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Internal Revenue Service

Department of the Treasury

Index Nos: 7701.20-00
7871.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:
CC:DOM:FI&P:3 / PLR-116717-98

Date:
APR 14 1999

Legend:

Tribe =

State X =

Act Y =

Dear :

This ruling responds to your letter dated August 14, 1998, and subsequent correspondence, requesting a ruling that Tribe is an "Indian tribal government" within the meaning of sections 7701(a)(40) and 7871(a) of the Internal Revenue Code.

FACTS

Tribe is officially recognized by the Department of the Interior as an Indian tribe with a government-to-government relationship with the United States by virtue of being included on the list of tribal entities published by the Secretary of the Interior in the Federal Register. See 62 Fed. Reg. 55270, 55272 (1995). Congress reaffirmed the federally recognized status of Tribe under Act Y.

Tribe is located in State X. Tribe's governing body is its elected Tribal Council or Board of Directors, which exercises legislative and administrative authority. Under Tribe's Constitution, the Board of Directors is instilled with certain powers including, inter alia, the following:

(i) To promulgate and enforce ordinances governing the conduct of persons within Tribe's jurisdiction; to establish a reservation court and define its duties and powers;

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(ii) To exclude and remove from Tribe lands any person not legally entitled to be there;

(iii) To adopt resolutions, ordinances, and a code providing for the licensing, regulation, and control of non-Tribe persons coming upon or being within Tribe's territory or jurisdiction for the purpose of recreational boating, hunting, fishing, trapping, gathering fruits of the earth, or other usual rights of occupancy; and,

(iv) To adopt resolutions, ordinances, and a code providing for regulation and control of Bands' members who hunt, fish, trap, gather fruits of the earth, or exercise other usual rights of occupancy upon or within Tribe's territory or jurisdiction.

Tribe is not included in the list of Indian tribal governments provided in Rev. Proc. 83-87, 1983-2 C.B. 606. This is a list of Indian tribal governments that are to be treated as states for certain federal tax purposes, pursuant to sections 7701(a)(40) and 7871(a) of the Code.

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(a) of the Code treats an Indian tribal government as a state for certain specified tax purposes. In the legislative history to section 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.

The Department of the Interior publishes a list of recognized Indian tribes. Tribal entities on this list have a government-to-government relationship with the United States and are eligible for programs administered by the Bureau of Indian Affairs. Tribe is on the list. Indian tribes possess inherent sovereignty except where it has been limited by treaty or federal statute, or by implication as a necessary result of their dependent status. Absent such limitation, tribes on the list retain the right to exercise a wide variety of powers, including the power to tax, the power of eminent domain, police powers, and jurisdiction over tribal lands.

Although the powers of Tribe's governing body is stated in general terms, it is apparent from a review of certain tribal statutes enacted, implemented, and enforced by the Tribal Council that Tribe exercises a broad range of governmental powers, including but not limited to the powers of eminent domain and police powers. For example, in the Interim Criminal Code the Tribal Council exercises Tribe's power to prohibit certain conduct within its territory by punishing people who violate the laws of the Tribe.

This office has consulted with the Department of the Interior regarding Tribe. The Department of the Interior has opined that the governing body of Tribe exercises governmental functions.

CONCLUSION

Tribe exercises governmental functions and thus qualifies as an "Indian tribal government" within the meaning of sections 7701(a)(40) and 7871(a) of the Code.

Except as specifically provided otherwise, no opinion is expressed on the federal tax consequences of any particular transaction. Specifically, this ruling does not conclusively establish that Tribe qualifies for a particular federal income or excise tax benefit.

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 & Products)

By Alice M. Bennett
Alice M. Bennett
Chief, Branch 3

Enclosures:

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