can be taken into account by such related U.S. person in the same manner as it could have been taken into account by the qualified successor. Alternatively, for example, if a qualified successor subsequently transfers qualified stock to a U.S. person that is unrelated to the qualified successor or to a person that is not a U.S. person, §1.367(d)-1T(d) will apply to such transfer. In this case, a proportionate amount of any remaining credit amount attributable to the qualified successor can be taken into account to reduce the amount of gain recognized under §1.367(d)-1T(d).

#### .05 Definitions

The following definitions apply for purposes of this notice:

(1) *Non-qualifying liabilities*—(i) *In general.* Except as provided in paragraph (1)(ii) of this section 5, non-qualifying liabilities include all liabilities of the U.S. transferor other than a liability:

(A) That was incurred in the ordinary course of the U.S. transferor's active trade or business (within the meaning of section 367(a)(3)), if any,

(B) That did not arise in connection with the reorganization, and

(C) That is owed to an unrelated person. For this purpose, an unrelated person is any person that does not have a relationship to the U.S. transferor described in section 267(b) or 707(b) immediately before the reorganization.

(ii) *Increase for certain distributions.* The amount of non-qualifying liabilities shall be increased (but not in excess of the U.S. transferor's total liabilities) by an amount equal to the sum of the U.S. trans-

feror distributions and any other distributions made by the U.S. transferor (or any predecessor) with respect to its stock, including distributions in redemption of its stock, during the two-year period immediately preceding the reorganization.

(2) *Ownership interest percentage* is the ratio of the value of the stock in the U.S. transferor owned by a shareholder to the value of all of the outstanding stock of the U.S. transferor. Except as provided in this paragraph, the ownership interest percentage of a shareholder is determined immediately before the reorganization. For purposes of determining the ownership interest percentage with respect to each shareholder, however, the numerator of the fraction is first reduced (but not below zero) by U.S. transferor distributions made to such shareholder, and the denominator is reduced by the total amount of U.S. transferor distributions.

(3) *Property* is defined in §1.367(a)-1T(d)(4). *Section 367(d) property* is any property described in section 936(h)(3)(B). *Section 367(a) property* is any property other than section 367(d) property.

(4) *Qualified stock* means stock in the transferee foreign corporation, including stock received in the transferee foreign corporation under section 354, 355, or 356 in exchange for, or with respect to, stock of the U.S. transferor.

(5) *Qualified successor* means a shareholder of the U.S. transferor that is a domestic corporation, other than a regulated investment company (as defined in section 851(a)), a real estate investment trust (as defined in section 856(a)), or an S corporation (as defined in section 1361(a)), provided such shareholder receives qualified stock in the reorganization or immediately after the reorganization owns qualified stock other than qualified stock received in the reorganization. A *non-qualified successor* means a shareholder of the U.S. transferor other than a qualified successor.

(6) *Section 367(d) percentage* is the ratio of the aggregate value of the section 367(d) property transferred by the U.S. transferor to the transferee foreign corporation in the section 361 exchange to the aggregate value of all property (in other words, all section 367(a) property and section 367(d) property) transferred by the

U.S. transferor to the transferee foreign corporation in the section 361 exchange.

(7) *U.S. transferor distributions* are any distributions by the U.S. transferor of money or other property (within the meaning of section 356) to shareholders pursuant to the plan of reorganization, but only to the extent such money or other property is not provided by the transferee foreign corporation in exchange for property of the U.S. transferor acquired in the section 361 exchange.

#### .06 Other Rules

Income taken into account under section 4.02 or 4.03 of this notice is treated as ordinary income and is treated, for purposes of applying section 904(d), in the same manner as if such amount were a royalty.

For purposes of this notice, stock of the U.S. transferor held by a partnership (domestic or foreign) is treated as held proportionately by its partners. Thus, for example, if a partnership is a shareholder of the U.S. transferor and receives qualified stock in the reorganization, the partners in the partnership are treated as receiving the qualified stock for purposes of this notice, including for purposes of identifying a qualified successor.

#### .07 Example

The following example illustrates the rules and guidance provided in this notice.

*Example.* (i) *Facts.* USP, a domestic corporation (that is not a regulated investment company, a real estate investment trust, or an S corporation), owns 100% of the outstanding stock of UST, a domestic corporation, and 100% of the outstanding stock of TFC, a foreign corporation. UST owns a patent with a tax basis of \$0x and a value of \$60x. UST also owns Asset A, which is section 367(a) property, with a value of \$40x. UST has no liabilities. In a reorganization described in section 368(a)(1)(D), UST transfers the patent and Asset A to TFC in exchange for \$70x of TFC stock and \$30x of cash. In connection with the transfer, UST distributes the \$70x of TFC stock and \$30x of cash to USP and liquidates. UST's transfer of the patent and Asset A to TFC qualifies as a section 361 exchange. USP is treated as exchanging its UST stock for \$70x of TFC stock and \$30x of cash pursuant to section 356.

(ii) *Analysis.* UST's transfer of the patent to TFC in the section 361 exchange is an outbound section 367(d) transfer subject to section 367(d) and the regulations thereunder, as modified by this notice. Under section 4.02 of this notice, the income that UST will take into account as a prepayment is \$18x, the product of the section 367(d) percentage (60%) multiplied by the amount of cash (\$30x) received

by USP, a qualified successor. UST must include this amount in income regardless of whether income is being generated by the patent at the time of the outbound section 367(d) transfer. USP is a qualified successor because USP (a domestic corporation) is a shareholder of UST that receives qualified stock (newly issued stock of TFC) under section 356 in exchange for stock of UST. USP is also a qualified successor because USP (a domestic corporation) is a shareholder of UST that owns qualified stock (existing stock in TFC) other than the qualified stock received in the reorganization. Under section 4.05 of this notice, the section 367(d) percentage of 60% is computed as the \$60x aggregate value of the section 367(d) property transferred in the section 361 exchange, divided by \$100x aggregate value of all property transferred in the section 361 exchange. USP, as a qualified successor to UST, will take into account the income attributable to the contingent annual payments that UST would have received under §1.367(d)-1T(c) over the remaining useful life of the intangible property, determined as if UST had remained in existence and not taken into account the \$18x of income. Under §1.367(d)-1T(c)(1), such contingent annual payments must be determined in accordance with section 482 and the regulations thereunder, and therefore must be consistent with the arm's-length standard. The first \$18x of contingent annual payments (if otherwise taken into account by USP under section 4.04 of this notice) are excluded from USP's gross income under section 4.04 of this notice, and any additional contingent annual payments are included in USP's gross income. In accordance with §1.367(d)-1T(g)(1), USP may establish an account receivable with respect to any contingent annual payments included in gross income by USP under this notice. For rules applicable to the transfer of Asset A, see section 367(a) and any regulations thereunder.

## SECTION 5. EFFECTIVE DATE

The regulations described in this notice will apply to outbound section 367(d) transfers occurring on or after July 13, 2012. No inference is intended as to the treatment of transactions described in this notice under current law, and the IRS may challenge such transactions under applicable Code provisions or judicial doctrines.

## SECTION 6. COMMENTS

The IRS and the Treasury Department request comments on the regulations to be issued under this notice. Specifically, comments are requested regarding whether certain domestic corporations that are related to the U.S. transferor but not subject to section 4.04 of this notice

(relating to qualifying successors) should nevertheless be subject to section 4.04. For example, the IRS and the Treasury Department are considering whether the rules described in section 4.04 of this notice should apply to transactions in which a domestic corporation is not a qualified successor because it indirectly owns the U.S. transferor through a controlled foreign corporation. In addition, comments are requested as to the proper recovery of basis in the section 367(d) property transferred.

## SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Robert B. Williams, Jr. of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this notice, contact Robert B. Williams, Jr. at (202) 622-3860 (not a toll-free call).

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# Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

## Notice 2012-47

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), and the 24-month average segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under

§ 417(e)(3)(D) as in effect for plan years beginning after 2007. These rates do not reflect any changes implemented by the Moving Ahead for Progress in the 21st Century Act (MAP-21). MAP-21 provides that for purposes of section 430(h)(2), the segment rates are limited by the applicable maximum percentage or the applicable minimum percentage based on the average of segment rates over a 25 year period. Guidance related to the new legislation will be issued in the future.

## CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004-34, 2004-1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004-34 continues to apply in determining that rate. See Notice 2006-75, 2006-2 C.B. 366.

The composite corporate bond rate for June 2012 is 4.27 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for

plan years beginning in the month shown below.

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range	
Month	Year		90%	to 100%
July	2012	5.38	4.84	5.38

#### YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates

("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. Section 430(h)(2)(G) set forth a transitional rule applicable to plan years beginning in 2008 and 2009 under which the segment rates were blended with the corporate bond weighted average described above, including an election under § 430(h)(2)(G)(iv) for an employer to use the segment rates without the transitional rule.

Notice 2007-81, 2007-2 C.B. 899, provides guidelines for determining the

monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007-81, the monthly corporate bond yield curve derived from June 2012 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of June 2012 are, respectively, 1.60, 3.97, and 4.93. The three 24-month average corporate bond segment rates applicable for July 2012 are as follows:

First Segment	Second Segment	Third Segment
1.81	4.73	5.85

The transitional rule of § 430(h)(2)(G) does not apply to plan years beginning after December 31, 2009. Therefore, for a plan year beginning after 2009 with a look-back month to July 2012, the funding segment rates are the three 24-month average corporate bond segment rates applicable for July 2012, listed above without blending for any transitional period.

#### 30-YEAR TREASURY SECURITIES INTEREST RATES

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury se-

curities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual rate of interest on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for June 2012 is 2.70 percent. The Service has determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in May 2042.

Generally for plan years beginning after 2007, § 431 specifies the mini-

imum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range	
Month	Year		90%	to 105%
July	2012	3.83	3.44	4.02

**MINIMUM PRESENT VALUE  
SEGMENT RATES**

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a

24-month average. For plan years beginning in 2008 through 2011, the applicable interest rates are the monthly spot segment rates blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007-81 provides guidelines for determin-

ing the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for June 2012, taking into account the June 2012 30-year Treasury rate of 2.70 stated above, are as follows:

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<u>For Plan Years Beginning in</u>	<u>First Segment</u>	<u>Second Segment</u>	<u>Third Segment</u>
2011	1.82	3.72	4.48
2012	1.60	3.97	4.93

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**DRAFTING INFORMATION**

The principal author of this notice is Tony Montanaro of the Employee Plans,

Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at *RetirementPlanQuestions@irs.gov*.



**Table I**  
 Monthly Yield Curve for June 2012  
 Derived from June 2012 Data

<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>
0.5	0.53	20.5	4.68	40.5	4.96	60.5	5.06	80.5	5.11
1.0	0.87	21.0	4.69	41.0	4.96	61.0	5.06	81.0	5.11
1.5	1.17	21.5	4.71	41.5	4.97	61.5	5.07	81.5	5.11
2.0	1.43	22.0	4.72	42.0	4.97	62.0	5.07	82.0	5.12
2.5	1.63	22.5	4.73	42.5	4.97	62.5	5.07	82.5	5.12
3.0	1.79	23.0	4.74	43.0	4.98	63.0	5.07	83.0	5.12
3.5	1.93	23.5	4.75	43.5	4.98	63.5	5.07	83.5	5.12
4.0	2.07	24.0	4.76	44.0	4.98	64.0	5.07	84.0	5.12
4.5	2.21	24.5	4.77	44.5	4.99	64.5	5.07	84.5	5.12
5.0	2.35	25.0	4.78	45.0	4.99	65.0	5.08	85.0	5.12
5.5	2.49	25.5	4.78	45.5	4.99	65.5	5.08	85.5	5.12
6.0	2.64	26.0	4.79	46.0	5.00	66.0	5.08	86.0	5.12
6.5	2.80	26.5	4.80	46.5	5.00	66.5	5.08	86.5	5.12
7.0	2.95	27.0	4.81	47.0	5.00	67.0	5.08	87.0	5.12
7.5	3.10	27.5	4.82	47.5	5.01	67.5	5.08	87.5	5.13
8.0	3.24	28.0	4.82	48.0	5.01	68.0	5.08	88.0	5.13
8.5	3.38	28.5	4.83	48.5	5.01	68.5	5.09	88.5	5.13
9.0	3.51	29.0	4.84	49.0	5.01	69.0	5.09	89.0	5.13
9.5	3.63	29.5	4.85	49.5	5.02	69.5	5.09	89.5	5.13
10.0	3.74	30.0	4.85	50.0	5.02	70.0	5.09	90.0	5.13
10.5	3.85	30.5	4.86	50.5	5.02	70.5	5.09	90.5	5.13
11.0	3.94	31.0	4.87	51.0	5.02	71.0	5.09	91.0	5.13
11.5	4.03	31.5	4.87	51.5	5.03	71.5	5.09	91.5	5.13
12.0	4.11	32.0	4.88	52.0	5.03	72.0	5.09	92.0	5.13
12.5	4.18	32.5	4.89	52.5	5.03	72.5	5.10	92.5	5.13
13.0	4.25	33.0	4.89	53.0	5.03	73.0	5.10	93.0	5.13
13.5	4.30	33.5	4.90	53.5	5.04	73.5	5.10	93.5	5.13
14.0	4.35	34.0	4.90	54.0	5.04	74.0	5.10	94.0	5.14
14.5	4.40	34.5	4.91	54.5	5.04	74.5	5.10	94.5	5.14
15.0	4.44	35.0	4.91	55.0	5.04	75.0	5.10	95.0	5.14
15.5	4.48	35.5	4.92	55.5	5.04	75.5	5.10	95.5	5.14
16.0	4.51	36.0	4.92	56.0	5.05	76.0	5.10	96.0	5.14
16.5	4.54	36.5	4.93	56.5	5.05	76.5	5.10	96.5	5.14
17.0	4.56	37.0	4.93	57.0	5.05	77.0	5.11	97.0	5.14
17.5	4.58	37.5	4.94	57.5	5.05	77.5	5.11	97.5	5.14
18.0	4.60	38.0	4.94	58.0	5.05	78.0	5.11	98.0	5.14
18.5	4.62	38.5	4.94	58.5	5.05	78.5	5.11	98.5	5.14
19.0	4.64	39.0	4.95	59.0	5.06	79.0	5.11	99.0	5.14
19.5	4.65	39.5	4.95	59.5	5.06	79.5	5.11	99.5	5.14
20.0	4.67	40.0	4.96	60.0	5.06	80.0	5.11	100.0	5.14

# Tribal Economic Development Bonds

## Notice 2012-48

### SECTION 1. PURPOSE

This notice solicits applications for allocations of the available amount of national bond volume limitation authority (volume cap) for tribal economic development bonds (Tribal Economic Development Bonds). The available amount includes amounts that were previously allocated and subsequently forfeited under Notice 2009-51, 2009-28 I.R.B. 128 (July 13, 2009), Announcement 2010-88, 2010-47 I.R.B. 753 (November 22, 2010), and Announcement 2011-71, 2011-46 I.R.B. 770 (November 14, 2011). This notice also provides related guidance on the following: (1) application requirements and forms for requests for volume cap allocations; and (2) the method that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) will use to allocate the volume cap.

### SECTION 2. BACKGROUND

Section 1402 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), added § 7871(f) to the Internal Revenue Code (Code). In general, the purpose of § 7871(f) is to give Indian tribal governments greater flexibility than is allowable under the existing standard of § 7871(c) through the issuance of Tribal Economic Development Bonds to finance economic development projects. Section 7871(f)(1) provides that the Secretary shall allocate the \$2 billion volume cap among the Indian tribal governments in such manner as the Secretary, in consultation with the Secretary of the Interior, determines appropriate.

In Notice 2009-51, the Treasury and the IRS solicited applications for allocations of volume cap and addressed administrative procedures for the initial allocations of the \$2 billion volume cap. On September 15, 2009, the IRS announced allocations in an aggregate amount of approximately \$1 billion of volume cap for the first allocation (2009 First Allocation) of authority to issue Tribal Economic Development Bonds. On February 9, 2010,

the IRS announced allocations in an aggregate amount of approximately \$1 billion of volume cap in the second allocation (2010 Second Allocation) of authority to issue Tribal Economic Development Bonds.

Section 7.f. of Notice 2009-51 provides that if bonds were not issued by December 31, 2010, for any or all of the allocation received by an Indian tribal government from the 2009 First Allocation, or by December 31, 2011, for any or all of the allocation received by an Indian tribal government from the 2010 Second Allocation, then any or all of such allocation not used to issue bonds would be treated as forfeited.

In Announcement 2010-88, the IRS announced an automatic six-month extension of the administrative deadline to issue bonds under bonding authority from the 2009 First Allocation from December 31, 2010, to June 30, 2011, and a process by which Indian tribal governments could receive an additional six-month extension of the administrative deadline to issue bonds under bonding authority from the 2009 First Allocation from June 30, 2011, to December 31, 2011. Section 3 of Announcement 2010-88 provides that an allocation received pursuant to the 2009 First Allocation shall be treated as forfeited if bonds are not issued by the applicable deadline.

In Announcement 2011-71, the IRS notified eligible Indian tribal governments that they could request a three-month extension from December 31, 2011, to March 31, 2012, to issue Tribal Economic Development Bonds. Indian tribal governments eligible for such extension were (1) those that had received an allocation of volume cap from the 2009 First Allocation if an extension of the deadline to issue bonds from June 30, 2011, to December 31, 2011 had been granted pursuant to the process described in Announcement 2010-88, or (2) Indian tribal governments that had received an allocation from the 2010 Second Allocation. Section 4 of Announcement 2011-71 also provides that an allocation with respect to which the Indian tribal government received an extension pursuant to the process described in Announcement 2011-71 is treated as forfeited if bonds were not issued by March 31, 2012.

Notice 2009-51, Announcement 2010-88, and Announcement 2011-71 provide that any allocation amounts treated as forfeited may be available for allocation by the IRS. Indian tribal governments have reported to the IRS the issuance of Tribal Economic Development Bonds in the amount of \$197,153,357. Based on these reports and the passage of the deadlines described above for issuing Tribal Economic Development Bonds, the IRS has identified \$1,802,846,643 of volume cap that is available for reallocation.

In Announcement 2011-71, and pursuant to Executive Order 13175 on tribal consultation, the IRS announced that it was seeking public comment from Indian tribal governments and other interested members of the public on the reallocation of available volume cap in order to facilitate issuance of Tribal Economic Development Bonds by Indian tribal governments. Pursuant to the Announcement and the Executive Order, consultation sessions were held in person and by telephone with tribal organizations.

### SECTION 3. GENERAL APPLICATION REQUIREMENTS

Each application for an allocation of volume cap under § 7871(f)(1) submitted pursuant to this notice (Application) must be prepared and submitted in accordance with this section. By submitting an Application, the applicant agrees to comply with the requirements of this notice. For an Application to comply with this section, among other things, the Application must be prepared in substantially the same format as the form attached to this notice as Appendix A. This notice, including Appendix A, may be found electronically under the link "TEB Published Guidance" on the IRS web site at <http://www.irs.gov/tax-exemptbond/index.html>.

a. *Qualified issuer.* The Application must be submitted by an Indian tribal government (Applicant). See § 7701(a)(40)(A) of the Code and Revenue Procedure 2008-55, 2008-39 I.R.B. 768. The Application must identify the Applicant, including the Applicant's Federal tax identification number, and either: (1) state that the entity is included on the most recent list published by the Department of the Interior in the Federal Register pursuant to the Federally Recognized Indian

Tribe List Act of 1994, Pub. L. 103–454, 108 Stat. 4791, or (2) provide a letter from the Department of the Interior stating that the Indian tribal government has been acknowledged as a Federally recognized Indian tribe. See section 4.e. of this notice for pool bond issuers and issuers of Tribal Economic Development Bonds other than the Indian tribal government that receives an allocation.

b. *Signatures.* The Application must be signed and dated by an authorized official of the Applicant. For purposes of the Application, the term “authorized official of the Applicant” means an officer, board member, employee, or other official of the Applicant who is duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt of the Applicant (for example, a tribal chairperson, chief executive officer, or chief financial officer), similar to the kind of duly authorized official of an Indian tribal government who would be authorized to execute documents in connection with an Indian tribal government’s declaration of official intent to reimburse expenditures from the proceeds of a borrowing under § 1.150–2(e) of the Income Tax Regulations.

c. *Contact person.* The Application must designate one or more persons with knowledge of the project that the Applicant duly authorizes to discuss with the IRS any information relating to the Application. The designation must include the designee’s name, title, telephone number, fax number, and mailing address. If a designee is not an official or officer of the issuer, the Application must include an executed Form 8821 (*Taxpayer Information Authorization*) or Form 2848 (*Power of Attorney and Declaration of Representative*) authorizing the disclosure of taxpayer information specifically relating to the Application.

d. *Addresses.* The Application must be submitted by hard copy accompanied by a copy of the Application in PDF format on a CD and sent by mail to the Internal Revenue Service (IRS), SE:T:GE:TEB:CPM, Attention: Mark Helfer, 1122 Town & Country Commons, St. Louis, MO 63017.

e. *Submission date.* Applications will be accepted by the IRS on an ongoing basis. See section 4 of this notice for further discussion of the general allocation process.

f. *Project description.* The Application must contain the information required by this subsection f.

(i) *Qualified project.* The Application must describe in reasonable detail the project or projects (project) reasonably expected to be financed with the proceeds of the Tribal Economic Development Bonds (proposed bonds), including information regarding the type and use of the project and a certification that the project will qualify for Tribal Economic Development Bond financing under § 7871(f). Applicants receiving an allocation may use proceeds of the proposed bonds only to finance the project or permitted deviations as further provided in section 6 of this notice.

(ii) *Project cost.* The Application must describe the reasonably expected cost of the project, including the portion to be financed by the proposed bonds and any portion to be financed by other sources, if any.

(iii) *Location of project.* The Application must include a certification that the project’s location is entirely within the Applicant’s reservation. In the case of a joint project described in section 3.m. of this notice, the Application must include a certification that the joint project will be located entirely within one or more of the reservations of the Indian tribal governments receiving an allocation of volume cap for the joint project.

(iv) *Project not used for gaming purposes.* The Application must include a certification that no portion of the proceeds of the proposed bonds will be used to finance any portion of a building in which class II or class III gaming, as defined in section 4 of the Indian Gaming Regulatory Act, Pub. L. 100–497, 102 Stat. 2475, codified at 25 U.S.C. § 2701–2721 (1988), is conducted or housed, or any other property actually used in the conduct of such gaming. For purposes of compliance with the limitation in § 7871(f)(3)(B) on the use of proceeds of Tribal Economic Development Bonds for these purposes, the safe harbor regarding certain determinations with respect to separate buildings under § 10(b) of Notice 2009–51 applies.

(v) *Approvals.* The Application must state that all required Federal, State, local, and tribal approvals (regulatory and otherwise) for the project, the proposed bonds, and any other required financing

for the project have been obtained or, if any approvals have not yet been obtained, the Application must include a certification that the Applicant reasonably expects to receive all required approvals in a timely manner sufficient to permit issuance of the proposed bonds within the 180-day period prior to the expiration of the volume cap allocation (see section 4.g. of this notice). The Application must identify any required approvals that have not been obtained and must describe the Applicant’s plan and expected time frame for obtaining such approvals.

g. *Plan of financing.* The Application must contain a reasonably detailed description of the plan of financing for the project including (1) the amount of Tribal Economic Development Bonds expected to be issued and the amount of proceeds of such bonds to be allocated to the project, (2) any reasonably expected other sources of financing for the project together with a description of how such financing will be allocated to the project, and (3) documentation from an independent third party who is knowledgeable about the marketability of tax-exempt bonds evidencing that the proposed bonds are reasonably expected to be marketable prior to expiration of the volume cap allocation set forth in section 4.g. of this notice. Documentation that may be used to meet this requirement includes, among other things, the following: a bond purchase commitment letter from an investor; a credit quality assessment evidencing the investment grade credit quality of the proposed bonds from an independent organization that is in the business of assessing credit quality; a credit enhancement commitment letter from a financial institution that will enable the proposed bonds to be investment grade quality; a letter from an underwriter or financial advisor to the effect that the sale of the proposed bonds is likely to be successful in a timely manner before expiration of the volume cap allocation for the bonds described in section 4.g. of this notice; or similar documentation or a combination thereof.

h. *Compliance with Federal tax laws.* The Application must include a certification that the Applicant reasonably expects that the proposed bonds will meet the applicable requirements of § 7871(f) and that the Applicant has engaged bond counsel to render an opinion to the effect that the proposed bonds will meet those requirements.

i. *Dollar amount of allocation requested.* The Application must specify the dollar amount of the volume cap requested, not to exceed the amount of the proposed bonds.

j. *Demonstration of readiness to issue.* The Application must include a certification that the Applicant reasonably expects to use the volume cap allocation by issuing the proposed bonds prior to expiration of the volume cap allocation described in section 4.g. of this notice. Based on its overall assessment of an Applicant's readiness to issue the proposed bonds, the IRS may require the Applicant to provide additional information or supporting documentation to demonstrate the Applicant's readiness to issue such bonds, and the Application will be treated as incomplete until the IRS receives the additional information or documentation.

k. *Certain forfeitures.* In determining an Applicant's readiness to issue the proposed bonds under section 3.j. of this notice, the IRS will not take into account or otherwise consider any prior forfeitures or expirations of volume cap that occurred with respect to the original allocations of volume cap received for Tribal Economic Development Bonds under the 2009 First Allocation or the 2010 Second Allocation. In determining such readiness to issue the proposed bonds, however, the IRS may consider any forfeitures or expirations of volume cap previously received under this notice. The Application must identify any allocation of volume cap (not including any allocations received in the 2009 First Allocation or the 2010 Second Allocation) previously received by the Applicant under this notice that was forfeited or expired and provide an explanation of the reasons for such forfeiture.

l. *Multiple projects.* Subject to other limitations and requirements described herein, an Applicant may submit a single Application for volume cap that covers multiple projects, provided that such Application includes sufficient information to satisfy the requirements of this notice for each project independently of any other project covered by the Application (for example, for each project covered by the Application, the Application must include a plan of financing, a description of the project including costs and location, and a description of the status of approvals for that project). Alternatively, an Applicant

may submit separate Applications for separate projects.

m. *Joint projects.* An Applicant may submit an Application for an allocation of volume cap to finance its share of a joint project all of which will be owned by Indian tribal governments or which will, in part, be owned by an entity that is not an Indian tribal government, provided that the joint project will be located entirely on one or more of the reservations of any of the Indian tribal governments receiving an allocation with respect to such project. For this purpose, the type of joint ownership of facilities to be financed with Tribal Economic Development Bonds include only those recognized under the private activity bond restrictions on tax-exempt bonds under § 141.

n. *Perjury statement.* The Application must include the following declaration signed and dated by an authorized official of the Applicant: "I hereby certify that I am an authorized officer or official of the Applicant, that I am duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt, and that I am duly authorized to execute legal documents on behalf of the Applicant in making this Application. Under penalties of perjury, I declare that (i) I have knowledge of the relevant facts and circumstances relating to this Application and the project(s), (ii) I have examined this Application and the supporting documents, and (iii) to the best of my knowledge and belief, all of the facts contained in this Application and the supporting documents are true, correct and complete." If the Applicant subsequently submits any additional information or supporting documents with respect to the Application, such additional information or supporting documents must be accompanied by a declaration, signed and dated by an authorized official of the Applicant, in a form substantially identical to the declaration submitted with the Application pursuant to the preceding sentence.

#### **SECTION 4. GENERAL ALLOCATION PROCESS**

a. *Priority of Allocations.* Except as otherwise provided in this section 4, for Applications filed with the IRS that meet the requirements in this notice, the IRS will allocate an amount of available vol-

ume cap equal to the amount requested in the Application on a first-come, first-served basis by order of submission date (as defined in section 4.b. of this notice).

b. *Submission date and incomplete Applications.* Each Application will be treated as submitted on the day (submission date) the Application, and any additional information and supporting documents requested by the IRS, are received by the IRS and such Application, additional information, and supporting documents satisfy all of the applicable requirements of this notice, including being submitted as described in section 3 of this notice. The IRS may request additional information to support any of the requirements of this notice, including additional information and certifications to demonstrate that the proposed project will qualify for Tribal Economic Development Bond financing under § 7871(f) and to demonstrate the Applicant's readiness to issue the proposed bonds. The Application will not satisfy the requirements of this notice until the IRS receives such information.

c. *Limit on allocation to any one Indian tribal government.* No Indian tribal government will receive an allocation of volume cap that would cause the aggregate amount of volume cap allocated to that Indian tribal government pursuant to this notice (not including any allocations received in the 2009 First Allocation or the 2010 Second Allocation or amounts forfeited under section 4.g. or 4.i. of this notice) to exceed the Published Volume Cap Limit (as defined in the next sentence) in effect for the period that includes the submission date. The Published Volume Cap Limit for any period is the greater of: (1) 20% of the amount of available volume cap as of the first day of such period (determined by the IRS based on available information, including allocation data and reports of bonds issued); or (2) \$100 million. The Published Volume Cap Limit for the initial period beginning on the date of this notice is \$360,569,329 (20% of \$1,802,846,643). The IRS plans to publish updated Published Volume Cap Limits on the IRS website at <http://www.irs.gov/tax-exemptbond/index.html> or at such other location as the IRS may provide future public notice. Beginning no later than October 1, 2012, the IRS will publish these updates for successive two-month periods on or about the first business day of each pe-

riod. For purposes of this limitation, an Indian tribal government includes the Indian tribal government, together with any political subdivisions of the Indian tribal government, and any entities controlled by the Indian tribal government. An Application that requests an allocation of volume cap in an amount that would cause the Published Volume Cap Limit in effect on the date of submission to be exceeded will be treated as incomplete until the day the Applicant supplements the Application in a manner that complies with the requirements of the notice and does not cause such limit to be exceeded.

d. *Available volume cap limitation.* The IRS will not make an allocation that would cause the total amount of volume cap allocated (not including forfeited allocations) to exceed the \$2 billion statutory limit for Tribal Economic Development Bonds. In general, if the total amount of volume cap requested in an Application meeting the requirements of this notice exceeds the amount of available volume cap on the submission date (determined by the IRS based on available information, including allocation data and reports of bonds issued), then the Applicant will have the opportunity to receive a portion of the available volume cap. Further, if two or more Applications meeting the requirements of this notice are filed on the same submission date and the amount of available volume cap on that date is less than the total amount of requested volume cap under those Applications, then each Applicant will be given the opportunity to receive a portion of the available volume cap in proportion to their requested amount of volume cap. In any circumstance in which available volume cap is in an amount less than the amount requested, the IRS will notify the Applicant and the Applicant will be provided 30 days to notify the IRS (at the address specified in section 3.d. of this notice) of its decision to accept the allocation in the lesser amount or to delay the allocation for up to 180 days from the submission date to determine if future forfeitures of volume cap may allow the Applicant to receive the full amount requested.

If the Applicant decides to delay receiving its allocation, it will also notify the IRS of whether it will accept a lesser allocation if forfeitures of volume cap during the delay period are insufficient to allow the Applicant to receive the full amount requested. If the Applicant does not notify the IRS of its decision within 30 days of such IRS' notice to the Applicant, the Application will be treated as withdrawn. In any circumstance in which an allocation of volume cap may be in an amount less than the amount requested, the IRS may require the Applicant to supplement the Application to demonstrate that the requirements of this notice are satisfied if based on an Application for the reduced allocation.

e. *Section 17 corporations, subdivisions of Indian tribal governments, and pool bond issuers.*

(1) For purposes of issuing proposed Tribal Economic Development Bonds, an Applicant that receives an allocation may assign the allocation to an Indian tribal corporation organized under section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. section 477 (2012) (a Section 17 Corporation),<sup>1</sup> or to a subdivision of the Indian tribal government that satisfies the requirements of § 7871(d) to be treated as a political subdivision of a State, provided the assignment and use of the allocation conforms in all respects (other than with respect to the issuer of the bonds) to the Application of the assigning Applicant.

(2) An Applicant that receives an allocation may assign the allocation to a pool bond issuer to issue the proposed bonds provided that the proceeds of the proposed bonds are then loaned to the Applicant and provided that the pool bond issuer is itself an Indian tribal government, a subdivision of an Indian tribal government that satisfies the requirements of § 7871(d) for treatment as a political subdivision of a State, or a Section 17 Corporation. Pooled Tribal Economic Development Bonds will be subject to the provisions of § 149(f).

(3) Any bonds issued by a subdivision of an Indian tribal government, a Section 17 Corporation, or a pool bond issuer will be treated for purposes of a volume cap

allocation as if they were bonds issued by Applicant. Allocations will not be made to a pool bond issuer.

(4) The allocation limit of section 4.c. of this notice for any one Indian tribal government applies to the Applicant without regard to how the proposed bonds are issued (*i.e.*, whether the issuer is a subdivision of an Indian tribal government, a Section 17 Corporation, or a pool bond issuer).

f. *Confirmation of allocation.* The IRS will send the Applicant that receives a volume cap allocation a letter confirming the allocation (allocation letter).

g. *Expiration of allocation.* Applicants have 180 days from the date of the allocation letter to issue the proposed bonds. To the extent that the proposed bonds are not issued within 180 days of the date of the allocation letter, the portion of such allocation for which bonds have not been issued will be treated as forfeited and will be available for reallocation.

h. *Extensions and new Applications.* The IRS does not expect to grant extensions to the expiration date of the volume cap allocation as set forth in section 4.g. of this notice. An Indian tribal government that is unable to issue the proposed bonds within the 180-day period from the date of the allocation letter may reapply for an allocation. The new Application must comply with this notice, including by providing the information described in section 3.k. of this notice, and will be subject to the submission provisions of section 4.b. and the applicable limits set forth in section 4 of this notice.

i. *Voluntary forfeiture.* If an Applicant determines that it does not intend to use an allocation of volume cap to issue the proposed bonds (including circumstances in which the Applicant determines to finance the project with financing other than the proposed bonds), the Applicant should notify the IRS in writing at the address set forth in section 3.d. of this notice of its intention to forfeit the allocation. The notice will permit the IRS to treat the allocation as forfeited as of the date the IRS receives the notification, and the forfeited amount will be available to reallocate.

<sup>1</sup> Federally-chartered corporations organized and controlled by Indian tribal governments under section 17 of the Indian Reorganization Act of 1934 are eligible Indian tribal governmental issuers of tax-exempt bonds under § 7871 and eligible governmental users of proceeds of tax-exempt bonds for purposes of the private business restrictions on governmental bonds under § 141. See Treas. Reg. § 1.301.7701-1(a)(3) (Section 17 Corporations are integral parts of Indian tribal governments and are not recognized as separate entities apart from the Indian tribal governments for Federal tax purposes); Rev. Rul. 94-16, 1994-1 C.B. 19 (Section 17 Corporations are not separate taxable entities apart from the controlling Indian tribes and are not subject to Federal income taxation).

## **SECTION 5. CONSENT TO DISCLOSURE OF ALLOCATION**

To provide the public with information on how the volume cap has been allocated and to facilitate oversight of the Tribal Economic Development Bond program, the IRS intends to publish certain data regarding the results of the allocation process. The data will be most useful to the public if it identifies the specific allocations awarded. Pursuant to § 6103, consent is required for the IRS to disclose identifying information with respect to Applicants awarded an allocation. Therefore, the IRS seeks the consent of Applicants to the disclosure by the IRS of the name of the issuer, the type of project to be financed by the Tribal Economic Development Bonds, the reservation on which the project is to be located, the reasonably expected cost of the project, and the amount of volume cap allocation awarded to that Applicant. To provide valid consent, the consent must be in the form set forth in Appendix B. This consent to disclosure of certain information about allocations, however, is optional for Applicants. An Applicant is not required to consent to disclosure to receive an allocation. The IRS will not publish identifying information on Applications that are not awarded an allocation of volume cap or pending Applications but may publish an aggregate amount of allocations for which no consent was received.

## **SECTION 6. INSUBSTANTIAL DEVIATIONS FROM INFORMATION IN APPLICATION; EFFECTS OF OTHER CHANGES**

a. *Insubstantial deviations.* In general, an allocation of volume cap is valid for purposes of § 7871(f)(1) if the proposed bonds are issued, and the proceeds of such bonds are allocated to expenditures, in a manner that does not substantially deviate from the information submitted in the Application. For this purpose, whether a deviation from the information submitted in the Application constitutes an insubstantial deviation is determined based on all the facts and circumstances using criteria similar to those used under § 5f.103-2(f)(2), as amended or supplemented from time to time, regarding insubstantial deviations in the information

required for public approval of tax-exempt private activity bonds under § 147(f) of the Code. No further approval is necessary from, and requests for approvals should not be submitted to, the IRS with respect to such insubstantial deviations. Nevertheless, the Applicant must give the IRS notice of the deviation. If the insubstantial deviation occurs before the submission of the Notice of Issuance described in section 7.a. of this notice, the Notice of Issuance must include a description of the insubstantial deviation. If the insubstantial deviation occurs after the submission of the Notice of Issuance, the Applicant must submit a supplement to the Notice of Issuance which describes the insubstantial deviation. The supplement should contain a copy of the notice of Issuance as well as the details of the deviation and should be sent to the same address as the Notice of Issuance.

b. *Substantial deviations—In general.* (1) Other than as described in section 6.b.(2) below, an allocation of volume cap under an Application is invalid for purposes of § 7871(f) if there is a change relating to the issuance of the proposed bonds or the allocation of the proceeds of such bonds to expenditures that substantially deviates from the information submitted in the Application. In the event of such a change prior to the issuance of its proposed bonds, the Applicant may notify the IRS that it does not intend to use the original allocation of bond volume cap as described in section 4.i. of this notice and submit a new Application reflecting the modified information. The new Application must comply with this notice, including by providing the information described in section 3.k. of this notice, and will be subject to the submission provisions of section 4.b. and the applicable allocation limits in section 4 of this notice.

(2) *Certain post-issuance deviations.* A substantial deviation that occurs after the proposed bonds are issued and prior to the allocation of gross proceeds of such bonds to expenditures under the general rule set forth in § 1.148-6(d)(1)(iii) will not invalidate the allocation of volume cap under the Application if the Applicant submits a supplement to the Notice of Issuance (as defined in section 7.a. of this notice) to the IRS. The supplement must (1) be sent to the address set forth in section 7.a. of this notice, (2) describe the substantial deviation

between the information submitted in the Application and the actual information subsequent to the bond issuance, and (3) include a certification that the Applicant has received an opinion from bond counsel to the effect that the change will not cause the bonds to fail to meet all applicable requirements of § 7871(f) and the applicable requirements of §§ 103 and 141 and the regulations under such sections.

## **SECTION 7. INFORMATION REPORTING**

a. *Notice of issuance.* Not later than 15 days after issuance of the proposed bonds, the Applicant shall send to the IRS a notice of issuance (Notice of Issuance) of such bonds, which shall include the following information: (1) the Applicant's name and taxpayer identification number; (2) the issue price of the bonds issued; (3) the issue date of the bonds; and (4) a description of the project financed with the bonds. If the Applicant fails to respond within 15 days to an IRS request for confirmation that either the Notice of Issuance has been submitted or that the Applicant has voluntarily forfeited the allocation, the IRS, in its discretion, may treat allocations as forfeited and available for reallocation. The Applicant shall send the Notice of Issuance to the IRS at the following address: Internal Revenue Service, SE:T:GE:TEB:CPM, Attention: Mark Helfer, 1122 Town & Country Commons, St. Louis, MO 63017. Further, in the case of the issuance of any Tribal Economic Development Bonds that involves an insubstantial deviation under section 6.a. of this notice that occurs before submission of the Notice of Issuance, the Notice of Issuance shall include a description of the insubstantial deviation. For insubstantial deviations that occur after submission of the Notice of Issuance, see section 6.a. of this notice.

b. *Regular information reporting.* Subject to updated IRS information reporting forms or procedures, an issuer of Tribal Economic Development Bonds should complete Part II of Form 8038-G by checking the box on Line 18 (Other), writing "*Tribal Economic Development Bonds*" in the space provided for the bond description, and entering the issue price of the Tribal Economic Development Bonds in the Issue Price column. For purposes of this notice, the term "issue" has the mean-

ing used for tax-exempt bond purposes in § 1.150-1(c).

## **SECTION 8. PAPERWORK REDUCTION ACT**

The information collection contained in this notice has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35) under control number 1545-2233. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

Sections 3 and 7 of this notice contain the collections of information. That information is required in order to inform the

IRS of an Applicant's desire to receive an allocation of volume cap for Tribal Economic Development Bonds and to determine the amount of volume cap that may be allocated to each Applicant. The collections of information are mandatory for any Applicant that wishes to receive an allocation of volume cap for Tribal Economic Development Bonds. The likely respondents will be eligible issuers of Tribal Economic Development Bonds.

We estimate the total number of respondents to be 143 and the total annual responses to be 143. We estimate it will take 7 hours to comply. Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

Books or records relating to a collection of information must be retained as long as their contents may become material in

the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by § 6103.

## **SECTION 9. DRAFTING INFORMATION**

The principal authors of this notice are Debbie Cho of the IRS Office of Tax Exempt Bonds and Timothy L. Jones of the Office of Chief Counsel. However, other personnel from the Treasury and the IRS participated in its development. For further information regarding this notice, contact Timothy L. Jones at (202) 622-3701 (not a toll-free call). For further information about submitted applications, contact Mark Helfer at (636) 255-1201 (not a toll-free call).

**APPENDIX A**  
**APPLICATION FOR ALLOCATION OF**  
**TRIBAL ECONOMIC DEVELOPMENT BOND VOLUME CAP**

Internal Revenue Service  
SE:T:GE:TEB:CPM  
Attention: Mark Helfer  
1122 Town & Country Commons  
St. Louis, MO 63017

Dear Sir or Madam:

The following constitutes the application (Application) of (Name) (Applicant) for allocation of tribal economic development bond (Tribal Economic Development Bond) volume cap under § 7871(f) of the Internal Revenue Code (Code) (unless otherwise noted, section references herein are to the Code).

1. **Name of Applicant/issuer.** \_\_\_\_\_  
Street Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_  
EIN \_\_\_\_\_

2. **Status of issuer.** (*Select as appropriate*)

The Applicant/issuer is a “qualified issuer” under § 7871(f) because it is —

(i) an Indian tribal entity that appears on the most recent list published by the Department of the Interior in the Federal Register pursuant to the Federally Recognized Indian Tribe List Act of 1994, Pub. L. 103–454, 108 Stat. 4791 (List), as demonstrated by the attached documents included as Exhibit A.

(ii) an Indian tribal government that is acknowledged as a Federally recognized Indian tribe, as stated in a letter from the Department of the Interior, as demonstrated by the attached documents included as Exhibit A.

3. **Description of the project.** A description of the project to be financed (Project), including information regarding the type and use of the Project and a certification that the Project will qualify for Tribal Economic Development Bond financing under § 7871(f), is set forth below or in attached Exhibit B.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the Project is a jointly owned Project, please describe the other owners of the Project and the Applicant’s ownership interest in the Project.

If the Application relates to multiple Projects, the Applicant must include separate project-specific information in all relevant portions of the Application for each separate project (for example, for each separate project, the Application must separately include a plan of financing, describe the project including costs and location, and describe the status of the project’s approval).

4. **Pool issuances.** Does the Applicant expect to have the Tribal Economic Development Bonds issued by a pool issuer or an “on behalf of issuer”? \_\_\_\_\_

If the answer above is yes, please describe the pool issuer or “on behalf of issuer” and provide a statement that the pool issuer is an Indian tribal government or that the “on behalf of issuer” meets the requirements to be such an issuer under the rules applicable to bonds issued under § 103.

**Location of the Project.**

Reservation where the Project will be located: \_\_\_\_\_

Include in the attached Exhibit C, a certification that the Project will be located entirely on the Applicant’s reservation. If the Tribal Economic Development Bonds will be issued for a joint project please include in the attached Exhibit C a certification that the Project will be located entirely within one or more of the reservations of at least one of the Indian tribal governments receiving an allocation with respect to such Project.



5. **Not used for gaming purposes.**

Include in the attached Exhibit D a certification that no portion of the proceeds of any bonds issued pursuant to the requested allocation will be used to finance any portion of a building in which class II or class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act) is conducted or housed, or any other property actually used in the conduct of such gaming.

6. **Individual to contact for more information about the Project.**

Individual Name and Title

Company Name

Street Address

City

State

Zip

Telephone Number

Fax Number

Email Address

*(Include as appropriate)* The contact person is not an authorized official or officer of the Applicant and a properly executed Form 8821 (or Form 2848) is included with this Application that authorizes the disclosure by the IRS of information that relates to this Application and the Project(s) described above to the contact person.

7. **Approvals.** Include in the attached Exhibit E a certification that all required Federal, State, local, and tribal approvals (regulatory and otherwise) for the Project, the proposed Tribal Economic Development Bonds, and any other required financing for the Project have been obtained or, if any approvals have not yet been obtained, a certification that the Applicant reasonably expects to receive all required approvals in a timely manner sufficient to permit issuance of the proposed Tribal Economic Development Bonds within the 180-day period allowed for issuance of bonds under an allocation. In addition, include in the attached Exhibit E which required approvals have not been obtained and describe the Applicant's plan and expected time frame for obtaining such approvals.
8. **Plan of financing.** Include in the attached Exhibit F a plan of financing for the Project which includes: a reasonably detailed plan of financing which includes (1) the amount of Tribal Economic Bonds expected to be issued and the amount of proceeds of such bonds to be allocated to the project, (2) any reasonably expected other sources of financing for the project together with a description of how such financing will be allocated to the project, and (3) documentation from an independent third party who is knowledgeable about the marketability of tax-exempt bonds evidencing that the proposed bonds are reasonably expected to be marketable prior to expiration of the volume cap allocation set forth in section 4.g. of the notice. Documentation that may be used to meet this requirement for the proposed bonds includes, among others, the following: a bond purchase commitment letter from an investor; a credit quality assessment evidencing the investment grade credit quality of the proposed Tribal Economic Development Bonds from an independent organization that is in the business of assessing credit quality; a credit enhancement commitment letter from a financial institution that will enable the Tribal Economic Development Bonds to be investment grade credit quality; or a letter from an underwriter or financial advisor to the effect that the sale of the proposed bonds is likely to be successful in a timely manner before expiration of the volume cap for the allocation; or similar documentation or a combination thereof.
9. **Compliance with federal tax laws.** Include in the attached Exhibit G a certification that the Applicant reasonably expects that the proposed bonds will meet all applicable requirements of § 7871(f) and that the Applicant has engaged bond counsel to render an opinion to the effect that the proposed bonds will meet those requirements.
10. **Certification of readiness to issue.** Include in the attached Exhibit H a certification that the Applicant reasonably expects to use the volume cap allocation by issuing Tribal Economic Development Bonds prior to the expiration of the volume cap allocation.
11. **Certain forfeitures.** If the Applicant previously received an allocation of Tribal Economic Development Bond volume cap (not including any allocations received in allocations announced by the IRS on September 15, 2009 and February 9, 2010) that was forfeited, then the Applicant must identify any such forfeited allocation and include an explanation of the reasons for such prior forfeiture.
12. **Reimbursements.** *(For reimbursements, include the following statement.)* The Applicant intends to use the proceeds of Tribal Economic Development Bonds to reimburse costs of the Project in accordance with § 1.150-2. *(In addition, the Applicant must demonstrate that the requirements of § 1.150-2 will be met.)*

13. **Refundings.** *(For refundings or refinancings, include the following statement.)* The Applicant intends to use the proceeds of Tribal Economic Development Bonds to refund or refinance prior debt in circumstances that would qualify for a refunding or refinancing with tax-exempt bonds by a State or local government under § 103. In addition, the Applicant must demonstrate that applicable requirements for such a refunding or refinancing issue will be met.
14. **Dollar amount of allocation requested for the Project.** The Applicant hereby requests a Tribal Economic Development Bond allocation in the amount of \$
15. **Assignment of allocations to another issuer.** *(If the Applicant expects to assign its allocation to another qualified issuer of Tribal Economic Development Bonds as authority for the Tribal Economic Development Bond issuer to issue bonds for the project on behalf of the Applicant, the Applicant should provide the following statement.)*

The Applicant expects to assign the requested allocation for Tribal Economic Development Bonds volume cap to a qualified issuer of Tribal Economic Development Bonds as authority for the Tribal Economic Development Bond issuer to issue bonds for the project on behalf of the Applicant. Applicant agrees to obtain a written commitment from the assignee Tribal Economic Development Bond issuer that it is a qualified issuer of Tribal Economic Development Bonds and that it will issue Tribal Economic Development Bonds for the project within the time frame specified in the Application for the Applicant's bonds.

16. **Penalty of perjury statement and signatures.**

I hereby certify that I am an authorized officer or official of the Applicant, that I am duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt, and that I am duly authorized to execute legal documents on behalf of the Applicant in making this Application. Under penalties of perjury, I declare that (i) I have knowledge of the relevant facts and circumstances relating to this Application and the Project(s), (ii) I have examined this Application and the supporting documents, and (iii) to the best of my knowledge and belief, all of the facts contained in this Application and the supporting documents are true, correct and complete.

By:

Name:

Title:

Date:

**Exhibit A**  
**DOCUMENTS REGARDING ISSUER STATUS AS AN INDIAN TRIBAL GOVERNMENT**  
**(RESPONSE TO QUESTION 2 OF THE APPLICATION)**

(Attached hereto)

**Exhibit B**  
**DESCRIPTION OF THE PROJECT**  
**(RESPONSE TO QUESTION 3 OF THE APPLICATION)**  
(Attached hereto)

**Exhibit C**

**PROJECT LOCATION ON INDIAN TRIBAL GOVERNMENT RESERVATION  
(RESPONSE TO QUESTION 5 OF THE APPLICATION)**

**EXHIBIT D**  
**STATEMENT WITH RESPECT TO GAMING**  
**(RESPONSE TO QUESTION 6 OF THE APPLICATION)**

**Exhibit E**  
**APPROVALS**  
**(RESPONSE TO QUESTION 8 OF THE APPLICATION)**  
(Attached hereto)

**Exhibit F**  
**PLAN OF FINANCING**  
**(RESPONSE TO QUESTION 9 OF THE APPLICATION)**  
(Attached hereto)



**EXHIBIT G**  
**COMPLIANCE WITH FEDERAL TAX LAWS**  
**(RESPONSE TO QUESTION 10 OF THE APPLICATION)**  
(Attached hereto)

**EXHIBIT H**  
**STATEMENT OF READINESS TO ISSUE**  
**(RESPONSE TO QUESTION 11 OF THE APPLICATION)**

I hereby certify that I am an authorized officer or official of the Applicant, that I am duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt, and that I am duly authorized to execute legal documents on behalf of the Applicant in making this Application. I certify that the Applicant reasonably expects to issue the Tribal Economic Development Bonds pursuant to the allocation of volume cap for those bonds to be received pursuant to the Application prior to the expiration date of the volume cap allocation.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX B**  
**CONSENT TO PUBLIC DISCLOSURE**  
**OF CERTAIN TRIBAL ECONOMIC DEVELOPMENT BOND**  
**APPLICATION INFORMATION**

In the event that the Application of [(*Insert name of Applicant here*): \_\_\_\_\_] (Applicant) for an allocation of authority to issue tribal economic development bonds (Tribal Economic Development Bonds) under § 7871(f) of the Internal Revenue Code is approved, the undersigned authorized representative of the Applicant hereby consents to the disclosure by the Internal Revenue Service through publication of a Notice in the Internal Revenue Bulletin or other public release of the name of Applicant (issuer), the type of project to be financed by the Tribal Economic Development Bonds, the reservation on which the project is to be located, the reasonably expected cost of the project, and the amount of the allocation, if any, of volume cap authority to issue Tribal Economic Development Bonds awarded to the Applicant. The undersigned understands that this information might be published, broadcast, discussed or otherwise disseminated in the public record.

This authorization shall become effective upon the execution hereof. Except to the extent disclosure is authorized herein, the returns and return information of the undersigned taxpayer are confidential and are protected by law under the Internal Revenue Code.

I certify that I have the authority to execute this consent to disclose on behalf of the taxpayer named below.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name of Applicant-Taxpayer: \_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

Taxpayer's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note: Treasury Regulations require that the Internal Revenue Service must receive this consent within 60 days after it is signed and dated.

\_\_\_\_\_

**2012 Section 43 Inflation Adjustment**

**Notice 2012-49**

Section 43(b)(3)(B) of the Internal Revenue Code requires the Secretary to publish an inflation adjustment factor. The enhanced oil recovery credit under § 43 for any taxable year is reduced if the "reference price," determined under § 45K(d)(2)(C), for the calendar year

preceding the calendar year in which the taxable year begins is greater than \$28 multiplied by the inflation adjustment factor for that year. The credit is phased out in any taxable year in which the reference price for the preceding calendar year exceeds \$28 (as adjusted) by at least \$6.

The term "inflation adjustment factor" means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990.

Because the reference price for the 2011 calendar year (\$95.73) exceeds \$28 multiplied by the inflation adjustment factor for the 2011 calendar year (\$43.92) by \$51.81, the enhanced oil recovery credit for qualified costs paid or incurred in 2012 is phased out completely.

Table 1 contains the GNP implicit price deflator used for the 2012 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2011 calendar years.

Notice 2012-49 TABLE 1  
GNP IMPLICIT PRICE DEFLATORS

<i>Calendar Year</i>	<i>GNP Implicit Price Deflator</i>
1990	112.9 (used for 1991)
1991	117.0 (used for 1992)
1992	120.9 (used for 1993)
1993	124.1 (used for 1994)
1994	126.0 (used for 1995)*
1995	107.5 (used for 1996)
1996	109.7 (used for 1997)**
1997	112.35 (used for 1998)
1998	112.64 (used for 1999)***
1999	104.59 (used for 2000)
2000	106.89 (used for 2001)
2001	109.31 (used for 2002)
2002	110.63 (used for 2003)
2003	105.67 (used for 2004)****
2004	108.23 (used for 2005)
2005	112.129 (used for 2006)
2006	116.036 (used for 2007)
2007	119.656 (used for 2008)
2008	122.407 (used for 2009)
2009	109.764 (used for 2010)*****
2010	110.654 (used for 2011)
2011	113.347 (used for 2012)*****

\* Beginning in 1995, the GNP implicit price deflator was rebased relative to 1992. The 1990 GNP implicit price deflator used to compute the 1996 § 43 inflation adjustment factor is 93.6.

\*\* Beginning in 1997, two digits follow the decimal point in the GNP implicit price deflator. The 1990 GNP price deflator used to compute the 1998 § 43 inflation adjustment factor is 93.63.

\*\*\* Beginning in 1999, the GNP implicit price deflator was rebased relative to 1996. The 1990 GNP implicit price deflator used to compute the 2000 § 43 inflation adjustment factor is 86.53.

\*\*\*\* Beginning in 2003, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2004 § 43 inflation adjustment factor is 81.589.

\*\*\*\*\* Beginning in 2009, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2010 § 43 inflation adjustment factor is 72.199.

\*\*\*\*\* Beginning in 2011, the 1990 GNP implicit price deflator used to compute the 2012 § 43 inflation adjustment factor is 72.260.

Table 2 contains the inflation adjustment factor and the phase-out amount for taxable years beginning in the 2012

calendar year as well as the previously published inflation adjustment factors and phase-out amounts for taxable years be-

ginning in the 1991 through 2011 calendar years.

Notice 2012-49 TABLE 2		
INFLATION ADJUSTMENT FACTORS AND PHASE-OUT AMOUNTS		
<i>Calendar Year</i>	<i>Inflation Adjustment Factor</i>	<i>Phase-out Amount</i>
1991	1.0000	0
1992	1.0363	0
1993	1.0708	0
1994	1.0992	0
1995	1.1160	0
1996	1.1485	0
1997	1.1720	0
1998	1.1999	0
1999	1.2030	0
2000	1.2087	0
2001	1.2353	0
2002	1.2633	0
2003	1.2785	0
2004	1.2952	0
2005	1.3266	0
2006	1.3743	100 percent
2007	1.4222	100 percent
2008	1.4666	100 percent
2009	1.5003	100 percent
2010	1.5203	100 percent
2011	1.5326	100 percent
2012	1.5686	100 percent

**DRAFTING INFORMATION**

The principal author of this notice is Martha M. Garcia of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Garcia at (202) 622-3110 (not a toll-free call).

**2012 Marginal Production Rates**

**Notice 2012-50**

This notice announces the applicable percentage under § 613A of the Internal Revenue Code to be used in determining percentage depletion for marginal properties for the 2012 calendar year.

Section 613A(c)(6)(C) defines the term “applicable percentage” for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the per-

centage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which \$20 exceeds the reference price (determined under § 45K(d)(2)(C)) for crude oil for the calendar year preceding the calendar year in which the taxable year begins. The reference price determined under § 45K(d)(2)(C) for the 2011 calendar year is \$95.73.

The following table contains the applicable percentages for marginal production for taxable years beginning in calendar years 1991 through 2012.

Notice 2012-50

APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION

<i>Calendar Year</i>	<i>Applicable Percentage</i>
1991	15 percent
1992	18 percent
1993	19 percent
1994	20 percent
1995	21 percent
1996	20 percent
1997	16 percent
1998	17 percent
1999	24 percent
2000	19 percent
2001	15 percent
2002	15 percent
2003	15 percent
2004	15 percent
2005	15 percent
2006	15 percent
2007	15 percent
2008	15 percent
2009	15 percent
2010	15 percent
2011	15 percent
2012	15 percent

The principal author of this notice and Special Industries). For further Ms. Garcia at (202) 622-3110 (not a  
 is Martha M. Garcia of the Office of information regarding this notice, contact toll-free call).  
 Associate Chief Counsel (Passthroughs

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.

ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.

PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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### Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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