

## IRC Section 7871

**Sec. 7871.** Indian tribal governments treated as states for certain purposes.

(a) General rule. An Indian tribal government shall be treated as a State

- (1) for purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under--
  - (A) **section** 170 (relating to income tax deduction for charitable, etc., contributions and gifts),
  - (B) **sections** 2055 and 2106(a)(2) (relating to estate tax deduction for transfers of public, charitable, and religious uses), or
  - (C) **section** 2522 (relating to gift tax deduction for charitable and similar gifts);
- (2) subject to subsection (b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by--
  - (A) chapter 31 (relating to tax on special fuels),
  - (B) chapter 32 (relating to manufacturers excise taxes),
  - (C) subchapter B of chapter 33 (relating to communications excise tax), or
  - (D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles);
- (3) for purposes of **section** 164 (relating to deduction for taxes);
- (4) subject to subsection (c), for purposes of **section** 103 (relating to state and local bonds);
- (5) for purposes of **section** 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);
- (6) for purposes of--
  - (A) **section** 105(e) (relating to accident and health plans),
  - (B) **section** 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities), and
  - (C) **section** 454(b)(2) (relating to discount obligations); and
  - (D) [Redesignated]
- (7) for purposes of--
  - (A) chapter 41 (relating to tax on excess expenditures to influence legislation), and
  - (B) subchapter A of chapter 42 (relating to private foundations).

(b) Additional requirements for excise tax exemptions. Paragraph (2) of subsection (a) shall apply with respect to any transaction only if, in addition to any other requirement of this title applicable to similar transactions involving a State or political subdivision thereof, the transaction involves the exercise of an essential governmental function of the Indian tribal government.

(c) Additional requirements for tax-exempt bonds.

- (1) In general. Subsection (a) of **section** 103 shall apply to any obligation (not described in paragraph (2)) issued by an Indian tribal government (or subdivision thereof) only if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.
- (2) No exemption for private activity bonds. Except as provided in paragraph (3), subsection (a) of **section** 103 shall not apply to any private activity bond (as defined in **section** 141(a)) issued by an Indian tribal government (or subdivision thereof).
- (3) Exception for certain private activity bonds.
  - (A) In general. In the case of an obligation to which this paragraph applies—
    - (i) paragraph (2) shall not apply,
    - (ii) such obligation shall be treated for purposes of this title as a qualified small issue bond, and
    - (iii) **section** 146 shall not apply.

- (B) Obligations to which paragraph applies. This paragraph shall apply to any obligation issued as part of an issue if—
- (i) 95 percent or more of the net proceeds of the issue are to be used for the acquisition, construction, reconstruction, or improvement of property which is of a character subject to the allowance for depreciation and which is part of a manufacturing facility (as defined in **section 144(a)(12)(C)**),
  - (ii) such issue is issued by an Indian tribal government or a subdivision thereof,
  - (iii) 95 percent or more of the net proceeds of the issue are to be used to finance property which—
    - (I) is to be located on land which, throughout the 5-year period ending on the date of issuance of such issue, is part of the qualified Indian lands of the issuer, and
    - (II) is to be owned and operated by such issuer,
  - (iv) such obligation would not be a private activity bond without regard to subparagraph (C),
  - (v) it is reasonably expected (at the time of issuance of the issue) that the employment requirement of subparagraph (D)(i) will be met with respect to the facility to be financed by the net proceeds of the issue, and
  - (vi) no principal user of such facility will be a person (or group of persons) described in **section 144(a)(6)(B)**.
- For purposes of clause (iii), **section 150(a)(5)** shall apply.
- (C) Private activity bond rules to apply. An obligation to which this paragraph applies (other than an obligation described in paragraph (1)) shall be treated for purposes of this title as a private activity bond.
- (D) Employment requirements.
- (i) In general. The employment requirements of this subparagraph are met with respect to a facility financed by the net proceeds of an issue if, as of the close of each calendar year in the testing period, the aggregate face amount of all outstanding tax-exempt private activity bonds issued to provide financing for the establishment which includes such facility is not more than 20 times greater than the aggregate wages (as defined by **section 3121(a)**) paid during the preceding calendar year to individuals (who are enrolled members of the Indian tribe of the issuer or the spouse of any such member) for services rendered at such establishment.
  - (ii) Failure to meet requirements.
    - (I) In general. If, as of the close of any calendar year in the testing period, the requirements of this subparagraph are not met with respect to an establishment, **section 103** shall cease to apply to interest received or accrued (on all private activity bonds issued to provide financing for the establishment) after the close of such calendar year.
    - (II) Exception. Subclause (I) shall not apply if the requirements of this subparagraph would be met if the aggregate face amount of all tax-exempt private activity bonds issued to provide financing for the establishment and outstanding at the close of the 90th day after the close of the calendar year were substituted in clause (i) for such bonds outstanding at the close of such calendar year.
  - (iii) Testing period. For purposes of this subparagraph, the term "testing period" means, with respect to an issue, each calendar year which begins more than 2 years after the date of issuance of the issue (or, in the case of a refunding obligation, the date of issuance of the original issue).

(E) Definitions. For purposes of this paragraph—

(i) Qualified Indian lands. The term "qualified Indian lands" means land which is held in trust by the United States for the benefit of an Indian tribe.

(ii) Indian tribe. The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(iii) Net proceeds. The term "net proceeds" has the meaning given such term by **section 150(a)(3)**.

(d) Treatment of subdivisions of Indian tribal governments as political subdivisions. For the purposes specified in subsection (a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a State if (and only if) the Secretary 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.

(e) Essential governmental function. For purposes of this **section**, the term "essential governmental function" shall not include any function which is not customarily performed by State and local governments with general taxing powers.