PLR 8543016, 1985 WL 295311 (IRS PLR)

Internal Revenue Service (I.R.S.)

Private Letter Ruling

July 25, 1985

Section 7871 -- Indian Tribal Governments Treated As States For Certain Purposes

7871.00-00

CC:IND:S:2:3

Legend:

X = * * *

Y = * * *

* * *

This is in reply to your letter of February 8, 1985, in which a ruling is requested that Y be treated, for purposes of section 7871 of the Internal Revenue Code, as a subdivision of a state.

X has been recognized as an Indian tribal government (Revenue Procedure 83-87, 1983-2 C.B. 606). Y is a tribal court established by X. The Code of Y provides that, "For the purpose of enforcing the provisions of [the Y] Code, or other subject matter codes already enacted in the future, Y shall exercise jurisdiction in a manner not inconsistent with the Constitution and Bylaws of X, a federally recognized Indian Tribe."

Section 1.2 of the Y Code provides that, "The Court shall consist of one Chief Judge and such associate judges as are appointed by the [X] Tribal Council. Each judge shall be appointed by a majority vote of the [X] Tribal Council ...
"Each judge shall hold office for a period of 4 years, unless sooner removed for cause, and shall be eligible for reappointment. In the event of a vacancy the [X] Tribal Council shall appoint a judge to serve the unexpired term.
"A judge may be suspended or removed only upon a showing of good cause, and where a majority of the [X] Tribal Council votes such action ...
"The [X] Tribal Council shall appoint a prosecutor to represent the Tribe in Court."

Section 1.3 of the Y Code delineates the duties and powers of judges. That section provides,

"The Judges of the Court shall have the power:
(1) To try cases;
(2) To issue subpoenas compelling the attendance of witnesses at proceedings, and to punish for failure to comply with such subpeonas;
(3) To determine the construction of any code provision, including necessary elements of an offense, and applicable defenses;
(4) To issue any other order or writ necessary and proper to the complete exercise of their power.
(5) Consistent with its judicial functions, the court shall have the authority to exercise the police powers of the Tribe."

The Indian Tribal Government Tax Status Act of 1982 (Title II of Pub.L. No. 97-473, 96 Stat. 2605, 2607-11 as amended by Pub.L. No. 98-21, 97 Stat. 65, 87 [1983-1 C.B. 510, 511]) added certain provisions to the Internal Revenue Code that pertain to the status of Indian tribal governments. For specified federal tax purposes, Indian tribal governments or subdivisions thereof will be treated as states or political subdivisions thereof. See section 7871 of the Code.

The term "Indian tribal government" is defined in section 7701(a)(40) of the Code as a governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, that is determined by the Secretary of the Treasury, after consultation with the Secretary of the Interior, to exercise governmental functions.

Conference report H.R.Rep. No. 97-984, 97th Cong., 2nd Sess. 15 (1982), 1983-1 C.B. 522, indicates that the provisions will not apply to any Indian tribal government unless it is recognized by the Treasury Department (after consultation with the Interior Department) as exercising sovereign powers.

Section 7871(d) of the Code provides that for purposes of section 7871, a subdivision of an Indian tribal government shall be treated as a political subdivision of a state if (and only if) the Secretary of the Treasury 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.

Revenue Procedure 84-36, 1984-1 C.B. 510, provides a list of subdivisions of Indian Tribal governments that are to be treated as political subdivisions of states for specified purposes under the Internal Revenue Code.

Revenue Procedure 84-37, 1984-1 C.B. 513, provides procedures for a governmental unit of an Indian tribe or a political subdivision of an Indian tribal government not included on the list published in Rev. Proc. 84-36, to request a ruling qualifying it for treatment as a state or a political subdivision of a state as provided under section 7871(d) of the Code.

Section 2.03 of Rev. Proc. 84-37, provides in part, "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."

The term "political subdivision" is defined in section 1.103-1 of the Income Tax Regulations:
"... The term 'political subdivision', for purposes of this section, denotes any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit."

It is generally accepted that the definition of 'political subdivision' under section 103 of the Code is also applicable to other sections of the Code where the term 'political subdivision' appears. Not all operating units within the structure of a government however, are political subdivisions. For example, a legislative body, is an instrumentality or an arm of the government and functions as an integral part of it. Such entities are not political subdivisions but are the government itself, for a government functions only though the activities of its various departments and operating units. A court is such an entity. 20 Am.Jur.2d 386, Courts § 1, provides that ".... the word 'court' in the technical sense ... describes an organ of the government ..." In Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070, it was stated that, "A court is an agency of the sovereign created by it directly or indirectly under its authority ..." In White County Com'rs v. Gwin, 36 N.E. 237, 242, 136 Ind. 562, 22 L.R.A. 402, the court stated, "A 'court' is an instrumentality of government." Further authority for the proposition that a court is an instrumentality of the government is provided by Revenue Ruling 59-152, 1959-1 C.B. 54. In that ruling it was held that contributions made by members and other donors to or for the use of a State Bar are deductible by the donors as a charitable contribution, as provided by section 170 of the Code. The ruling states, "The State Bar performs functions of a public nature customarily performed by government instrumentalities and is an administrative arm of the Supreme Court of the State. Contributions to it for its public purposes are deductible ..." Implicit in the ruling is the notion that a contribution to the Supreme Court is synonymous with a contribution to the State.

In the instant case we see no reason to distinguish Y because it is an Indian Tribal Court rather than a state court. Y is a tribunal empowered to try cases, to issue subpoenas, to punish for failure to comply with such subpeonas, to determine the construction of X Code provisions and to issue orders or writs necessary to the complete exercise of the court's powers.

Based on the foregoing and the information submitted we conclude that Y is not a political subdivision of X. We find however, that since Y is the judicial arm of X, it is an instrumentality, or an integral part of X. Since X has been recognized as an Indian Tribal government (Revenue Procedure 83-87, 1983-2 C.B. 606), all federal tax benefits under section 7871 of the Code that accrue to X by virtue of this designation, are shared with Y.

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

No opinion is expressed as to the federal income tax consequences of the organization described above under any other provision of the Code.

Very truly yours,

E. L. Kennedy
Chief
Specialty Tax Branch

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