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Date:
November 24, 2003

Legend

Corporation =
Tribe
Council =
Program –
Center =
Department

Dear _____ :

This is in response to a request submitted by your representative on May 23, 2003, for various rulings for Corporation.

FACTS

Tribe is a federally recognized Indian tribe included on the list of recognized tribal entities published by the Secretary of the Interior in 67 Fed. Reg. 46328 (July 12, 2002). Tribe is also included in Rev. Proc. 2002-64, 2002-42 I.R.B. 717, as a tribe that is treated as a state for specified purposes under the Internal Revenue Code (“the Code”). Tribe is governed by the Council, which oversees tribal services, tribal government programs, and the tribe’s commercial enterprises.

Corporation was chartered under the tribal laws of Tribe, through a resolution adopted by the Council. The resolution delegates to Corporation the Tribe’s powers to implement educational programs, employment training, and health programs.

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Corporation's board of directors is selected by the Council. Directors may only be removed through a majority vote of the Council. The Council has the power to dissolve the Corporation at any time. In addition, Tribe provides all necessary funding for Corporation.

Pursuant to its charter, Corporation has several divisions that will conduct the following activities for the benefit of Tribe members:

- (1) Education – This division will offer courses in reading, writing, math, parenting, job search skills, algebra, computers, and social studies.
- (2) Employment Training – This division will train Tribe members in areas that enhance services offered on tribal lands, such as courses in law enforcement, medical opportunities, fundamental wild fire fighting, casino dealer's school, and law.
- (3) Healing and Wellness – This division will develop a Center that will provide 24-hour crises intervention for alcohol and drug abuse, an emergency shelter, individual and group counseling, and a residential treatment facility.
- (4) Employment – This division will offer job opportunities to tribal members through agreements with Indian-owned companies and in general contracting, street and highway excavation, traffic control, and new home construction.

Council also adopted a resolution establishing Program, through which Corporation provides educational assistance and benefits to Tribe members attending institutions of higher learning for two year, four year, or graduate degrees, and those receiving vocational or occupational training. High school students enrolled in college courses are also eligible for assistance. Program provides financial assistance with educational costs (books, supplies, transportation, tuition, room and board, and certain other expenses, such as day care). Program has eligibility requirements that Tribe members must meet to receive assistance. Although most Tribe members qualifying for assistance will have an income threshold below the national family median income level as established by Department, Tribe, as provided in the Program resolution, will occasionally provide grants to Tribe members whose income is greater than the median level.

You have requested the following rulings:

1. Corporation is an integral part of Tribe and is not recognized as an entity separate from the Tribe for federal income tax purposes;

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2. The educational assistance and benefits provided by the Corporation to members of the Tribe are excludible from the recipients' gross incomes for federal income tax purposes;
3. The educational assistance and benefits provided by the Corporation are not subject to reporting under section 6041 of the Code.

LAW AND ANALYSIS

Ruling 1 – Integral Part Status

Indian tribal governments are treated as states under section 7871(a) of the Internal Revenue Code (“Code”), and as such, they are not subject to many federal taxes. 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 and have sovereign powers”.

Generally, if income is earned by an enterprise that is an integral part of a state or political subdivision of a state, that income is not taxable in the absence of specific statutory authorization to tax that income. See Rev. Rul. 87-2, 1987-1 C.B. 18; Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29.

In Maryland Savings-Share Insurance Corp. v. United States, 308 F. Supp. 761, rev'd on other grounds, 400 U.S. 4 (1970) (“MSSIC”), the State of Maryland formed a corporation to insure the customer accounts of state chartered savings and loan associations. Under MSSIC’s charter, the full faith and credit of the state was not pledged for MSSIC’s obligations. Only three of eleven directors were selected by state officials. The district court rejected MSSIC’s claim of intergovernmental tax immunity because the state made no financial contribution to MSSIC and had no present interest in the income of MSSIC. Thus, the imposition of an income tax on MSSIC would not burden the State of Maryland. Although the Supreme Court reversed the lower court on other grounds, it agreed with the lower court’s analysis of the instrumentality and section 115 issues.

In State of Michigan and Michigan Education Trust v. United States, 40 F.3d 817 (6th Cir. 1994), rev'g 802 F. Supp. 120 (W.D. Mich. 1992), the court held that the investment income of the Michigan Education Trust (“MET”) was not subject to current taxation under section 11(a). The court’s opinion is internally inconsistent because it concludes that MET qualifies as a political subdivision of the State of Michigan (Id. at 825), that

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MET is “in a broad sense” a municipal corporation (Id. at 826), and that MET is, in any event, an integral part of the State of Michigan (Id. 829). Moreover, the court’s reliance on the factors listed in Rev. Rul. 57-128, 1957-1 C.B. 311, to reach its conclusion is misplaced. The revenue ruling applies to entities that are separate from the state. The factors in the revenue ruling do not determine whether an enterprise is considered to be a separate entity or an integral part of the state.

Nevertheless, in determining whether an enterprise is an integral part of an Indian tribe or a state, it is necessary to consider all of the facts and circumstances, including the Indian tribe’s or the state’s degree of control over the enterprise and the Indian tribe’s or the state’s financial commitment to the enterprise.

Section 301.7701-1 et. seq. of the Procedure and Administration Regulations, the so-called “check-the-box” regulations, supports the position that an entity that is separate from a state or political subdivision may still be an integral part of that state or political subdivision. Treas. Reg. section 301.7701-1(a)(3) provides, in part, that:

“An entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State”.

Thus, the check-the-box regulations indicate that even though Corporation is incorporated as a separate legal entity from the Tribe, it nevertheless may be treated as an integral part of the Tribe if the Corporation so qualifies.

The facts and circumstances indicate that Corporation is an integral part of the Tribe. Corporation was created by a resolution adopted by the Council, part of the Tribe’s governing body. Tribe’s Council selects and removes all of Corporations directors, and may terminate Corporation’s charter at any time. These facts are consistent with Tribe’s exercise of significant control over Corporation.

In addition, the facts demonstrate Tribe has a substantial financial commitment to Corporation because Tribe provides all the funding for the operations of Corporation and its activities.

Because Tribe, a federally recognized tribe, has demonstrated its financial commitment and control over Corporation, we conclude that Corporation is an integral part of Tribe. Because Corporation is an integral part of Tribe, an entity not subject to federal income tax under 7871(a) of the Code, Corporation’s income is also not subject to federal income tax.

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Ruling 2 – Exclusion from Gross Income

Section 61(a) of the Code and Income Tax Regulations thereunder provide that, except as otherwise provided by law, gross income means all income from whatever source derived. Broad includibility under section 61 was endorsed in Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955), 1955-1 C.B. 207, in which the Supreme Court of the United States held that the concept of gross income included accessions to wealth, clearly realized, over which the taxpayers have complete dominion.

Although section 61 provides for broad includibility in gross income, the Service has held that payments to individuals by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not includible in the recipient's gross income. See e.g. Rev. Rul. 76-395, 1976-2 C.B. 16 (home rehabilitation grants received by low-income homeowners residing in a defined area of a city are in the nature of general welfare, and therefore, not includible in their gross income).

This administrative exception to the general rule of broad includibility under section 61 (the "general welfare exception") has been construed narrowly, and has generally been limited to payments by governmental entities to individuals experiencing either (1) a natural disaster or other catastrophic situation (see e.g., Rev. Rul. 76-144, 1976-1 C.B. 17), or (2) severe economic need (usually tested by income level). See e.g. Rev. Rul. 78-170, 1978-1 C.B. 24 (payments made by Ohio to low-income elderly or disabled residents to reduce their cost of winter energy consumption are not includible in gross income).

Section 117(a) of the Code provides that gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii).

The educational assistance payments for qualifying Tribe members with an income below the national family median income level, made to enhance educational opportunities for students from lower-income families, are for the promotion of the general welfare. Therefore, the payments are not includible in the recipient's gross income.

In contrast, the educational assistance payments for qualifying Tribe members with an income equal to or greater than the national family median income level are not in the nature of general welfare. Therefore, they are includible in the recipients' gross income unless they qualify for exclusion from income under section 117.

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Ruling 3 – Reporting

Section 6041 of the Code requires all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year, to file an information return with the Service and to furnish an information statement to the payee.

Treas. Reg. section 1.6041-1(c) provides that payments are fixed when they are paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

Treas. Reg. section 1.6041-3(n) provides that information returns are not required under section 6041 for payments to individuals as scholarships or fellowship grants within the meaning of section 117(b)(1) of the Code, whether or not “qualified scholarships” as described in § 117(b). This exception does not apply to any amount of a scholarship or fellowship grant that represents payment for services within the meaning of section 117(c).

Corporation is not required to file information returns under section 6041 and report educational assistance and benefits provided to Tribe members if these amounts are not includible in gross income of the Tribe members. On the other hand, Corporation is required to file information returns under section 6041 and report the educational assistance and benefits provided to the Tribe members if these amounts are includible in gross income of the Tribe members. In addition, Corporation is not required to file information returns under section 6041 and report the educational assistance if these amounts are scholarships or grants under section 117(b)(1), whether or not “qualified scholarships” as described in section 117(b).

CONCLUSION

Accordingly, based on the information submitted, we rule as follows:

1. Corporation is an integral part of the Tribe;
2. The educational assistance and benefits provided by the Corporation to qualifying members of the Tribe with an income below the national family median income level are not includible in the recipient’s gross income. Educational assistance payments and benefits for qualifying members of Tribe with an income equal to or greater than the

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national family median level are includible in the recipient's gross income unless they qualify for exclusion from income under section 117.

3. Corporation is not required to file information returns under section 6041 and report educational assistance and benefits provided to Tribe members if these amounts are not includible in gross income of the Tribe members. Corporation is required to file information returns under section 6041 and report the educational assistance and benefits provided to Tribe members if these amounts are includible in gross income of the Tribe members. Corporation is not required to file information returns under section 6041 and report the educational assistance if these amounts are scholarships or grants under section 117(b)(1).

Except as specifically provided otherwise, no opinion is expressed on the federal tax consequences of any particular transaction.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Barbara E. Beckman
Assistant Chief
Exempt Organizations Branch 2
Division Counsel/Associate Chief Counsel
Tax Exempt and Government Entities)

Enclosures:

Copy of this letter
Copy for section 6110 purposes

cc: