

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

First Nations Development  
Institute  
11917 Main Street  
Fredericksburg, Virginia 22408

Person to Contact: L.E. Kawecki  
Telephone Number: (202) 622-7922  
Refer Reply to: OP:E:EO:P:1

Attn: Ms. Rebecca Adamson

Date: SEP 8 1998

Dear Ms. Adamson:

This responds to your letter dated April 24, 1998, concerning corporations organized under tribal law. Specifically, you requested information concerning the qualification of such organizations under 501(c)(3) of the Internal Revenue Code.

It has not always been clear whether an organization created under tribal corporation law could satisfy the organizational requirements of section 501(c)(3) of the Code and section 1.501(c)(3)-1(b) of the Income Tax Regulations. Originally, the question was whether the tribal government had the authority to create a separate legal entity under the Code. Simply, if such an organization is not regarded as separate from the tribal government, it would not be considered as described in section 501(c)(3).

However, this has been clarified in a section 301.7701-2(b) of the Procedural and Administrative Regulations which provides, in part, for federal tax purposes the term "corporation" means a business entity created under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic.

Accordingly, a corporation created under a tribal statute meeting the requirements of section 301.7701-2(b) would be considered a separate legal entity which could qualify for exemption under 501(c)(3).

Even when an organization is a separate legal entity from the tribal government, it would have to meet the requirements of Rev. Rul. 60-364, 1960-2 C.B. 172, to qualify for exemption as an instrumentality of the government.

You also asked if a tribal corporation would qualify for favorable treatment under section 170 of the Code. Assuming that a tribal corporation is described in section 501(c)(3) of the Code and recognized as exempt under section 501(a), contributions to it would be deductible under section 170.

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We hope that this information is helpful. This letter, however, is not a ruling and may not be relied on as such. If you have any further questions on this matter, please contact Mr. Lynn Kawecki at (202) 622-7922.

Sincerely yours,



Thomas J. Miller  
Chief, Exempt Organizations  
Projects Branch 1

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Attn: Ms. Rebecca Adamson

Date: SEP 8 1998

Dear Ms. Adamson:

This responds to your letter dated April 24, 1998, concerning the treatment of grants made by private foundations to Indian Tribal governments. Specifically, you request information as to whether or not such grants would be qualifying distributions under section 4942 of the Internal Revenue Code and would not be taxable expenditures under section 4945.

Pursuant to section 4942 of the Code, a foundation is not subject to tax on a qualifying distribution paid to accomplish one or more purposes in section 170(c)(2)(B). Although section 170(c)(2)(B) does not include distributions to the state as a qualifying distribution, section 53.4942(a)-3(a)(2) of the Private Foundations and Similar Excise Taxes Regulations extends the definition of "qualifying distributions" to include distributions to the State or political subdivision.

Pursuant to section 4945 of the Code, a grant to an organization described in section 509(a)(1) would not be a taxable expenditure. Section 53.4945-5(a)(4) of the regulations treats a state or political subdivision of a state described in section 170(c)(1) as a 509(a)(1) organization.

Therefore, a distribution to a state or political subdivision of a state would constitute a qualifying distribution under section 4942 of the Code but would not constitute a taxable expenditure under section 4945. The question is whether these same rules apply to Indian tribal governments.

Under section 7871(a)(7)(B) of the Code an Indian tribal government shall be treated as a state for purposes of subchapter A of chapter 42, including sections 4940 through 4946 applicable to private foundations.

Whether or not any particular tribal entity is considered to be a governmental entity under section 7871 is set forth in section 7701(a)(40) of the Code and section 305.7701.1 of the Temporary Procedural and Administrative Regulations Under the Indian Tribal Governmental Tax Status Act of 1982. These sections provide that an Indian tribal government is the governing body of a tribe, band, community, village or group of

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Indians, which is determined by the Service to exercise governmental functions.

Tribal entities regarded as exercising governmental functions are listed in Rev. Proc. 83-87, 1983-2 C.B. 606 and tribal subdivisions treated as political subdivisions exercising governmental functions are listed in Rev. Proc. 84-36, 1984-1 C.B. 510. Pursuant to Rev. Proc. 84-37, 1984-1 C.B. 513, entities not included in either list may apply to the Service for a determination that the entity qualifies to be treated as state or a political subdivision of a state under section 7871 of the Code. Each of the three revenue procedures have been extended pursuant to Rev. Proc. 86-17, 1986-1 C.B. 550, which lifts the two-year limitation.

Accordingly, a grant to an Indian tribal government or subdivision would constitute a qualifying distribution under section 4942 but would not constitute a taxable expenditure under 4945 provided that the tribal entity is listed in either Rev. Proc. 83-87 or 84-36, or has obtained a determination from the Service pursuant to Rev. Proc. 84-37.

We hope that this information is helpful. This letter, however, is not a ruling and may not be relied on as such. If you have any further questions on this matter, please contact Mr. Lynn Kawecky at (202) 622-7922.

Sincerely yours,



Thomas J. Miller  
Chief, Exempt Organizations  
Projects Branch 1