



### **Facts and Representations**

Issuer is a political subdivision of Tribe, recognized as such by a private letter ruling previously issued by the Service. Tribe is recognized as an Indian tribal government in Rev. Proc. 2002-64, 2002-2 C.B. 717.

Issuer will issue tribal economic development bonds (the "Bonds") under § 7871(f) and use the proceeds of the Bonds to finance capital costs of the Facility. The Facility will consist of a building of approximately a square feet, of which approximately 20 percent (approximately b square feet) will be used as offices and conference rooms for employees of Issuer and of an LLC that is wholly owned by Issuer.

Many of the employees whose offices will be located in the Facility will perform functions directly related to the operations of the Casino.

No patrons of the Casino will engage in gaming within the Facility. Nor will any machines or supplies used in the conduct of gaming be located within the Facility, either for storage or maintenance purposes. Nor will the servers used to operate gaming activities be located within the Facility.

The Facility will contain the offices of the General Manager of the Casino and the following executives who have responsibilities that, in whole or in part, relate to Casino operations: (1) the Financial Controller, (2) the Director of Marketing, (3) the Table Games Director, (4) the Human Resource Director, (5) the Director of Information Technology, (6) the Casino Compliance Officer, and (7) the Facilities Director. The General Manager and each of the executives listed in this paragraph is an employee of Issuer. The activities performed or supervised by these individuals in the Facility are referred to herein as the "Designated Activities."

### **Law and Analysis**

Section 103(a) provides that gross income does not include interest on any State or local bond. Section 103(c)(1) provides that the term "State or local bond" means an obligation of a state or political subdivision thereof.

Section 7871 sets forth the various purposes for which an Indian tribal government may be treated as a State. 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 of the Treasury, after consultation with the Secretary of the Interior, to exercise governmental functions. The Secretary of the Treasury's determination is set forth in Rev. Proc. 2002-

64, which contains a modified and supplemented list of Indian tribal governments that are to be treated similarly to states for specified purposes under the Code.

Section 7871(a)(4) treats an Indian tribal government as a State for purposes of § 103 subject to § 7871(c). Section 7871(d) treats a subdivision of an Indian tribal government 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. A previously issued private letter ruling recognizes Issuer as a political subdivision of Tribe.

Section 7871(f)(1)(A) provides that the Secretary of the Treasury shall allocate the national tribal economic development bond limitation among the Indian tribal governments in such manner as the Secretary, in consultation with the Secretary of the Interior, determines appropriate. Section 7871(f)(2) provides in part that a tribal economic development bond shall be treated in the same manner as if such bond were issued by a State, and the Indian tribal government issuing such bonds and any instrumentality of such Indian tribal government shall be treated as a State for purposes of § 141.

Section 7871(f)(3)(A) defines a tribal economic development bond to mean any bond issued by an Indian tribal government the interest on which would be exempt from tax under § 103 if issued by a State or local government, and which is designated by the Indian tribal government as a tribal economic development bond. However, § 7871(f)(3)(B)(i) provides that no portion of the proceeds of an issue of tribal economic development bonds may be used to finance any portion of a building in which class II or class III gaming (as defined in § 4 of the Indian Gaming Regulatory Act) is conducted or housed or any other property actually used in the conduct of such gaming.

Section 4 of the Indian Gaming Regulatory Act (the "Act") defines class II gaming to mean (i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) - (I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, (II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and (III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and (ii) card games that - (I) are explicitly authorized by the laws of the State, or (II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

Section 4 of the Act further provides that the definition of class II gaming does not include (i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or (ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

Class III gaming is defined under § 4 of the Act to mean all forms of gaming that are not class I gaming or class II gaming. Section 4 defines class I gaming to mean social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations. The Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat. 2467.

Under § 7871(f)(3)(B)(i), no portion of the proceeds of a tribal economic development bond may be used to finance any portion of a building in which class II or class III gaming is conducted or housed or any other property actually used in the conduct of such gaming. By plain meaning, the “conduct” of gaming must involve the presence of customers, and a building “housing” gaming can only be a building in which customers actually are present and engaged in gaming. However, no customer of any type of gaming, including class II and class III gaming, will ever engage in gaming within the Facility. Furthermore, the Designated Activities, i.e., the activities of the General Manager and executives of the Casino overseeing the operation of the Casino from offices and conference rooms located in the Facility, are not activities that constitute gaming conduct and therefore also do not cause the Facility to be treated as housing or otherwise used in the conduct of class II or class III gaming. Section 7871(f)(3)(B)(i) thus does not prohibit the use of Bond proceeds to finance capital costs of the Facility.

### **Conclusion**

Under the facts and circumstances of this case, we conclude that the conduct of the Designated Activities in the Facility will not result in the conduct or housing of class II or class III gaming as defined in § 4 of the Indian Gaming Regulatory Act in the Facility within the meaning of § 7871(f)(3)(B)(i).

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

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

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to Issuer’s authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Issuer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel  
(Financial Institutions & Products)

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By: \_\_\_\_\_  
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