

OMNIBUS BUDGET RECONCILIATION ACT
OF 1987

CONFERENCE REPORT

TO ACCOMPANY

H.R. 3545



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exists only if both parties to a transaction are bound to complete the sale/purchase of specifically identified property.

2. Tax-exempt bonds issued by Indian tribal governments

Present law

Indian tribal governments generally are treated like States under the Internal Revenue Code. However, tribal governments may issue tax-exempt bonds only if the proceeds are used in the exercise of an "essential governmental function." Unlike States, tribal governments may not issue tax-exempt private activity bonds.

Treasury Department regulations have defined an "essential governmental function" to include any projects for which Federal assistance to Indian tribes may be provided, thereby including some commercial and industrial activities not generally conducted by States and local governments with general taxing powers.

House bill

The House bill clarifies that for Indian tribal governments an "essential governmental function" does not include any function which is not customarily performed by States and local governments with general taxing powers.

The provision applies to bonds (including refunding bonds) issued after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification permitting Indian tribal governments to issue as tax-exempt private activity bonds certain bonds for tribal manufacturing facilities⁵ as an exception to the general rule that tribal governments may issue tax-exempt bonds only for essential governmental functions which States and local governments customarily perform. The conferees adopted this limited exception in recognition of the unique responsibilities of Indian tribal governments in managing historical tribal resources and land held in trust by the Federal Government, and limited its scope to bonds designed to foster employment opportunities on these tribal lands as part of the performance of this unique responsibility.

For a bond to qualify under this exception, no person other than the issuing Indian tribal government may use the bond proceeds (or be responsible for debt service on the bonds) in a manner resulting in violation of the private business use and private payment

⁵ A facility which does not qualify as a manufacturing facility for purposes of this provision may nonetheless be financed with tax-exempt bonds issued by a tribal government provided that the facility satisfies the "essential governmental function" standard (i.e., the facility is comparable to facilities that are customarily acquired or constructed and operated by States and local governments. For example, a building used for offices for a tribal government itself would be comparable to State or local government office buildings, and therefore, could be financed with tax-exempt bonds. As another example, a lodge owned and operated by a tribal government may be eligible for tax-exempt financing if it is comparable to lodges customarily owned and operated by State park or recreation agencies.

tests that determine generally whether a bond is a private activity bond (sec. 141(a)). Additionally, no person other than the issuing Indian tribal government may be a principal user of the bond proceeds or bond-financed property in a manner violative of the restrictions on participation in qualified small-issue bonds by franchisors, etc. (sec. 144(a)(6)(B)). Bonds issued by Indian tribal governments under this exception are not subject to State volume caps, but are subject to all other Internal Revenue Code provisions that apply to private activity bonds (and the interest thereon). The conference agreement accomplishes this by treating bonds issued under this exception as qualified small-issue bonds.⁶

The following requirements apply specifically to these bonds:

(1) 95 percent or more of the proceeds of the bonds must be used to finance property that is acquired, constructed, or improved by and operated by the Indian tribal government issuing the bonds;⁷

(2) the bond-financed property must be of a character subject to allowance for depreciation and must be part of a manufacturing facility;⁸

(3) the bond-financed property must be located on Indian tribal which has been held in trust by the United States for the issuing tribe for at least five years immediately preceding issuance of the bonds and at all times when the bonds are outstanding;⁹ and

(4) an employment test must be satisfied.

The employment test requires that for every \$20 of bonds outstanding, at least \$1 in FICA wages must have been paid during the preceding year to a member¹⁰ of the issuing tribe employed at the manufacturing facility financed by the bonds.¹¹ It must be reasonably expected that the employment test will be satisfied when the bonds are issued. Further, the employment test is applied at the end of each calendar year that all or part of the bond issue is outstanding, beginning two years after the date of original issuance of the bonds. If the test is not satisfied as of any of these annual determination dates, the issuing tribal government must redeem bonds in an amount sufficient to meet the test within 90 days. Otherwise, interest on the bonds is taxable as of January 1 of the year following the December 31 when that determination of noncompliance is made.

⁶ Despite their treatment as qualified small-issue bonds, many of the restrictions generally applicable to such bonds under sec. 144(a) do not apply to these bonds. For example, bonds qualifying for tax-exemption under this exception are not subject to the termination date or the special size limits generally applicable to qualified small-issue bonds.

⁷ The conferees intend that this requirement be treated as satisfied if the property is owned by a wholly-owned Indian corporation or other entity, which owns the property on behalf of the issuing tribal government. In addition, property financed with the bonds may be owned by a joint venture entered into between two or more Indian tribal governments.

⁸ The term manufacturing facility is defined in the same manner under this exception as that term is defined for purposes of the exception permitting issuance of qualified small-issue bonds. (See sec. 144(a)(12)(C).)

⁹ Qualifying land held in trust by the United States for a tribe includes, e.g., trust land located on a reservation or elsewhere in Indian country (e.g., Oklahoma).

¹⁰ Members of the issuing tribe include a tribal member's spouse, even if such spouse is not a member of the issuing tribe.

¹¹ If two or more Indian tribes jointly financed a manufacturing facility under this provision, the employment test is met by a pro rata apportionment of FICA wages by tribe according to the relative participation of each tribe.

The employment test is to be applied with respect to the establishment (as that term is used in the *Standard Industrial Classification Manual*) of which the bond financed property is a part, not with respect to the specific bond financed property itself. For example, if bonds were issued to finance additional equipment at an existing saw mill, all wages paid to Indian employees working at the saw mill would count for purposes of the employment test. Wages paid to lumberjacks working at locations different from the saw mill would not count even if they were paid by the same tribal enterprise.

These provisions apply to bonds (including refunding bonds) issued after October 13, 1987.

PART 2. TECHNICAL CORRECTIONS

House bill

The House bill contains technical, clerical, and conforming amendments to the Tax Reform Act of 1986 and other recently enacted tax legislation (subtitle B of Title X of the House bill).

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

PART 3. MISCELLANEOUS TAX PROVISIONS

House bill

The House bill contains miscellaneous tax provisions (subtitle C of Title X of the House bill).

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

PART 4. TAX-EXEMPT ORGANIZATIONS' LOBBYING AND POLITICAL ACTIVITIES

A. DISCLOSURE REQUIREMENTS

1. Disclosure by certain tax-exempt organizations of nondeductibility of contributions

Present law

Only certain categories of tax-exempt organizations are eligible to receive tax-deductible charitable contributions for Federal income tax purposes (sec. 170(c)). Present law does not require other types of tax-exempt organizations, such as certain lobbying groups or political action committees, to state in solicitations for "contributions" or "donations" that such amounts are not deductible as charitable contributions.