

Internal Revenue Service

Department of the Treasury

Index No.: 7871.00-00

Washington, D.C. 20224

199914043

Person to Contact:

Telephone Number:

Refer Reply to:

CC:DOM:FI&P:3/PLR-108147-98

Date:

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Legend:

Tribe =

Authority =

Council =

This ruling responds to a letter dated March 19, 1998, and subsequent correspondence, submitted by your authorized representative requesting a ruling that Authority will be treated as a political subdivision of a state under § 7871 of the Code for certain federal tax purposes.

FACTS

Tribe is recognized by the United States Department of Interior as an Indian tribe with a government-to-government relationship with the United States. Tribe 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. Several subdivisions of Tribe have been recognized by the Service as subdivisions of Tribe for federal tax purposes. Rev. Proc. 84-36, 1984-1 C.B. 510.

Tribe does not have a constitution but rather has an extensive Code. Tribe is governed by Council. Authority is a wholly owned entity of Tribe that was established by Tribe's Code and by various resolutions of Council. Authority is authorized and directed by Council to construct roads, bridges, dams, water lines, sewer lines, and sewer lagoons, and to perform environmental remediation and clean-up on Tribe's reservation

lands. Authority does not perform any construction projects outside of Tribe's reservation lands.

Authority is vested with the sovereign immunity of Tribe in its plan of operation by Council. Moreover, under Tribe's Code, Authority is authorized to initiate and to exercise the eminent domain power of Tribe to acquire lands and rights-of-way to carry out its purposes.

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. Authority is not included on the list published in Rev. Proc. 84-36.

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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).

This office has consulted with the United States Department of the Interior regarding Tribe and Authority. The Department of the Interior has opined that Tribe has effectively delegated to Authority the right to exercise the power of eminent domain.

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

CONCLUSION

Authority 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 Authority 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(j)(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
Alice M. Bennett
Chief, Branch 3

Enclosures:

- Copy of this letter
- Copy of section 6110 purposes