

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply to:

Date:
April 5, 2000

Legend:

Tribe =

Tribal Council =

City X =

City X Tribe =

City X Tribal Council =

Date 1 =

Date 2 =

Dear :

This ruling responds to a letter dated August 13, 1999, and subsequent correspondence, requesting a ruling that City X Tribe will be treated as a political subdivision of a state under § 7871 of the Code for certain federal tax purposes.

FACTS

The United States Congress has statutorily acknowledged Tribal Council as a federally recognized Indian tribe. Tribal Council is recognized by the United States Department of Interior as an Indian tribe with a government-to-government relationship with the United States. Tribal Council 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. Tribal Council functions under a constitution that was adopted on Date 1.

City X Tribe is the local City X organization for members of Tribe. City X Tribe consists of all enrolled members of Tribe who reside in City X, as well as members of Tribe who are registered on the official voting list for City X and their descendants who are members of Tribe and who are not enrolled in another local organization for members of Tribe. City X Tribe is governed under a constitution that was approved by the Executive Committee of Tribal Council and subsequently adopted by the members of the City X Tribe on Date 2. City X Tribal Council is the governing body of City X Tribe.

Under the City X Tribe's constitution, the members of City X Tribe are members of Tribe. Moreover, City X Tribe shares in the sovereign immunity of Tribal Council. City X Tribe's constitution states that City X Tribal Council is the local governmental body of Tribe and as such shall exercise on the behalf of City X Tribe all sovereign governmental powers that are inherent or are delegated to it by Tribal Council. City X Tribe's constitution enumerates those inherent and delegated powers. The powers include the powers to acquire and dispose of real and personal property, and to administer, protect, and preserve all City X Tribal property. City X Tribal Council also has been delegated the power to safeguard and promote the general, social, and economic welfare of City X Tribe.

Moreover, under its constitution, City X Tribal Council is empowered to enact City X Tribal ordinances, resolutions, and administrative regulations to serve as Tribal law for City X Tribe. City X Tribal Council is directed under its constitution to establish a Tribal Court and to determine its jurisdiction provided that the Tribal Court shall not have any jurisdiction over any actions of Tribal Council.

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(d) of the Code provides that for purposes of § 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 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 § 7871(d) of the Code. City X Tribe 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 § 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).

Police powers include the power to promulgate and enforce regulations within an entity's scope. Shamberg, 3 T.C. 131 at 143. Because City X Tribe has been delegated the power to enact ordinances, to issue resolutions and regulations, and to establish a City X Tribal Court, City X Tribe is considered to possess police powers.

This office has consulted with the United States Department of the Interior regarding Tribal Council and City X Tribe. The

Department of the Interior has opined that Tribal Council has effectively delegated to City X Tribe police powers.

We therefore conclude that within the meaning of § 7871(d) of the Code, City X Tribe has been delegated the power to exercise one of the substantial governmental functions of Tribal Council. Consequently, for purposes of § 7871 of the Code, City X Tribe will be treated as a political subdivision of a state.

CONCLUSION

City X Tribe will be treated as a political subdivision of a state under § 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. In particular, this ruling does not necessarily establish that City X Tribe qualifies for a particular federal income or excise 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 § 7871(e) of the Code, of the Indian tribal government.

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

Sincerely yours,

Assistant Chief Counsel
(Financial Institutions
and Products)

By:

Alice M. Bennett
Chief, Branch 3

Enclosures:

Copy of this letter
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