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Person To Contact:

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Date:

February 01, 2006

In Re:

### LEGEND:

Tribe =

General =

Council

Council =

Reservation =

University =

Date 1 =

Date 2 =

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Dear :

This responds to Tribe's request for a ruling that University is an instrumentality of Tribe for purposes of § 7871(a) of the Internal Revenue Code.

### **Facts and Representations**

Tribe, located on Reservation, is listed in Revenue Procedure 2001-15, 2001-1 C.B. 465, as an Indian tribal government that is an entity that exercises governmental functions for purposes of the Indian Tribal Government 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). Indian tribes listed in Rev. Proc. 2001-15, are to be treated similarly to states for specified purposes under the Internal Revenue Code.

General Council, composed of all adult members of Tribe, is the supreme governing body of Tribe. Council is a business council of representatives from Tribe. All members of Council are elected by vote of General Council. General Council has authorized Council to act on behalf of Tribe to exercise a variety of powers, including the authority to establish or charter public bodies by official resolution.

University is a public college or university chartered by resolution of Council on Date 1 to provide educational opportunities to residents of Reservation, and anyone else choosing to enroll.

University's daily operations are managed by a president and a board of directors. All members of University's board of directors are appointed by Council. All decisions by University's board of directors concerning governance, including appointment of a president and removal of directors or a president, are made subject to Council's authority to insist that such decisions be made only with the consent of Council. General Council has the authority to direct Council to remove a president or members of the University board of directors.

University is required to submit an annual budget report to Council for approval. Failure of Council to approve the budget would result in University's loss of Tribe's financial support. University's primary source of funding is Tribe. More than A percent of University's annual revenue is currently provided by Tribe. University is located in office space owned by Tribe, for which University pays no rent or utility fees.

No part of the net earnings of University may inure to the benefit of, or be distributed to, its members, directors, officers, or other private persons. Council will immediately (within 30 days from Date 2) amend University's charter to provide that upon dissolution of University, all assets of University will be distributed for the benefit of Tribe.

### **Law and Analysis**

Section 170(a)(1) allows, subject to certain limitations, a deduction for charitable contributions as defined in § 170(c), payment of which is made within the taxable year.

Section 170(c)(1) includes in the definition of "charitable contribution" a contribution or gift made for exclusively public purposes to or for the use of a State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia.

Section 7701(a)(40)(A) provides that the term "Indian tribal government" means 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)(1)(A) provides that an Indian tribal government shall be treated as a State for purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under § 170 (relating to income tax deduction for charitable, etc., contributions and gifts).

Section 7871(c)(3)(E)(ii) provides that the term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Section 170(b)(1)(A)(v) provides in relevant part that, in the case of an individual, the deduction provided in § 170(a) shall be allowed for any charitable contribution to a governmental unit referred to in § 170(c)(1) to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year. Section 170(b)(1)(F) provides that the term contribution base generally means adjusted gross income.

Entities eligible to receive tax-deductible contributions include not only governmental units described in § 170(c)(1) but also wholly-owned instrumentalities of States or political subdivisions. See Rev. Rul. 75-359, 1975-2 C.B. 79; Rev. Rul. 79-323, 1979-2 C.B. 106.

Revenue Ruling 57-128, 1957-1 C.B. 311, sets forth the following factors to be taken into account in determining whether an entity is an instrumentality of one or more governmental units: (1) Whether the organization is used for a governmental purpose and performs a governmental function; (2) whether performance of its function is on behalf of one or more states or political subdivisions; (3) whether there are any private interests involved, or whether the states or political subdivisions have the power and interests of an owner; (4) whether control and supervision of the organization is vested in a public authority or authorities; (5) whether express or implied statutory or other authority is necessary for the creation and/or use of the organization, and whether this authority exists; and (6) the degree of financial autonomy of the entity and the source of its operating expenses.

Tribe is recognized as an Indian tribal government that is to be treated similarly to a state for specified purposes under the Internal Revenue Code.

University is used for a governmental purpose and performs a governmental function on behalf of Tribe. University is a public university chartered by Council to provide educational opportunities to all residents of Reservation.

There are no private interests involved in University, and Tribe has the power and interests of an owner. All of University's assets will be distributed for Tribe's benefit

upon dissolution of University. University is a public college or university controlled solely by Tribe. University's president and all members of University's board of directors are appointed by Council, and General Council has the authority to direct Council to remove any president or director. All decisions by University's board of directors concerning governance, including appointment of a president and removal of directors or a president, are made subject to Council's authority to insist that such decisions be made only with the consent of Council.

Statutory authority for the creation of University is found in the Tribal requirement that University be chartered by resolution of Council.

Tribe controls the financial affairs of University. University is required to submit an annual budget report to Council for approval. Failure of Council to approve the budget would result in University's loss of Tribe's financial support. University's primary source of funding is Tribe, and University pays no utility fees or rent for its physical location provided by Tribe.

### **Conclusion**

We conclude that University is an instrumentality of Tribe for purposes of § 7871(a). We further conclude that contributions made to University exclusively for public purposes are charitable contributions as defined in § 170(c)(1) of the Internal Revenue Code and deductible pursuant to § 170(a) to the extent otherwise allowed by § 170.

Except as specifically provided herein, no opinion is expressed or implied on the federal tax consequences of any aspect 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 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 Tribe.

The ruling contained in this letter is based upon information and representations submitted by Authority 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,

Karin Goldsmith Gross  
Senior Technical Reviewer, Branch 1  
(Income Tax & Accounting)