

Internal Revenue Service

Department of the Treasury

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Washington, D.C.
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Refer Reply to:
CC:DOM:FI&P:1 - PLR-114656-99
Date:
April 20, 2000

LEGEND
Tribe =
Authority =
Act =
x =

y =

Dear:

This is in reply to a letter dated August 27, 1999, and subsequent correspondence, requesting a ruling that Authority is a political subdivision of Tribe within the meaning of §§ 7871(d) and 7701(a)(40) of the Internal Revenue Code.

FACTS

Tribe is listed as an Indian tribal government in Rev. Proc. 83-87, 1983-2 C.B. 606, 608, modified, Rev. Proc. 86-17, 1986-1 C.B. 550, supplemented, Rev. Proc. 92-19, 1992-1, C.B. 685, which lists Indian tribal governments that are to be treated as states for certain federal tax purposes pursuant to §§ 7701(a)(40) and 7871(a). Also, it is recognized by the United States Department of Interior as an Indian tribe with a government-to-government relationship with the United States. See 63 Fed. Reg. 71941, 71943 (1998). Authority is not included in the list of political subdivisions of an Indian tribal government published in Rev. Proc. 84-36, 1984-1 C.B. 510, modified, Rev. Proc. 86-17.

Tribe's constitution provides for a tribal Business Committee, which consists of the Chief, Second Chief, Secretary-Treasurer, and two councilpersons. The Business Committee has the power to transact business and otherwise speak and act for Tribe in all matters that Tribe is empowered to act. On April 23, 1999, the Business Committee passed Resolution 99-28 adopting Act establishing Authority. Act provides that Authority is a public body corporate and politic, subordinate economic enterprise, and a political subdivision of Tribe.

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The purposes underlying the creation and operation of Authority are to establish and organize tribal business enterprises and to acquire property for the purposes of reducing unemployment, raising revenues and promoting the economic welfare of Tribe.

Act provides a Board of Directors to manage Authority. The seven directors are appointed by the Chief with the advice and consent of the Business Committee. Directors serve a 10-year term and can only be removed for misconduct or dereliction of duty. The provisions of Act may not be amended, modified, supplemented or rescinded without the prior approval of Authority's Board of Directors.

Act provides that the Tribe has delegated to Authority the power of eminent domain. Authority's power of eminent domain covers all of Tribe's land. Tribe does not have a reservation. Tribal land is held in trust by the federal government for the benefit of Tribe. Currently, Tribe holds x acres of non-reservation federal trust land under its jurisdiction. y acres of this land is subject to a lease held by a private corporation as part of a management contract under which the corporation operates Tribe's gaming facility. Authority can exercise its power of eminent domain over the entire x acres of non-reservation federal trust land, including the y acres of land covered by the lease.

Act also provides that Tribe has delegated to Authority the power to assess, levy and collect sales taxes on any receipts from the sale of products or services, with the same force and effect as the Business Committee may levy and collect. Any tax approved by Authority shall be dedicated to a limited purpose specified in the ordinance levying the tax. Taxes collected shall be expended only for the purposes specifically described in the taxing ordinance enacted by Authority. Authority is prohibited from proposing taxing ordinances more often than three times in any calendar year, or twice in any six-month period.

Authority has also been given the power to issue obligations and other evidence of indebtedness, the payment of which is secured by its revenues. Such obligations are not deemed to be obligations of Tribe. Furthermore, the obligations are exempt from taxes imposed by Tribe. It is contemplated that Authority will issue obligations to finance infrastructure development and other tribal government projects, as well as certain economic activities. It is further contemplated that Authority will issue both obligations that are exempt from federal taxes and obligations not so exempt.

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Authority must pay over yearly to Tribe a percentage of its profits which, according to sound business practices, will be available for general expenditure purposes other than business development. Furthermore, Authority must submit quarterly and annual reports of its activities to the Business Committee.

LAW

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.

Section 7701(a)(40)(A) 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) treats an Indian tribal government as a state for certain specified tax purposes. In the legislative history to § 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.

Indian tribes possess inherent sovereignty except where it has been limited by treaty or statute, or by implication as a necessary result of their dependent status. Indian tribes are viewed as having certain inherent powers, including the power to tax and administer justice, whether they choose to take actions to exercise them or not. A written constitution or other governing document is not a prerequisite for the exercise of inherent sovereign powers. See United States v. Mazurie, 419 U.S. 544 (1975); Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982); United States v. Wheeler, 435 U.S. 313 (1978); Kerr-McGee

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Corp. v. Navajo Tribe of Indians, 471 U.S. 195 (1985); Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134 (1980); Iron Crow v. Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, 231 F.2d 89 (8th Cir. 1956); and Powers of Indian Tribes, 55 I.D. 14 (1934), 1 Op. Sol. on Indian Affairs, 445 (U.S.D.I. 1979).

Section 7871(d) provides that for purposes of § 7871(a), 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.

Rev. Proc. 84-36 provides a list of subdivisions of Indian tribal governments that are to be treated as political subdivisions of a state for specified purposes of the Code.

Rev. Proc. 84-37, 1984-1 C.B. 513, modified, Rev. Proc. 86-17, 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 § 7871 of the Code.

Section 2.03 of Rev. Proc. 84-37 provides 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). Section 2.03 indicates that the generally accepted sovereign powers of states are the power to tax, the power of eminent domain, and the police power.

ANALYSIS

Tribe is a federally recognized Indian tribe. Tribe created Authority by adopting Act. Act provides that Authority is to be a political subdivision of Tribe and specifically delegates to Authority the power and authority to exercise a portion of the Tribe's inherent sovereign powers of eminent domain and the power to tax. The portion of each power delegated to Authority is not insubstantial.

This office has consulted with the United States Department of the Interior regarding Tribe and Authority. The United States Department of the Interior has opined that Tribe has effectively delegated to Authority the power of eminent domain and the power to tax. Accordingly, after consultation with the Secretary of the Interior, we conclude that within the meaning of § 7871(d),

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Authority has been delegated the power to exercise one or more of the substantial governmental functions of Tribe. Therefore, for purposes of § 7871, Authority will be treated as a political subdivision of a state.

CONCLUSION

Pursuant to § 7871(d), Authority will be treated as a political subdivision of a Indian tribal government (Tribe). Accordingly, Authority will be treated as a political subdivision of a state for the purposes specified in § 7871(a).

No opinion is expressed as to the federal tax consequences to Authority under any other provision of the Code. For example, no opinion is expressed as to the federal tax consequences to Authority with respect to any specific transaction under § 103 or §§ 141 through 150, or whether Authority satisfies the specific requirements of § 7871(b) or § 7871(c).

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

In accordance with a Power of Attorney on file, we are sending a copy of this letter to your representative.

Sincerely,

Assistant Chief Counsel
(Financial Institutions & Products)

By: _____
Alvin J. Kraft
Chief, Branch 1

Enclosures:
Copy of this letter
Copy for § 6110 purposes