



## New Opportunities in Tribal Finance

by Valerie Red-Horse

As the credit markets attempt to stabilize in a troubled and challenged economy, opportunities for tribal financing have reopened or appear in new and interesting forms. Although credit has tightened, leverage ratios have constricted, and lenders have diminished overall, tribes should explore and revisit opportunities available in this new landscape.

### Stimulus Bill Update

On February 17, 2009, President Obama signed HR-1, the American Economic Recovery and Reinvestment Act, also known as the “Stimulus Bill” or official law PL 111-5. This act is the largest economic stimulus legislation in United States’ history and provides several areas of opportunity and potential benefits for Indian Country. The act authorizes expanded federal tax incentives for the issuance of bonds, designed to increase the borrowing capability of tribal nations and decrease the cost of such capital. These incentives allow for new financing opportunities, a wider scope of uses and for the first time, redefine tribal governments as borrowers – to be considered the same as states and local governments when issuing certain debt instruments. In order to issue such bonds under the act’s parameters, tribes must complete and submit an application to the IRS for an allotment, no greater than \$30 million. This is NOT a grant. The funding is not provided by the government, but rather tribes can be granted the authority to issue bonds at a lower cost of capital. Deadlines for the applications are August 15, 2009 and January 1, 2010 – with respective deadlines for issuing the bonds by December 31, 2010 and December 31, 2011. The application requests information from the tribes that should be provided in concert with legal and financial advisors. It should also be noted that projects will only qualify if they are on tribal reservation lands and cannot include any portion of the gaming operations building. The financing that can be realized under this allocation will be provided by institutional investors seeking municipal tax-exempt lending opportunities and will be a very conservative investor pool with strict lending criteria.

### Value Add Investors

In a challenging economy, it is logical to seek win-win scenarios whereby a mutual benefit can be attained within a professional relationship. Many vendors that seek to bring value-add services to tribal casinos – such as slot providers, service providers, contractors, architects and others – are incentivized to provide or assist with financing for tribal operations in an effort to see their own contracts realized. All qualifications being equal, a service provider that can also assist with financing makes logical sense. Tribes should still seek

multiple proposals and review qualifications through requests for responses as their tribal government requires, but should also explore the financing rates and structures vendors can provide for expansions and refinancings otherwise stalled. Most tribal casino vendors will already understand the process of becoming registered with the tribe’s gaming commission, however, those vendor investors seeking to have a voice in the management of a tribal casino or participate in revenue share as a requirement of lending, will need National Indian Gaming Commission (NIGC) approval.

### NIGC Approvals

In this market where many facilities are realizing declines in their prior revenue levels, often a turnaround to reach maximum potential on an existing tribal facility will be a requirement of lenders – whether they be banks, institutional market lenders or vendors/value add providers of capital. Lenders seem willing to lend, even in these markets, if the facility agrees to have their existing management work with a turnaround group – a management consultant, and then everyone wins from the realized upside. If structured properly there can be more profit for the tribe and an otherwise unattainable financing may be structured. However, any contract that is a management agreement, or even a management consulting agreement, will need to be reviewed by NIGC to meet regulatory requirements and to be valid and binding. The NIGC will typically either weigh in with a declination letter (in the example of a consulting agreement) or approval for an actual management agreement. The NIGC approval process has historically gained a reputation for being very slow and frustrating to all parties. However, in light of the current market, tribal needs for financing and the urgency of some existing debt covenants, the NIGC has committed to expedient processing and they appear to be living up to their word.

### The New Investor Pool

When the market was robust, tribal gaming facilities had the option of borrowing from commercial banks or institutional lenders through a bond issuance. In either case, the tribes’ advisors and bankers would typically seek a small group of banks and institutional lenders such as insurance companies and mutual funds. All of these groups are considered Qualified Institutional Buyers or “QIBS” under securities laws (and have to meet set criteria demonstrating investment sophistication to be considered a QIB). In most cases bonds issued via these lenders were private placements (not public offerings) limited to certain securities restrictions. Now that many of the commercial banks and large institutional buyers have pulled back

from lending or tightened their criteria to be nearly prohibitive for tribal gaming facilities, there still are QIBS interested in lending. These now are typically smaller groups of pooled capital and most are newly formed, since the market has shifted so greatly. Many small groups of investors have hired savvy personnel as their fund managers, available due to the layoffs and closures at the larger investment banks and institutions. Several new lending entities have been recently created or restructured. Many of these funds are opportunistic in nature, meaning they are seeking higher rates of return on their investments, but still others have a more conservative profile – the pool is diverse. Regardless, these new investors together with vendor/value add investors can often make the difference for a tribal facility seeking to complete a financing package in this new market. The QIBS still need to meet regulatory and registration requirements under both securities laws and at the tribal gaming commission level.

### Structure

Many tribal facilities have learned that simply because financing might be available, it is not always wise to extend the facility's debt load to an extent that is prohibitive and dangerous. All tribal gaming facilities should carefully consider what their needs are going forward and downsize aggressive plans or phase expansions if possible. However, when necessary funding still seems challenging for those vital projects (or a

refinancing is required due to maturing debt), creative structures can provide financing solutions. A tribe can attain their financing needs by blending several types of capital in their overall plan. Funding issued via the Stimulus Bill or under existing tax exempt regulations will typically be senior debt at the tribal level and will carry the lowest interest rates and longest terms. Senior debt at the gaming facility will typically be attained from commercial banks and conservative investors with higher rates than tax-exempt debt, but still reasonable since they will be in a senior position. Rounding out the financing structure will often be what is referred to as junior, subordinate or mezzanine capital. By subordinating their position in terms of priority of payment and default preference, these lenders will expect a higher interest rate, but this often allows for the entire financing to be achieved and an overall blended interest rate that is reasonable. QIBS, value add vendor investors and management entities can all typically provide the junior capital in a financing structure.

### Off Balance Sheet Financing

Another creative financing option for those tribes whereby the gaming facility is not producing enough revenue to allow for expansion funding, is to seek partners that can finance the desired amenity such as a hotel or spa, and repay their investment through the operations of that separate entity as a stand-alone business profit center. Over time, the debt will be reduced or retired and eventually the business can be reverted entirely to the tribe. In a tight market, joint venture partners are logical and sensible when vetted properly. When the desired result is added customers to the tribal gaming facility, a hotel, golf course or spa can make business sense. Therefore having a national entity finance and operate these additional amenities cannot only enhance the gaming revenue but often allows for greater results at the amenity level since these partners typically bring a brand and existing expertise in the operation of that particular sector. Hotel operators for example, may draw from a large reservation system and branded marketing that will benefit the tribe and the overall business plan.

Even though the market has shifted and some of the players have changed, the business of operating tribal gaming facilities continues and the need for financing exists. The good news is that some amount of funding is attainable for most operating facilities or those new projects with strong demographics. Government agencies such as the Internal Revenue Service and the NIGC are attempting to assist with new opportunities and expedient processing. Tribes may need to take longer in placing their funding and seek creative structures and potential partners. Tribes as always should explore, research and be extremely cautious as they enter into financings, especially within new relationships. ♣

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Gaming**

**Executive Director of Tribal Gaming Office  
Puyallup Tribe Administration**

Close: 08/24/09  
Salary: Min. \$155,614 DOQ + Benefits

Duties specifically listed in the Tribal Gaming Ordinance, and has full responsibility for the day-to-day management of the Regulatory office.

Education/Experience: B.A. in the area of management, business, or a related gaming field; at least five years of director level supervisory and leadership experience; and a minimum of three years of experience in the regulation and control of gaming activities.

*For more details and an application form, go to [www.puyallup-tribe.com](http://www.puyallup-tribe.com) or call the Puyallup Tribe of Indians' HR Department at (253) 573-7958. Resumes submitted without a completed application will not be considered.*