

Internal Revenue Service

Department of the Treasury

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Washington, D.C.

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Telephone Number:

Refer Reply to:

CC:TE/GE:EO2 PLR-115368-00

Date:

December 14, 2000

LEGEND

Authority

Tribe

date x

Ordinance

City

Dear

This is in reply to a letter dated August 9, 2000, and subsequent correspondence, requesting a ruling that Authority is an integral part of Tribe for purposes of §§ 7701(a)(40) and 7871(a) of the Internal Revenue Code.

FACTS

Tribe is included on the list of tribal entities published by the Secretary of the Interior in the Federal Register. See 65 Fed. Reg. 13298, 13300 (2000). Tribe is also included in the list of Indian tribal governments provided in Rev. Proc. 83-87, 1983-2 C.B. 606. This is a list of Indian tribal governments that are to be treated as states for certain federal tax purposes, pursuant to §§ 7701(a)(40) and 7871(a) of the Code.

The tribal constitution provides that the business ventures of Tribe shall be conducted by tribal businesses established by written charter issued by the tribal legislature by ordinance. On date x the tribal legislature chartered Authority, pursuant to Ordinance. According to Ordinance, the purpose of Authority is to provide for the means to develop, construct, conduct, and manage a gaming business in City.

Authority is governed by a board of directors that consists of nine members. Six of the directors are tribal legislators and three are tribal members who are not legislators. Under the tribal constitution, tribal businesses are established for purposes of management only. The constitution directs that the tribal legislature shall not interfere with the business decisions of the management of the tribal businesses. However, the directors are appointed by the legislature and serve at the pleasure of the legislature. The constitution further provides that the legislature may establish uniform rules governing the establishment and operation of tribal businesses. Finally, the constitution provides that the tribal legislature may terminate the charter of Authority.

Tribe is the owner of the property on which Authority is to construct and manage the gaming facilities. Tribe represents that it will have the sole proprietary interest in the gaming activities. Pursuant to the constitution, profits from tribal businesses shall be shared with the Tribe on an equitable basis. According to Ordinance, the profits Authority realizes from the gaming operation shall be disbursed to Tribe each month, except that Authority may retain such sums as are reasonable and necessary for incidental operation expenses for the establishment and maintenance of reserve accounts as the board deems reasonably necessary. The constitution requires that regular reports on the financial status of the tribal businesses shall be made to the tribal legislature and to the tribal members. Ordinance provides that the tribal legislature shall choose an independent public accounting firm to establish an accounting system for Authority and carry out an annual audit of Authority.

LAW & ANALYSIS

In Maryland Savings-Share Ins. Corp. v. United States, 308 F. Supp 761 (D. Md. 1970), rev'd on other grounds, 400 U.S. 4 (1970) (MSSIC), the State of Maryland formed a corporation to insure the customer accounts of state chartered savings and loan associations. Under MSSIC's charter, the full faith and credit of the state was not pledged for MSSIC's obligations. Only three of eleven directors were selected by state officials. The district court rejected MSSIC's claim of intergovernmental tax immunity because the state made no financial contribution to MSSIC and had no present interest in the income of MSSIC. Thus, the imposition of an income tax on MSSIC would not burden the State of Maryland. Although the Supreme Court reversed the lower court on other grounds it agreed with the lower court's analysis about the treatment of state created enterprises.

In State of Michigan and Michigan Education Trust v. United States, 40 F. 3d 817 (6th Cir. 1994), rev'g 802 F. Supp. 120 (W.D. Mich. 1992), the court held that the investment income of the Michigan Education Trust (MET) was not subject to current taxation under section 11(a). The court's opinion is internally inconsistent because it concludes that MET qualifies as a

political subdivision of the State of Michigan (Id. at 825), that MET is "in a broad sense" a municipal corporation (Id. at 826), and that MET is in any event an integral part of the State of Michigan (Id. at 829). Moreover, the court's reliance on the factors listed in Rev. Rul. 57-128, 1957-1 C.B. 311, to reach its conclusion is misplaced. The revenue ruling applies to entities that are separate from the state. The factors in the revenue ruling do not determine whether an enterprise is considered to be a separate entity or an integral part of the state.

Section 301.7701-1 et seq. of the Procedure and Administration Regulations, the so-called "check-the-box" regulations, support the position that an entity that is recognized as separate from a state or political subdivision for local law purposes may still be an integral part of that state political subdivision. Section 301.7701-1(a) provides, in part, that an entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State.

In determining whether an enterprise is an integral part of the state, it is necessary to consider all of the facts and circumstances, including the state's degree of control over the enterprise and the state's financial commitment to the enterprise.

The control Tribe exercises over Authority is substantial. According to the tribal constitution, Authority's board of directors serves at the pleasure of the tribal legislature. The legislature appoints all nine members of the board of directors. Six of the appointed directors are required to be members of the tribal legislature. The tribal legislature created Authority for the purpose of managing a tribal business on tribally owned property. The tribal legislature is empowered by the tribal constitution to enact uniform rules to govern tribal businesses such as Authority. Finally, the tribal legislature has the power to terminate Authority's charter.

The financial commitment Tribe has made to Authority is also substantial. Tribe will purchase the land to be used for the gaming enterprise. Tribe will hold the sole proprietary interest in the gaming activities. Profits from the gaming business are turned over to the Tribe by Authority every month. Authority must provide regular financial reports to Tribe. Authority's accounting system was set up by and its annual audits are carried out by an independent accounting firm chosen by Tribe.

CONCLUSION

Accordingly, after considering the financial commitment that Tribe has made to Authority and the degree of control exercised over Authority by Tribe, we conclude that Authority is an

integral part of Tribe.

No opinion is expressed on the federal tax consequences of any particular transaction. No opinion is expressed as to whether Tribe may be treated as a State for purposes of § 7871(a)(2) relating to excise taxes or § 7871(a)(4) (relating to tax-exempt bonds), or whether Tribe satisfies the specific requirements of § 7871(b) or § 7871(c) of any particular transaction. Specifically, this ruling does not conclusively establish that Tribe qualifies for a particular federal income or excise tax benefit.

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 your representative.

Sincerely,
Elizabeth Purcell, Chief
Exempt Organizations
Branch 2
Division Counsel/Associate Chief

Counsel
Entities)

(Tax Exempt and Government

Enclosures:

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