

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:TE/GE:EO2-PLR-102385-00  
Date:  
September 13, 2000

Legend:

Tribe =

Council =

X =

Date 1 =

Dear :

This ruling responds to a letter submitted on your behalf dated January 18, 2000, and subsequent correspondence, requesting a ruling that Council is an Indian tribal government within the meaning of sections 7701(a)(40) and 7871 of the Internal Revenue Code.

FACTS

The Council is officially recognized by the Department of the Interior as the governing body of Tribe under Tribe's constitution. Tribe's constitution was adopted by the tribal voting membership on Date 1, and is recognized as valid by the Department of the Interior. Tribe and Council are recognized 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 65 Fed. Reg. 13298, 13302 (2000).

Tribe and Council are not included in the list of Indian tribal governments provided in Rev. Proc. 83-87, 1983-2 C.B. 606, modified, Rev. Proc. 86-17, 1986-1 C.B. 550, which is an official 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.

Tribe's constitution delegates a variety of sovereign powers to Council, including the police power and the power of taxation. Specifically, the constitution provides that the Council has the power to enact civil and criminal laws, to manage Tribal lands and

assets, and to generate revenue for Tribal purposes through taxation.

Council carries out a wide range of governmental functions of Tribe. Council has enacted fishing ordinances, enforced by Tribal law enforcement agents, to regulate the activities of tribal members fishing on the X River on the Reservation. Council regulates environmental quality on the Reservation, and authorizes and regulates the harvesting and restoration of Reservation timber resources. In addition, Council has established various social welfare programs that are administered by Tribal agencies that have been created by Council.

Council is composed of nine members, who are elected for a term of three years. The constitution designates the chief executive officer of Tribe as the Chairperson for Council.

## LAW

The Indian Tribal Government Tax Status Act of 1982 (Title II of Pub. L. No. 97-473, 96 Stat 2605 [1983-1 C.B. 510, 511], as amended by Pub. L. No. 98-21, 97 Stat. 65 [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, 97<sup>th</sup> Cong., 2d Sess. 15 (1982), 1983-1 C.B. 522.

Indian tribes possess inherent sovereignty except where limited by treaty or statute, or by implication as a necessary result of their dependent status. Indian tribes are viewed as having certain inherent powers, including the power to tax and administer justice, whether or not they choose to take action to exercise those powers. A written

constitution or other governing document is not a prerequisite for the exercise of inherent sovereign powers. See United States v. Mazurie, 419 U.S. 544 (1975); Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982); United States v. Wheeler, 435 U.S. 313 (1978); Kerr-McGee Corp. v. Navajo Tribe of Indians, 471 U.S. 195 (1985); Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134 (1980); Iron Crow v. Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, 231 F.2d 89 (8<sup>th</sup> Cir. 1956); and Powers of Indian Tribes, 55 I.D. 14 (1934); 1 Op. Sol. on Indian Affairs, 445 (U.S.D.I. 1979).

Rev. Proc. 84-37, 1984-1 C.B. 513, modified, Rev. Proc. 86-17, 1986-1 C.B. 550, provides procedures for a governmental unit of an Indian tribe not included on the list published in Rev. Proc. 83-87 to request a ruling qualifying it for treatment as a state as provided under section 7871 of the Code.

### ANALYSIS

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 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.

After consultation with the Department of the Interior, we are not aware of any treaty or federal statute that divests Tribe of its sovereign power to tax or its police power. Thus, Tribe and Council possess the right to exercise the power to tax and police powers. Based on the representations submitted, Tribe and Council have undertaken to exercise the power to tax and police powers in order to promote the well being of its members.

### CONCLUSION

Accordingly, we conclude that Council 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.

No opinion is expressed as to the federal tax consequences to Council under any other provision of the Code. No opinion is expressed as to whether Council may be treated as a State for purposes of section 7871(a)(2) (relating to excise taxes) or section 7871(a)(4) (relating to tax-exempt bonds), or whether Council satisfies the specific requirements of section 7871(b) or section 7871(c).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of

the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file in this office, a copy of this ruling is being sent to your authorized representative.

Sincerely,  
Elizabeth Purcell, Chief  
Exempt Organizations Branch 2  
Office of Division Counsel/Associate  
Chief Counsel  
(Tax Exempt and Government Entities)