



Spirit of the Salmon Fund

OF THE COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION*

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EAGLE NOTES

7871 awareness: a two-way stream



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In 1982, Congress passed the Indian Tribal Governmental Tax Status Act, codified as Section 7871 of the Internal Revenue Code, treating tribal governments as state governments for a variety of specified tax purposes.

At First Nations Development Institute we are building awareness of Section 7871 through a project with Columbia River Inter-Tribal Fish Commission, a consortium of the Nez Perce, Warm Springs, Umatilla and Yakama nations in the Columbia River Basin. The commission received a letter ruling from the Internal Revenue Service confirming its tax treatment under Section 7871 all the way back in 1989, but hasn't

made use of it because proper supports were not in place to mount an educational campaign concerning 7871 tax treatment. Only recently, in January 2000, has CRITFC established a restricted fund, Spirit of the Salmon Fund by name, to develop the asset of Section 7871 tax treatment.

This alone would argue the time is right for greater "7871 awareness" within philanthropy, which is certainly one of our goals. But we hope to build such awareness among tribes as well. For if professional philanthropy is going to support tribal sovereignty through 7871 grantmaking, 7871 organizations must demonstrate a more sophisticated accountability than the letter of any law.

Complexity is the middle name of any tax law, but the key provisions of Section 7871 are easy enough to remember: 1) 7871 offers many of the same tax benefits as IRC Section 501(c)(3) for practical tax purposes, meaning 2) all donations to a 7871 organization, whether a tribal government or its "political subdivisions" or "integral parts" (in the relevant terms of tax law) are tax deductible and 3) foundations can make grants to such organizations.

We should also commit it to memory that under Section 7871, tribal organizations can maintain a greater degree of sovereignty than under IRC Section 501(c)(3); for 501(c)(3)s are generally chartered by a state, thus subjecting them to the

*The CRITFC is recognized under IRC 7871(a) as an arm of tribal government entitled to receive tax-exempt, charitable donations. A private letter ruling to this effect, from the IRS dated July 18, 1989, is available upon request.

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supervision of a state attorney general's office, where jurisdiction over "expressly public and charitable purposes" generally resides. Not so with Section 7871. It follows that grantmaking to 7871 tribal governments and their political subdivisions can be a way to support tribal sovereignty.

In return, tribal organizations should take upon themselves the regulatory safeguarding, for accountability's sake, of donated funds. A 7871 letter ruling from the Internal Revenue Service points the concerned donor to a law stating that his or her donation is tax-exempt. For the donee, it also lightens the so-called compliance burdens of 501(c)(3) status, which requires that organizations fill out IRS form 1023 initially and file reporting form 990 annually with the IRS. These and other requirements, customary to 501(c)(3) nonprofits, do not apply under Section 7871.

But because they make good sense and are so familiar to funders, Columbia River Inter-Tribal Fish Commission has voluntarily adopted them. Bylaws state that every donor will receive a letter of acknowledgment – standard practice throughout philanthropy, though not strictly necessary under the terms of Section 7871. For

grantmakers and other donors who value the information available on the IRS 990 forms that most 501(c)(3)s file annually, the bylaws state that the commission's Spirit of the Salmon Fund shall make such data publicly available, though again the terms of 7871 do not strictly require it. For good measure, CRITFC formally forbids political lobbying by Spirit of the Salmon Fund.

In such ways, through resolutions and bylaws, tribal 7871 organizations can mitigate the concerns of donors who are more comfortable with the established routines of 501(c)(3) grantees – while retaining the advantages of self-regulated sovereignty.

Now let's consider the state of 7871 awareness within philanthropy. Eleven years ago, when Columbia River Inter-Tribal Fish Commission obtained a letter from the IRS ruling it eligible to receive tax-deductible contributions, the Commission found that program officers were not familiar with the provisions of Section 7871. They did not fully grasp the tax benefits it conferred. They sometimes understood that grants to tribal governments were tax-deductible, but they did not extend that understanding to other organizations. That CRITFC was an

inter-tribal organization – a political subdivision of four separate tribal governments – raised another hurdle.

Section 7871 does not grant income tax exemption to tribal governments, nor to their "political subdivisions" and "integral parts." That exemption had already been granted by IRS prior to enactment of 7871. Rather, Section 7871 grants tribal governmental units the other tax benefits that states possessed – tax deductibility of charitable contributions and treatment as a state for purposes of private foundation rules. Just as any tribe with a 7871 letter ruling from the IRS is qualified to receive tax-exempt donations for "expressly public charitable purposes," so are their "political subdivisions" exercising one of three primary attributes of sovereignty: the power to tax, the power of eminent domain, or the power to police.

By virtue of enforcing fishing regulations for four sovereign tribes, Columbia River Inter-Tribal Fish Commission has been delegated the power to police, making it a sovereign political subdivision of four tribal governments. It is one of the few inter-tribal political subdivisions recognized by the IRS since 1982.

Editor's Note: Normally our Eagle Notes column is not a part of another organization's letterhead. But this Spirit of the Salmon Fund letterhead, in addition to being almost a work of art in its own right, provides some 'visuals' on the subject of Section 7871. Note at the top of the facing page the clear indication that Spirit of the Salmon Fund is a creation of CRITFC. Note at bottom the offer to confirm the tax deductibility of charitable donations.