

SECTION 1. PURPOSE

The purpose of this revenue procedure is to provide guidance as to the manner in which a governmental unit of an Indian tribe or a political subdivision of an Indian tribal government not included among those listed in Revenue Procedures previously published by the Service can request a determination qualifying it for treatment as a state or a political subdivision of a state as provided under section 7871 of the Internal Revenue Code.

SEC. 2. BACKGROUND

.01 The Indian Tribal Governmental Tax Status Act of 1982, (Title II of Pub.L. No. 97-473, 96 Stat. 2605, 2607-11, as amended by Pub.L. No. 98-21, 97 Stat. 65, 87 (1983-1 C.B. 510, 511)) added certain provisions to the Code that pertain to the status of Indian tribal governments. For two years beginning in 1983, Indian tribal governments (or subdivisions thereof) will be treated as states (or political subdivisions thereof) for specified federal tax purposes. For example, under new section 7871 of the Code interest on public activity bonds issued during the years 1983 and 1984 by a tribal government may be tax exempt, and a tribal government will be entitled to exemption from certain excise taxes. Also, charitable contributions made in 1983 and 1984 to or for the use of a tribal government may be deductible under federal gift and estate tax laws. Charitable contributions made during a taxpayer's tax years beginning in 1983 and 1984 may be deductible under the federal income tax laws.

.02 The term "Indian tribal government" is defined under section 7701(a)(40) of the Code (as amended) to mean the governing body of any tribe, band, community, village or group of Indians, or (if applicable) Alaska Natives, that is determined by the Secretary of 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, 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.

.03 Three generally accepted sovereign powers of states are the power to tax, the power of eminent domain and the police power. See Rev.Rul. 77-164, 1977-1 C.B. 20; Rev.Rul. 77-165, 1977-1 C.B. 21; and Rev.Rul. 61-181, 1961-2 C.B. 21. Section 7871(d) of the Code provides that a subdivision of an Indian tribal government shall be treated as a political subdivision of a state under certain circumstances. 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 for purposes of 7871(d) of the Code.

04. A list of Indian tribal entities that exercise governmental functions for purposes

of section 7871 of the Code has been published as Revenue Procedure 83-87, 1983-50 I.R.B. 6.

.05 A list of Indian tribal subdivisions has been published as Rev. Proc. 84-36, page 26, this Bulletin.

SEC. 3. APPLICATION

.01 If a tribal entity or tribal subdivision is not included in Rev. Proc. 83-87 or Rev. Proc. 84-36, a request for recognition as such should be submitted in the form of an application for a private letter ruling in accordance with Rev. Proc. 84-1, 1984-1 I.R.B. 10.

.02 All determinations will be made based on all the facts and circumstances. Each request should include an explanation how the entity satisfies the statutory definition of an Indian tribal government or to what extent the entity has been delegated one or more of the sovereign powers that would qualify it as an Indian tribal subdivision. Each request should also provide the actual or approximate date on which such entity satisfied the statutory definition of an Indian tribal government or was delegated one or more of the sovereign powers of an Indian tribal government. The explanation should be sufficiently detailed to show to the satisfaction of the Commissioner that the entity in question qualifies as a governmental unit of an Indian tribe or a political subdivision of an Indian tribal government.

.03 Each determination will specify whether or not the entity qualifies as an Indian tribal government (or subdivision thereof) and the date on which such determination is effective for purposes of section 7701 and 7871 of the Code.

.04 Requests for determination that an Indian tribal government qualifies for treatment as a state or that a subdivision of an Indian tribal government qualifies for treatment as a political subdivision of a state as provided under section 7871 of the Code should be sent to Internal Revenue Service, Associate Chief Counsel (Technical), Attention CC:IND:S, Room 6545, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.