

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
July 24, 2014

LEGEND

Tribe =

Authority =

Council =

Constitution and Bylaws =

Authority Code =

Board of Trustees =

BIA Letters =

Dear _____ :

This letter is in response to your request for a ruling that Authority may be treated as a political subdivision of a State within the meaning of §7871(d) of the Internal Revenue Code.

FACTS AND REPRESENTATIONS

Tribe is listed in the most recent list of tribal entities recognized as Indian tribes by the Department of the Interior, Bureau of Indian Affairs (“BIA”), published in the Federal Register on October 1, 2010 (75 FR 190). Tribe’s Constitution and Bylaws describe the Council as the supreme governing body of Tribe composed of all members of Tribe 18 years of age or older. The Constitution and Bylaws also create a Business Committee (“Business Committee”) consisting of a chairman (“Chairman”), a vice chairman, a secretary, and three additional committeemen that is responsible for the day-to-day operation of Tribe’s government and for such additional duties as may be delegated or assigned to it by the Council. Council appoints the Chairman.

In 2008, Council created Authority to be managed by its Board of Trustees and ratified Authority Code as Authority’s governing document. Chairman appoints the Board members. Authority Code may be amended at any time by either Council or Business Committee. Authority’s existence is perpetual and, in the event of its dissolution, all assets must be distributed to Tribe. Authority Code describes Authority as an agency and instrumentality of Tribe having the purposes, powers, and duties as provided by law of Tribe. Authority has not been described in a revenue procedure as a political subdivision of a State.

Authority Code states, in part, that the purposes of Authority are: (1) promoting economic development of Tribe; (2) attracting outside funding in support of economic development of Tribe; (3) expanding Tribe’s resource base and economic development potential through investment in land, financial instruments, and enterprises; (4) establishing, owning, and operating business enterprises within the jurisdiction of Tribe; and (5) providing revenues for Tribe to address other matters of public health, safety, and welfare.

Authority Code delegates to Authority the power of eminent domain over private property within the reservation for the furtherance of public purpose projects involving revenue-producing utility projects. Revenue-producing utility projects are limited to the following types of projects: (a) electric power projects; (b) sewer lines and treatment plants; (c) utility easements of any kind; (d) road easements; and (e) projects for the transpiration, delivery, treatment or furnishing of water for domestic purposes or for power, including but not limited to the construction of lakes. Authority may exercise the power of eminent domain without seeking approval by Tribe and the Authority Code

does not impose approval or any other procedural limitation on the manner or timing of Authority's exercise of eminent domain.

Authority requested and received BIA Letters providing, in part, that: (1) Tribe is recognized by the Department of the Interior as an Indian tribe; (2) Authority Code gives Authority substantial, uniquely governmental powers; (3) Council delegated the power of eminent domain to Authority; (4) Authority performs a uniquely governmental function through the exercise of the power of eminent domain; (5) Authority functions as an integral part of Tribe within the meaning of §7871(d); and (6) Authority is a political subdivision of Tribe for purposes of §7871(d).

LAW

Section 7871(a) provides that an Indian tribal government shall be treated as a State for certain specified tax purposes, including, subject to subsection (c), for purposes of § 103 (relating to state and local bonds).

Section 7871(d) provides that for the purposes specified in subsection (a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a State if (and only if) the Secretary determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government.

Rev. Proc. 84-37, 1984-1C.B. 513, provides, in part, that three generally accepted sovereign powers of states are the power to tax, the power of eminent domain and the police power. A subdivision of an Indian tribal government that has been delegated one of the generally accepted sovereign powers may qualify as a political subdivision of a State for purposes of § 7871(d) of the Code.

Section 305.7871-1(e) provides, in part, that designation of a subdivision of an Indian tribal government as a political subdivision of a State will be by revenue procedure. If a subdivision of an Indian tribal government is not currently designated by the applicable revenue procedure as a political subdivision of a State, and such subdivision believes that it qualifies for such designation, the subdivision may apply for a ruling from the Internal Revenue Service.

Rev. Proc. 2014-1, section 7.01(7) provides that to facilitate prompt action on a letter ruling request for recognition of Indian tribal government status or status as a political subdivision of an Indian tribal government, the taxpayer must submit with the letter ruling request a letter from the Department of the Interior, Bureau of Indian Affairs, verifying that the tribe is recognized by BIA as an Indian tribe and that the tribal government exercises government functions or that the political subdivision of the Indian tribal government has been delegated substantial governmental functions.

ANALYSIS

Authority Code sets forth the purposes of Authority, which are clearly public in nature and intended to benefit Tribe and Tribal members. Tribe controls Authority through control over the Authority Code. Council may amend the Authority Code at any time and may, in its sole discretion, abolish Authority or cause a Board member to be removed for any reason. Based on this control and the public purposes of Authority, we conclude that Authority is a subdivision of Tribe.

Authority has been delegated the power of eminent domain limited only by the requirement that it be used by Authority for public purpose utility projects. The use of this power by Authority requires no approval and is not limited by other procedures that would distinguish it from the inherent eminent domain power possessed by Tribe itself.

Based upon the foregoing, we conclude that Authority is a subdivision of Tribe that has been delegated one of the substantial governmental functions of the Indian tribal government) and therefore may be treated as political subdivision of a State for purposes of purposes of § 7871(a).

CONCLUSION

Based solely on the documents provided to us and the factual representations made by Authority, we conclude that Authority is a subdivision of Tribe that may be treated as a political subdivision of a State for purposes of § 7871(a).

Except as expressly provided herein, no opinion is expressed or implied about the tax consequences of any transaction or item discussed in this letter.

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 with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel (Financial
Institutions and Products)

/S/

By: _____
Timothy L. Jones
Senior Counsel
Branch 5