

PLR 9812025, 1998 WL 123695 (IRS PLR)

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: March 20, 1998  
December 17, 1997

Section 7701 -- Definitions  
7701.00-00 Definitions  
7701.20-00 Indian Tribal Government

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

CC: DOM:FI&P:3 / PLR-114866-97

Legend:

Tribe =  
State X =  
Year 1 =  
Year 2 =  
Act Y =

This ruling responds to your letter dated July 28, 1997, and subsequent correspondence, requesting a ruling that Tribe is an "Indian tribal government" within the meaning of [sections 7701\(a\)\(40\)](#) and [7871\(a\) of the Internal Revenue Code](#).

#### FACTS

Tribe is officially recognized by the Department of the Interior as an Indian tribe with a government-to-government relationship with the United States by virtue of being included on the list of tribal entities published by the Secretary of the Interior in the Federal Register. See [62 Fed.Reg. 55270, 55271 \(1995\)](#).

Tribe is located in State X. Tribe's governing body is its elected Tribal Council, which exercises all of Tribe's governmental authority.

Tribe is not included in the list of Indian tribal governments provided in [Rev.Proc. 83-87, 1983-2 C.B. 606](#). This is a list of Indian tribal governments that are to be treated as states for certain federal tax purposes, pursuant to [sections 7701\(a\)\(40\)](#) and [7871\(a\)](#) of the Code.

Unlike many other tribes, Tribe chose not to enumerate the specific powers of Tribe's governing body in detail in its written constitution that was approved by the Department of the Interior in Year 1. Rather, Tribe chose to describe the powers of its governing body only in more general terms. Tribal ordinances show that Tribe exercises authority over a wide range of matters.

In Year 2, Congress restored Tribe to its status as a federally recognized Indian Tribe by enacting Act Y. Act Y not only clarified the status of Tribe by extending federal recognition to it, but also expressly provided that "[n]otwithstanding any other provision of law, [Tribe] shall be considered an Indian tribe for the purpose of the Indian Tribal government Tax Status Act ([26 U.S.C. 7871](#))."

#### 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, 1986-1 C.B. 550](#).

[Section 7701\(a\)\(40\)\(A\)](#) of the Code 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\(a\)](#) of the Code treats an Indian tribal government as a state for certain specified tax purposes. In the legislative history to [section 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. 984, 97th Cong., 2d Sess. 15 ([1982](#)), [1983-1 C.B. 522](#).

The Department of the Interior publishes a list of recognized Indian tribes. Tribal entities on this list have a government-to-government relationship with the United States and are eligible for programs administered by the Bureau of Indian Affairs. Tribe is on the list. Indian tribes possess inherent sovereignty except where it has been limited by treaty or federal statute, or by implication as a necessary result of their dependent status. Absent such limitation, tribes on the list retain the right to exercise a wide variety of powers, including the power to tax, the power of eminent domain, police powers, and jurisdiction over tribal lands.

Although Tribe has chosen to describe the powers of its governing body only in general terms, it is apparent from studying a list of tribal ordinances, that Tribe exercises a broad range of governmental powers, including but not limited to the power to tax, the power of eminent domain, and the police power. Moreover, in Act Y, Congress expressly provided that Tribe shall be considered an Indian tribe for the purpose of the Indian Tribal government Tax Status Act.

This office has consulted with the Department of the Interior regarding Tribe. The Department of the Interior has opined that the governing body of Tribe exercises sufficient governmental functions to be considered an Indian tribal government as defined in [section 7701\(a\)\(40\)](#) of the Code.

#### CONCLUSION

Tribe exercises governmental functions and thus qualifies as an "Indian tribal government" within the meaning of [sections 7701\(a\)\(40\)](#) and [7871\(a\)](#) of the Code. Except as specifically provided otherwise, no opinion is expressed on the federal tax consequences of any particular transaction. Specifically, this ruling does not conclusively establish that Tribe qualifies for a particular federal income or excise tax benefit. This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provided that this ruling may not be used or cited as precedent.

Sincerely yours,

Assistant Chief Counsel  
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By

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Enclosures:

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

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