

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:  
March 6, 2000

Legend

Agency =

Bonds =

State =

State Law =

Dear :

This letter is in response to your ruling request concerning the use of proceeds of tax-exempt bonds to finance the purchase of certain residential mortgage loans. Specifically, you have asked whether residences that are located on Indian reservation lands within the boundaries of the State are “located within the jurisdiction of” the Agency for purposes of § 143(c)(1)(B) of the Internal Revenue Code (the “Code”).

Facts

The Agency was created by the State and, pursuant to State Law, is authorized to issue bonds and to make mortgage loans with the proceeds of the bonds to persons or families of low and moderate income living within the State, including those living on tribal trust or reservation lands. The Agency issued the Bonds as qualified mortgage bonds under § 143. Reservation lands held by certain Indian tribes are located within the geographic boundaries of the State. The Bureau of the Census includes Native Americans residing on Indian reservations in its population figures, and accordingly, its population figures for the State include those persons living on the reservation lands within the State boundaries. The Indian tribes holding these reservation lands have not accepted the civil jurisdiction of the State.

## Law and Analysis

Section 103(a) provides that, in general, gross income does not include interest on any state or local bond. Section 103(b)(1) provides that this exclusion shall not apply to any private activity bond which is not a qualified bond (within the meaning of § 141). Section 141(e) provides, in part, that the term “qualified bond” means any private activity bond if such bond is a qualified mortgage bond and is issued as part of an issue which meets the applicable requirements of § 146.

Section 143(a)(1) provides that the term “qualified mortgage bond” means a bond which is issued as part of a qualified mortgage issue. Section 143(a)(2)(A) provides that the term “qualified mortgage issue” means an issue by a state or political subdivision thereof of 1 or more bonds, but only if all proceeds of such issue (exclusive of issuance costs and a reasonable required reserve) are to be used to finance owner-occupied residences and, among other things, the issue meets the requirements of subsection 143(c).

Section 143(c)(1) provides that a residence meets the requirements of § 143(c) only if (A) it is a single-family residence which can reasonably be expected to become the principal residence of the mortgagor within a reasonable time after the financing is provided, and (B) it is located within the jurisdiction of the authority issuing the bond. Section 143(c)(2) provides that an issue meets the requirements of § 143(c) only if all of the residences for which owner-financing is provided under the issue meet the requirements of § 143(c)(1).

Section 146(a) provides that a private activity bond issued as part of an issue meets the requirements of § 146 if the aggregate face amount of the private activity bonds issued pursuant to such issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed such authority’s volume cap for such calendar year.

Section 146(b) provides that the volume cap for any agency of the state authorized to issue tax-exempt private activity bonds for any calendar year shall be 50 percent of the state ceiling for such calendar year, and if more than 1 agency of the state is authorized to issue tax-exempt private activity bonds, all such agencies shall be treated as a single agency. Section 146(c)(1) provides that the volume cap for any issuing authority (other than a state agency) for any calendar year shall be an amount which bears the same ratio to 50 percent of the state ceiling for such calendar year as the population of the jurisdiction of such issuing agency bears to the population of the entire state. Notwithstanding, § 146(e)(1) provides that a state may, by law, provide a different formula for allocating the state ceiling among the governmental units (or other authorities) in such state having authority to issue tax-exempt private activity bonds.

Section 146(d) provides that the state ceiling applicable to any state for any calendar year from 1999 through 2002, shall be the greater of an amount equal to \$50

multiplied by the state population, or \$150,000,000.

Section 146(j) provides that determinations of the population of any state (or issuing authority) shall be made with respect to any calendar year on the basis of the most recent census estimate of the resident population of such state (or issuing authority) released by the Bureau of the Census before the beginning of such calendar year.

Section 143(c)(1)(B) requires that the residences for which financing is provided be located within the jurisdiction of the authority issuing the mortgage bonds. The purpose of the requirement is to ensure compliance with volume cap limitations. H. R. Rep. No. 96-1167, at 460 (1980), 1980-2 C.B. 550. For purposes of volume cap, the state ceiling for a state is calculated using the Bureau of the Census resident population estimate for the state. The Bureau of the Census population estimates include Native Americans residing on reservations. The jurisdictional requirement, therefore, is one of geographical jurisdiction, not political jurisdiction.

The reservations are within the geographical jurisdiction of the State. As the Agency is a State agency, we conclude that residences located on Indian reservation lands within the geographic boundaries of the State are "located within the jurisdiction of" the Agency for purposes of § 143(c)(1)(B).

This conclusion is consistent with the Code provisions related to Indian tribal governments. While Indian tribal governments have a limited authority to issue tax-exempt bonds for essential governmental functions, the tribal governments may not issue tax-exempt private activity bonds. Section 7871. Under § 7871(c), an Indian tribal government is not a state for purposes of private activity bonds and does not receive an allocation of volume cap. Accordingly, the only way for the residents of the Indian reservations to benefit from the volume cap attributable to their inclusion in the State population is through bonds issued by a State agency.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this

letter is being sent to your authorized representative.

Sincerely,

Assistant Chief Counsel  
(Financial Institutions & Products)

By: \_\_\_\_\_  
Timothy L. Jones  
Assistant to Branch Chief, Branch 5