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Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: February 15, 2002

November 14, 2001

Section 7871 -- Indian Tribal Governments Treated As States For Certain Purposes  
7871.00-00 Indian Tribal Governments Treated As States For Certain Purposes

CC: TEGE:EOEG:TEB / PLR-158070-01

LEGEND:

Tribe =  
Authority =  
Board of Directors of Authority =  
Act =  
Reservation =  
Date 1 =  
Date 2 =

Dear:

This letter is in response to your request for a ruling that the Authority is a political subdivision of Tribe within the meaning of [§ 7871\(d\) of the Internal Revenue Code](#).

### **Facts and Representations**

You make the following factual representations. Tribe is listed as an Indian tribal government in [Rev. Proc. 2001-15, 2001-05 I.R.B. 465](#), which lists Indian tribal governments that are to be treated as states for certain federal tax purposes pursuant to [§§ 7701\(a\)\(40\)](#) and [7871\(a\)](#). Authority is not included in the list of political subdivisions of an Indian tribal government published in [Rev. Proc. 84-36, 1984-1 C.B. 510](#), modified, [Rev. Proc. 86-17, 1986-1 C.B. 550](#).

Authority provides general governmental services to the tenants of the area within the physical boundaries of the Authority, including police, fire, emergency roads, sewer, water, land use planning, and other standard governmental services.

On Date 1, Tribe enacted the Act, which authorizes Tribe to grant charters for municipal corporations to be located within the Reservation. On Date 2, pursuant to the Act, Tribe chartered Authority as a municipal corporation of the Authority.

Pursuant to its charter, Authority is designated as a political subdivision of Tribe and is authorized to exercise the following powers within its physical boundaries: taxing and police powers, as well as the power of eminent domain.

The Board of Directors of Authority consists of a president and two board members elected by the Board of Directors of Tribe. The president and board members may be removed in the same manner as they are elected.

Authority must file with the Board of Directors of Tribe on an annual basis a full report of its financial activities.

### **Law and Analysis**

The Indian Tribal Governmental Tax Status Act of 1982 (Title II of [Pub. L. No. 97-473, 1983-1 C.B. 510, 511](#), as amended by [Pub. L. No. 98-21, 1983-2 C.B. 309, 315](#)) added provisions to the Internal Revenue Code that pertain to the tax status of Indian tribal governments. For two years beginning in 1983, Indian tribal governments were to be treated as states for some federal tax purposes.

Section 1065 of the Tax Reform Act of 1984, 1984-3 (Vol. 1) C.B. 556, made permanent the rules treating Indian tribal governments (or subdivisions thereof) as states (or political subdivisions thereof) for specified federal tax purposes. See [Rev. Proc. 86-17, Section 7701\(a\)\(40\)\(A\)](#) defines the term "Indian tribal government" as the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

[Section 7871\(a\)](#) treats an Indian tribal government as a state for certain specified tax purposes. In the legislative history to [§ 7871\(a\)](#), Congress indicated that this provision of the Code will not apply to any Indian tribal government unless it is recognized by the Treasury Department, after consultation with the Interior Department, as exercising sovereign powers. The legislative history provides that sovereign powers include the power to tax, the power of eminent domain, and police powers (such as control over zoning, police protection, and fire protection). [H.R. Conf. Rep. No. 97-984](#), at 15 ([1982](#)), [1983-1 C.B. 522](#).

Indian tribes possess inherent sovereignty except where it has been limited by treaty or statute, or by implication as a necessary result of their dependent status. Indian tribes are viewed as having certain inherent powers, including the power to tax and administer justice, whether they choose to take actions to exercise them or not. A written constitution or other governing document is not a prerequisite for the exercise of inherent sovereign powers. See [United States v. Mazurie, 419 U.S. 544 \(1975\)](#); [Merrion v. Jacarilla Apache Tribe, 455 U.S. 130 \(1982\)](#); [United States v. Wheeler, 435 U.S. 313 \(1978\)](#); [Kerr-McGee Corp. v. Navajo Tribe of Indians, 471 U.S. 195 \(1985\)](#); [Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134 \(1980\)](#); [Iron Crow v. Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, 231 F.2d 89 \(8<sup>th</sup> Cir. 1956\)](#); and Powers of Indian Tribes, I.D. 14 (1934), 1 Op. Sol. on Indian Affairs, 445 (U.S.D.I. 1979).

[Section 7871\(d\)](#) provides that for purposes of [§ 7871\(a\)](#), a subdivision of an Indian tribal government shall be treated as a political subdivision of a state if (and only if) the Secretary of the Treasury determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government.

[Rev. Proc. 84-36](#) provides a list of subdivisions of Indian tribal governments that are to be treated as political subdivisions of a state for specified purposes of the Code.

[Rev. Proc. 84-37, 1984-1 C.B. 513](#), modified, [Rev. Proc. 86-17](#), provides procedures for a governmental unit of an Indian tribal government not included on the list published in [Rev. Proc. 84-36](#) to request a ruling qualifying it for treatment as a state or a political subdivision of a state as provided under [§ 7871](#).

Section 2.03 of [Rev. Proc. 84-37](#) provides that a subdivision of an Indian tribal government that has been delegated one of the generally accepted sovereign powers may qualify as a political subdivision of a state as provided under [§ 7871\(d\)](#). Section 2.03 indicates that the generally accepted sovereign powers of states are the power to tax, the power of eminent domain, and the police power.

Tribe is a federally recognized Indian tribe. Pursuant to the Act, Tribe chartered Authority as a municipal corporation of the Authority. The charter was reviewed and approved by the BIA. Pursuant to its charter from Tribe, Authority is designated as a political subdivision of Tribe and is authorized to exercise taxing and police powers, as well as the power of eminent domain. The portion of each power delegated to Authority is not insubstantial.

This office has consulted with the United States Department of the Interior regarding Tribe and Authority. The United States Department of the Interior has opined that Tribe

has effectively delegated to Authority the power of eminent domain and the power to tax. Accordingly, after consultation with the Secretary of the Interior, we conclude that, within the meaning of [§ 7871\(d\)](#), Authority has been delegated the power to exercise one or more of the substantial governmental functions of Tribe. Therefore, for purposes of [§ 7871](#), Authority will be treated as a political subdivision of a state.

### **Conclusion**

Pursuant to [§ 7871\(d\)](#), Authority will be treated as a political subdivision of an Indian tribal government (Tribe). Accordingly, Authority will be treated as a political subdivision of a state for purposes of [§ 7871](#).

Except as specifically stated above, no opinion is expressed regarding the consequences of this transaction under any provision of the Code or regulations thereunder.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Assistant Chief Counsel (Exempt Organizations/Employment Tax/Government Entities)

By:

Timothy L. Jones  
Assistant Branch Chief Tax Exempt Bond Branch

This document may not be used or cited as precedent. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#).

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