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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:TEB

PLR-109193-06

Date:

May 19, 2006

LEGEND:

Tribe =

Authority =

Tribal Council =

Date =

Dear

This letter is in response to your request for rulings, submitted by your authorized representative on behalf of Authority, that (1) Authority is a political subdivision of Tribe within the meaning of § 7871(d) of the Internal Revenue Code (the "Code"); (2) Authority is not subject to federal income tax; and (3) Authority is not required to file federal income tax returns.

Facts and Representations

Tribe is listed in Rev. Proc. 2002-64, 2002-2 C.B. 717, as an Indian tribal government that is to be treated similarly to a state for specified purposes under the Code. Authority is not included in the list of political subdivisions of Indian tribal governments published in Rev. Proc. 84-36, 1984-1 C.B. 510, modified, Rev. Proc. 86-17, 1986-1 C.B. 550.

Tribal Council is the representative governing body of Tribe. Members of Tribal Council are elected by vote of General Council, which is composed of all members of Tribe who are duly registered to vote. General Council has authorized Tribal Council to act on behalf of Tribe to exercise a variety of powers, including the authority to establish and regulate political subdivisions.

Authority was established by resolution of Tribal Council on Date as a political subdivision of Tribe. Authority is authorized to exercise governmental power over the development, construction, operation, promotion, financing, regulation, and licensing of certain new and existing Tribal businesses in order to further the economic and social development of Tribe and its members.

Pursuant to its charter, Authority has been delegated the power to, among other things, impose and collect (1) business income or franchise taxes, sales and use taxes, and other business-related taxes on any persons (including, but not limited to, certain tribally-chartered business entities), transactions, or activities within the taxing jurisdiction of Tribe; and (2) service and licensing fees on certain Tribal enterprises and other business enterprises operating within the regulatory jurisdiction of Tribe.

The Board of Directors of Authority (the "Authority Board") consists of five members appointed by Tribal Council. The Authority Board members may be removed by Tribal Council at any time with or without cause.

Authority's capital and operating budgets must be approved by Tribal Council before they become effective. Authority also must file with Tribal Council annual balance sheets and quarterly reports of the financial affairs of Authority.

Law and Analysis

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.

Section 7871(a) treats an Indian tribal government as a state for certain specified tax purposes. Section 7871(d) provides that for purposes of §7871(a), a subdivision of an Indian tribal government shall 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 such 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 provides a list of political subdivisions of Indian tribal governments that are to be treated as political subdivisions of a state for specified purposes of the Code.

Rev. Proc. 84-37, 1984-1 C.B. 513, modified, Rev. Proc. 86-17, provides procedures for a governmental unit 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 political subdivision of a state as provided under § 7871.

Section 2.03 of Rev. Proc. 84-37 provides 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). Section 2.03 indicates that the generally accepted sovereign powers of states are the power to tax, the power of eminent domain, and the police power.

Tribe is an Indian tribal government that is to be treated as a state for specified purposes under the Code. Tribe chartered Authority as a political subdivision of Tribe, and Authority is authorized to exercise taxing powers. The portion of Tribe's taxing power delegated to Authority is not insubstantial.

This office has consulted with the United States Department of the Interior regarding Tribe and Authority. The United States Department of the Interior has opined that Tribe has effectively delegated to Authority the power to tax. Accordingly, after consultation with the Secretary of the Interior, we conclude that, within the meaning of § 7871(d), Authority has been delegated one or more of the substantial governmental functions of Tribe. Therefore, for purposes of § 7871, Authority will be treated as a political subdivision of a state.

Generally, the income of states or Indian tribes and their political subdivisions is not subject to federal income taxation. See Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29; and Rev. Rul. 94-16, 1994-1 C.B. 19. The Service does not require states, local governments or Indian tribes to file federal income tax returns.

Conclusion

Based on the information submitted and representations made, we conclude that (1) pursuant to § 7871(d), Authority is a political subdivision of an Indian tribal government (Tribe), and accordingly Authority will be treated as a political subdivision of a state for purposes of § 7871; (2) the income of Authority is not subject to federal income tax; and (3) Authority is not required to file federal income tax returns.

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 Authority's authorized representatives.

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,

Assistant Chief Counsel
(Exempt Organizations/Employment Taxes/
Government Entities)

By: Johanna Som de Cerff
Senior Technician Reviewer
Tax Exempt Bond Branch