



IRS Panel

Professor Gavin Clarkson
University of Michigan
School of Information
School of Law
Native American Studies

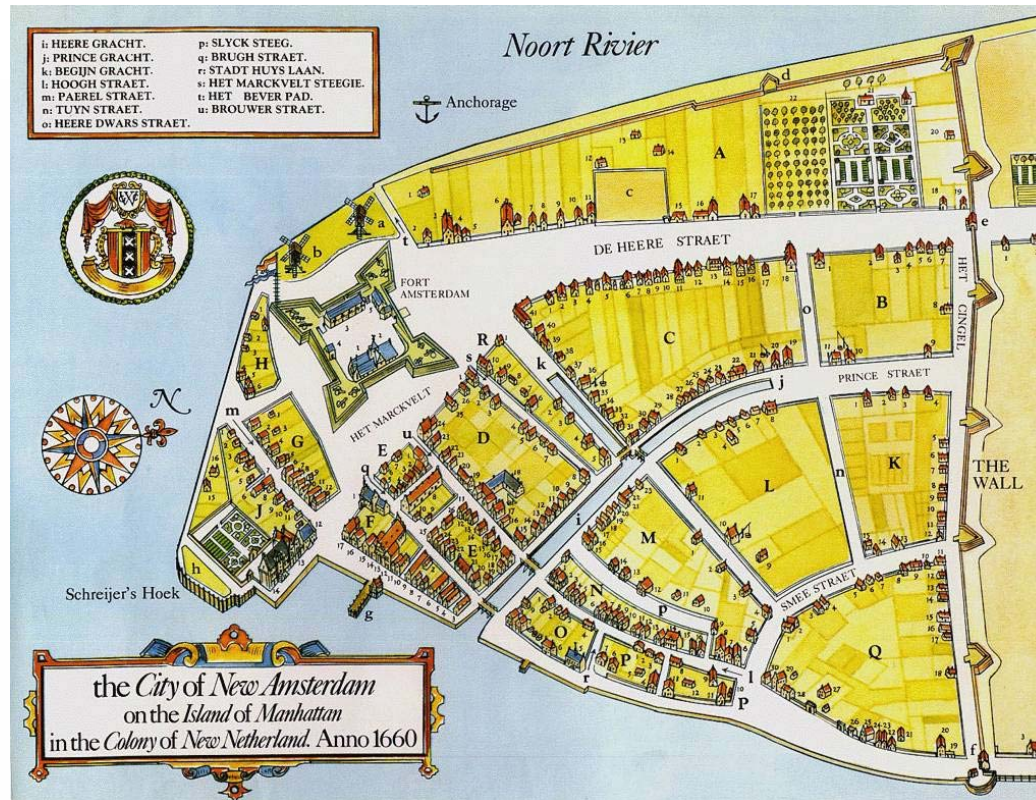


Presenters

- Dr. Gavin Clarkson, Professor
 - University of Michigan School of Information, School of Law, and Native American Studies
- Mr. Raymond Etcitty, Chief Legislative Counsel
 - Navajo Nation Office of Legislative Counsel
- Mr. Don Sampson, Executive Director
 - Confederated Tribes of the Umatilla Reservation
- Mr. Mark Scott, Partner
 - Vinson & Elkins, LLP
- Mr. Cliff Gannett, Director
 - Tax Exempt Bonds, Internal Revenue Service (IRS)



The Original Wall on Wall Street ...



was designed to keep the Indians out

Statutory Restrictions Imposed on Tribes but not on State or Local Governments

■ 1982 Tribal Tax Status Act

- Intended to treat tribes like states for tax purposes
- Rep. Gibbons (D-FL) and his fight with the Seminoles
- Limited tribal tax-exempt bond authority
 - No PABs
 - “Essential Governmental Function” test, 26 USC § 7871(c)(1)

■ 1987 Amendments

- Rep. Gibbons (D-FL) again
- 26 USC § 7871(e) added a “customary” requirement for EGF test



Suppression of Tribal Finance:

The Impact of the Essential Government Function Test

	2002 Issues	2002 Par Amount (US\$ mil)	2003 Issues	2003 Par Amount (US\$ mil)	2004 Issues	2004 Par Amount (US\$ mil)
State authority	1,943	125,595.7	1,978	119,013.3	1,884	102,837.4
Local authority	2,109	59,156.1	2,141	62,572.7	1,837	57,197.4
District	4,351	54,509.7	4,613	56,560.5	4,298	58,235.3
City, Town or Village	4,062	46,948.4	4,330	54,526.9	3,782	53,368.7
State	272	34,042.4	262	48,401.7	241	47,042.6
County /Parish	1,047	23,325.1	1,146	24,479.3	961	23,182.0
College or University	199	7,045.9	226	8,929.4	235	8,860.1
Direct Issuer	69	3,991.1	56	4,244.1	68	5,781.3
Co-op Utility	4	930.0	-	-	-	-
Total	14,056	355,544.4	14,752	378,727.9	13,306	356,504.8
Indian tribe	4	194.4	6	233.2	5	178.4

Source: Thompson Financial



Disparities with States

- Publicly financed, non-gaming activity
 - Hotels
 - Convention Centers
 - Liquor Stores
 - Golf Courses
- Publicly financed, gaming activity
 - Race tracks
 - Casinos
 - Lotteries



Hostile IRS Activity

- IRS FSA 200247012 -- Paiute golf course case
 - FSA available on www.tribalfinance.org
- Examining hostile IRS audit practices
 - Less than 0.5% of the more than 13,000 tax exempt municipal issuances each year are audited
 - 16.7% of tribal tax-exempt bonds issued between 2002 and 2005 have been audited
 - Tribes are 30 times more likely to be audited
 - Joint research with IRS
 - IRS takes no position on conclusions based on non-IRS data
- Conduit financing and other audits



Latest Developments

■ Proposed IRS Regulations

- Published in the Federal Register (8/9/06)
- Tribal bonds will only be tax-exempt if
 - 1) There are numerous State and local governments with general taxing powers that have been conducting the activity and financing it with tax-exempt governmental bonds
 - 2) State and local governments with general taxing powers have been conducting the activity and financing it with tax-exempt governmental bonds for many years, and
 - 3) the activity is not a commercial or industrial activity.

■ Significant Negative Commentary



Legislative Fix Needed

- Senate Finance Committee Testimony
 - May 23, 2006
 - Presented empirical results
- Legislative Response: S. 3567 (109th)
 - Baucus (D-Montana) and Smith (R-Oregon)
 - Amends § 7871
 - Eliminate EGF requirement
 - Allow Private Activity Bonds (PABs)
- Two policy rationales
 - Eliminate racial discrimination against tribes
 - Enhance federal revenues



Defining Racism

- Albert Memmi

- the generalizing definition and valuation of differences, whether real or imaginary, to the advantage of the one defining and deploying them, and to the detriment of the one subjected to the act of definition, whose purpose is to justify (social or physical) hostility and assault



Memmi's Moments of Racism

1. Insisting on a difference, whether real or imaginary
2. Imposing a negative valuation upon those seen as differing
3. Generalizing that difference to an entire group, which is then deprecated in turn
4. Justifying hostility, aggression, or privilege based on that difference



Positive Revenue Impact if §7871 is Amended

Taxable Rate		10.0%	
Tax exempt rate		6.5%	
Effective Federal Tax Rate on Wages		15%	
Bond	\$	5,000,000	\$ 5,000,000
Annual Tax-Exempt "Subsidy"	\$	175,000	
Annual Revenues	\$	2,000,000	\$ 2,000,000
Interest Expense	\$	325,000	\$ 500,000
Wages	\$	1,350,000	\$ 1,350,000
Other expenses	\$	300,000	\$ 300,000
Distribution to Tribe	\$	25,000	\$ (150,000)
Federal Taxes Paid by Employees	\$	202,500	
Federal Revenue Impact	\$	27,500	\$ (27,500)



Supportive Research Activities

■ Tax-Exempt Bonds

- www.tribalfinance.org
- Forthcoming article in North Carolina Law Review
- Collecting IRS Form 8038
 - Joint activity with NCAI, NITA, and others
 - Limited disclosure
 - Result will be a collective database of tribal tax-exempt financing

■ Discrimination in the Securities Laws

- Measure the magnitude of the liquidity premium caused by a lack of a securities regulation exemption for tribal municipal debt

■ Market Information Asymmetries

- Develop the Tribal Finance Information Clearinghouse to support tribal economic decision makers, entrepreneurs, and both large and small investors in the tribal finance marketplace

