

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:TE/GE:EOEG:EO2 - PLR-112164-00
Date:
August 22, 2001

Re:

Legend

Tribe A =

Tribe B =

Business Council =

College A =

College B =

Commission =

Dear :

This letter is in response to a request submitted by your representative on June 14, 2000, as amended by a letter dated August 21, 2001, for a ruling that College A is an integral part of Tribe A.

FACTS AND REPRESENTATIONS

Tribe A is listed in 65 Federal Register 13298 (March 13, 2000) as a federally recognized tribe and in Rev. Proc. 2001-15, 2001-5 I.R.B. as a tribe that is treated as a state for specified purposes under the Internal Revenue Code ("the Code"). Business Council is the governing body of Tribe A. Business Council exercises the general governmental functions of Tribe A, including formation of corporations and adoption of measures to provide for the educational needs of the members of Tribe A.

Business Council chartered College A as a separate non-profit educational corporation under the laws of Tribe A. College A has been delegated the authority to provide post-secondary educational opportunities within the reservation of Tribe A. College A is governed by a board of directors who are appointed by the Business Council of Tribe A. A majority of the directors of College A must be members of Tribe

A.

College A is a satellite campus of College B and functions for educational accreditation purposes as the Tribe A campus of College B. College B is owned and operated by Tribe B, which is also listed in 65 Federal Register 13298 (March 13, 2000) as a federally recognized tribe and in Rev. Proc. 2001-15, 2001-5 I.R.B. as a tribe that is treated as a state for specified purposes under the Code. College B is accredited by Commission. College A intends to eventually seek its own accreditation. Current funding for the satellite campus is provided jointly by Tribe A and Tribe B. The College A curricula is jointly managed by Tribe A and Tribe B at campus facilities provided by Tribe A.

LAW AND ANALYSIS

Indian tribal governments are treated as states under § 7871(a), and as such, they are not subject to many federal taxes. 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 and have sovereign powers".

Generally, if income is earned by an enterprise that is an integral part of a state or political subdivision of a state, that income is not taxable in the absence of specific statutory authorization to tax that income. See section 511(a)(2)(B); Rev. Rul. 87-2, 1987-1 C.B. 18; Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29.

In Maryland Savings-Share Insurance Corp. v. United States, 308 F. Supp. 761, rev'd on other grounds, 400 U.S. 4 (1970) (MSSIC), the State of Maryland formed a corporation to insure the customer accounts of state chartered savings and loan associations. Under MSSIC's charter, the full faith and credit of the state was not pledged for MSSIC's obligations. Only three of eleven directors were selected by state officials. The district court rejected MSSIC's claim of intergovernmental tax immunity because the state made no financial contribution to MSSIC and had no present interest in the income of MSSIC. Thus, the imposition of an income tax on MSSIC would not burden the State of Maryland. Although the Supreme Court reversed the lower court on other grounds, it agreed with the lower court's analysis of the instrumentality and section 115 issues.

In State of Michigan and Michigan Education Trust v. United States, 40 F.3d 817 (6th Cir. 1994), rev'g 802 F. Supp. 120 (W.D. Mich. 1992), the court held that the investment income of the Michigan Education Trust (MET) was not subject to current taxation under section 11(a). The court's opinion is internally inconsistent because it concludes that MET qualifies as a political subdivision of the State of Michigan (*Id.* at 825), that MET is "in a broad sense" a municipal corporation (*Id.* at 826), and that MET is in any event an integral part of the State of Michigan (*Id.* at 829). Moreover, the

court's reliance on the factors listed in Rev. Rul. 57-128, 1957-1 C.B. 311, to reach its conclusion is misplaced. The revenue ruling applies to entities that are separate from a state. The factors in the revenue ruling do not determine whether an enterprise is considered to be a separate entity or an integral part of a state.

Nevertheless, in determining whether an enterprise is an integral part of an Indian tribe or a state, it is necessary to consider all of the facts and circumstances, including the Indian tribe's or the state's degree of control over the enterprise and the Indian tribe's or the state's financial commitment to the enterprise.

Treas. Reg. § 301.7701-1 et. seq. of the Procedure and Administration Regulations, the so-called "check-the-box" regulations, supports the position that an entity that is separate from a state or political subdivision may still be an integral part of that state or political subdivision. Treas. Reg. § 301.7701-1(a)(3) provides, in part, that:

“An entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State”.

Treas. Reg. § 301.7701-2(a) provides:

“For purposes of this section and section 301.7701-3, a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under section 301.7701-3) that is not properly classified as a trust under section 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code. A business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner”.

Treas. Reg. § 301.7701-2(b) provides, in part:

“For federal tax purposes, the term corporation means –

(1) A business entity organized under a Federal or State statute, or under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic;

(2) An association (as determined under section 301.7701-3);

* * *

(6) A business entity wholly owned by a State or any political subdivision thereof”.

Thus, the check-the-box regulations indicate that even though the College A is incorporated as a separate legal entity from Tribe A, College A nevertheless may be treated as an integral part of Tribe A if College A so qualifies.

The facts and circumstances indicate that College A is an integral part of Tribe A. College A was created by Tribe A's governing body, Business Council, as part of the general powers and duties conveyed to Business Council in the Tribal constitution. The organizing documents for College A specifically provide that College A is a nonprofit educational corporation chartered under the laws of Tribe A, and delegated the Tribe's educational powers and functions. College A's purposes are to provide post-secondary education within the reservation of Tribe A. At least three of College A's five member board of directors must be members of Tribe A. The selection criteria for directors are determined by Business Council and College A board vacancies are filled by the Tribe A Business Council. In addition, Business Council may appoint one ex officio director to serve as a liaison between the board of directors of College A and the Business Council of Tribe A. College A must submit annual reports to Tribe A's Business Council regarding the College's activities and financial matters. Any amendments to College A's formation documents are not effective until ratified and adopted by a majority vote of the Tribe A Business Council. These facts are consistent with exercise of significant control over College A by Tribe A.

In addition, the facts demonstrate Tribe A's substantial financial commitment to College A. Tribe A provides the necessary funding for College A, with additional funding provided by Tribe B and from public donations.

Because Tribe A, a federally recognized tribe, has demonstrated its financial commitment and control over College A and the services College A provides, we conclude that the College A is an integral part of Tribe A. Because College A is an integral part of Tribe A, an entity not subject to federal tax under § 7871(a) of the Code, College A's income is also not subject to federal tax.

CONCLUSION

College A is an integral part of Tribe A.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

Although College A is not required to file federal income tax returns, a copy of this letter must be attached to any income tax return to which it is relevant.

This ruling is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the submissions, the material is subject to verification on examination.

Sincerely,
Elizabeth Purcell
Chief, Exempt Organizations Branch 2
Office of District Counsel/Associate Chief
Counsel
(Tax Exempt and Government Entities)