

PLR 9431019, 1994 WL 407374 (IRS PLR)

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: August 5, 1994
May 5, 1994

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

TR-31-218-94 / CC:DOM:FI&P:Br.3

Legend:

Commission = ***
Tribe = ***
Act = ***
Year 1 = ***
Name = ***

This ruling responds to your letter dated January 11, 1994, and subsequent submissions, requesting a ruling that the Commission will be treated as a political subdivision of a state under section 7871 of the Code for certain federal tax purposes.

FACTS

The Tribe is a federally recognized Indian tribe operating under a tribal constitution that was approved by the Secretary of the Interior and ratified by the members of the Tribe. The Tribe is listed in [Rev. Proc. 83-87, 1983-2 C.B. 606](#), as an Indian Tribal Entity recognized by the Service as exercising governmental functions for purposes of the Indian Tribal Governmental Tax Status Act.

The Tribe's constitution provides for a tribal committee ("Business Committee") which consists of a Chief, Second Chief, Secretary-Treasurer, and three councilpersons. The Business Committee has the power to transact business and otherwise speak and act on behalf of the Tribe in all matters on which the Tribe is empowered to act. In Year 1 the Business Committee passed the Act, creating the Commission.

The Commission is defined in the Act as "the tribe, operating in its corporate form having the purposes, powers, and duties as herein or hereafter provided by tribal law." The Commission's purpose includes the following missions: (a) remedying the disproportionate unemployment and underemployment of tribal members and other persons residing within the tribal jurisdiction; (b) providing revenues with which the Tribe may address other pressing matters of public health, safety, and welfare, or for other tribal purposes; (c) attracting private industry to the tribal jurisdiction; and (d) expanding the tribal land base and asset base and capacity for economic development potential through the purchase of additional land or assets for tribal use. The Commission is authorized to conduct business using Name.

The Act delegated certain powers to the Commission. One of the powers is that of eminent domain over tribal lands. The Act grants the Commission the power "[t]o exercise, in conformance with Tribal law, the power of eminent domain excepting land or interest therein held by any other agency of the Tribe, in order to further the purposes and powers expressed in this ordinance."

LAW

The Indian Tribal Government Tax Status Act of 1982 (Title II of Pub.Law No. 97-473, 96 Stat. 2605, 2067-11 as amended by [Pub.L. No. 98-21, 97 Stat. 65](#), 87) added provisions to the Internal Revenue Code that pertain to the tax status of Indian tribal governments. Section 7871(a) of the Code provides that Indian tribal governments shall be treated as states for certain specified federal income tax purposes.

The term "Indian tribal government" is defined in section 7701(a)(40) of the Code as the governing body of any tribe, band, community, village, or group of Indians or Alaska Natives, that is determined by the Secretary of the Treasury, after consultation with the Secretary of the Interior, to exercise governmental functions.

Section 7871(d) of the Code provides that for purposes of section 7871 of the Code, a subdivision of an Indian tribal government will 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 the 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, 1984-1 C.B. 510](#), contains a list of certain subdivisions of Indian tribal governments that are to be treated as political subdivisions of states for specific tax purposes under the Code. [Rev. Proc. 84-37, 1984-1 C.B. 513](#), provides procedures for a governmental unit of an Indian tribe or a political subdivision 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 section 7871(d) of the Code. The Commission is not included on the list published in [Rev. Proc. 84-36](#).

Section 2.03 of [Rev. Proc. 84-37](#), states 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 section 7871(d) of the Code." The three generally recognized sovereign powers of states are the police power, the power to tax, and the power of eminent domain. See [Shamberg v. Commissioner, 3 T.C. 131 \(1944\)](#), acq., 1945-1 C.B. 6, aff'd., [144 F.2d 998 \(2d Cir.1944\)](#), cert. denied, [323 U.S. 792 \(1945\)](#).

ANALYSIS

Congress authorized Indian tribes and their subdivisions to be treated like states for certain specified purposes because tribal governments, like state governments, serve the public within their jurisdictional boundaries, and accordingly should be permitted to devote their limited resources to that end. See S.Rep. No. 646, 97th Cong., 2d Sess. 11 (1982).

Neither the Code nor the Income Tax Regulations specifically define the term "substantial government function" as used in section 7871(d) of the Code. However, the power of eminent domain is one of the three generally recognized powers of a sovereign, the delegation of which by a state to a division thereof or to a local governmental unit, causes the recipient entity to be classified as a "political subdivision." [Rev. Proc. 84-37, 1984-1 C.B. 513](#), provides that a subdivision of an Indian tribal government may qualify as a political subdivision within the meaning of section 7871(d) of the Code if it has been delegated one or more of the generally accepted sovereign powers.

Based on the facts submitted, the Tribe's government has effectively delegated to the Commission the right to exercise the power of eminent domain, one of the three generally recognized powers of a sovereign.

We therefore conclude that within the meaning of section 7871(d) of the Code, the Commission has been delegated the right to exercise one of the substantial governmental functions of the Tribe's government. Consequently, for purposes of section 7871 of the Code, the Commission will be treated as a political subdivision of a state.

CONCLUSION

The Commission will be treated as a political subdivision of a state under section 7871 of the Code for the purposes specified in that section.

No opinion is expressed as to the federal tax consequences of this transaction under any other provisions of the Code. More specifically, this ruling does not necessarily establish that the Commission qualifies for a particular tax benefit. For example, when an Indian tribal government or a political subdivision of an Indian tribal government seeks exemption from excise taxes, the tribal government or subdivision must be able to demonstrate that the underlying transaction involves the exercise of an essential governmental function, within the meaning of section 7871(e) of the Code, of the Indian tribal government.

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

Sincerely yours,

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(Financial Institutions and Products)

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Chief, Branch 3

Enclosures:

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Copy of section 6110 purposes

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

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