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LEGEND:

- Tribe =
- General Council =
- Council =
- Reservation Authority =
- Housing Entity =
- Date 1 =
- Year 1 =
- A =

Dear :

This responds to Tribe's request for a ruling that Authority 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.

Authority was chartered by resolution of Council on Date 1 to provide low-income housing for Tribe members. Authority is Tribe's Housing Entity, and as such is designated by Tribe to obtain federal grants awarded to recognized Indian tribes for the development of housing projects.

Authority's daily operations are managed by an executive director and a board of commissioners. All members of Authority's board of commissioners are appointed by Council. All decisions by Authority's board of commissioners concerning governance, including appointment of an executive director and removal of commissioners or an executive director, 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 an executive director or members of the board of commissioners.

Authority is required to submit an annual report to Council summarizing, in part, (1) the year's activities; (2) Authority's financial condition; (3) significant problems and/or accomplishments; and (4) future plans. Tribe, through Council, may withdraw at will Authority's Housing Entity designation if it so chooses. Council may also withdraw at will Authority's ability to submit Tribe's housing plan to the federal government for approval. Submission of a housing plan is a prerequisite to Tribe's eligibility to receive the federal grants. In Year 1, Authority's federal housing funds represented most (A percent) of its annual budget.

Subject only to federal regulations limiting the disposition of assets acquired with federal funds, upon dissolution of Authority title to all assets of Authority would vest in 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.

Authority is used for a governmental purpose and performs a governmental function on behalf of Tribe. Authority was created by Tribe to obtain federal grants available to Tribe for the development of low-income housing projects for Tribe members.

There are no private interests in Authority, and Tribe has the power and interests of an owner. Subject only to regulatory limitations on the disposition of assets acquired with

federal funds, all of Authority's assets will be distributed for Tribe's benefit upon dissolution of Authority. Authority is Tribe's Housing Entity and is controlled solely by Tribe. All members of Authority's board of commissioners are appointed by Council, and General Council has the authority to direct Council to remove any executive director or commissioner. All decisions by Authority's board of commissioners concerning governance, including appointment of an executive director and removal of commissioners or an executive director, 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 Authority is found in the Tribal requirement that Authority be chartered by resolution of Council.

Tribe controls the financial affairs of Authority. Authority is required to submit an annual report to Council summarizing the year's activities as well as Authority's financial condition, and Authority's funding may be withdrawn at will by Tribe. Because Council can withdraw at will the ability of Authority to submit housing plans for federal approval, Council controls Authority's eligibility to receive the federal funds that represent most of Authority's annual budget.

Conclusion

We conclude that Authority is an instrumentality of Tribe for purposes of § 7871(a). We further conclude that contributions made to Authority 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)

cc: