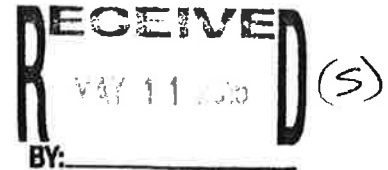




DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Office of Indian Tribal Governments

TAX EXEMPT AND
GOVERNMENT ENTITIES DIVISION

May 4, 2015



Governor Earl Salazar
Ohkay Owingeh
PO Box 1099
Ohkay Owingeh, NM 87566

Dear Governor Salazar:

This responds to your request for information concerning your tribe's federal tax status, and the issue that has been raised by certain grantors concerning a perceived need for Section 501(c)(3) status. While we have no control over their governing instruments, we can address the issue of Section 501(c)(3) and federally recognized Indian Tribal governments.

Under Section 7871 of the Internal Revenue Code, Congress determined that federally recognized Indian tribes and their subdivisions would be treated like states for certain specified purposes, because tribal governments, like state governments, serve the public within their jurisdictional boundaries, and accordingly should be permitted to devote their limited resources to that end.

There is no provision in the Internal Revenue Code that imposes an income tax on governmental entities or their political subdivisions. Revenue Ruling 67-284 amplifies this issue regarding federally recognized Indian tribes, by affirmatively indicating that they are not subject to federal income tax. Thus, Indian tribal governments do not qualify for exemption from federal income tax as described under Section 501(c)(3) of the Internal Revenue Code, since they are simply not subject to federal income tax.

Pursuant to Rev. Proc. 2008-55, Ohkay Owingeh is a federally recognized Indian tribal government and may therefore be treated as a State in accordance with Section 7871. As such, the tribe's income would not be subject to federal income tax. In addition, the tribe would also be eligible to receive charitable contributions that are deductible for federal income, estate, and gift tax purposes by the donor.

Sometimes governmental units are asked to provide proof of their status as part of a grant application. If your tribe is applying for a grant from a private foundation, the foundation may be requesting certain information from your tribe because of

restrictions imposed by the Internal Revenue Code on such foundations under Sections 4942 and 4945 of the Code.

Private foundation grants to governmental units for public or charitable purposes are not subject to these restrictions. Grants to governmental units for public purposes are "qualifying distributions" under Section 53.4942(a)-3(a) of the regulations; and, if they are for charitable purposes, will not be taxable expenditures under section 53.4945-6(a) of the regulations. Most grants to governmental units will qualify as being for charitable (as well as public) purposes.

Some private foundations require grant applicants to submit a letter from the Internal Revenue Service determining them to be exempt under section 501(c)(3) and classified as a non-private foundation. Such a letter, or an underlying requirement that a grantee be a public charity, is not legally required when the prospective grantee is a governmental unit and the grant is for qualifying (public or charitable) purposes.

The following references may be useful to a grantor in verifying eligibility under Section 7871:

- Revenue Procedure 2008-55 lists Indian tribal governments that are treated similarly to states for federal tax purposes, including sections 7871 and 7701(a)(40) of the Code.
- Revenue Procedure 84-36 lists subdivisions of Indian tribal governments that are treated as political subdivisions of states for the same specified purposes under the Internal Revenue Code that are noted in Revenue Procedure 2008-55.
- IRS Publication 78, Cumulative List of Organizations, includes the following language - "Pursuant to section 7871 of the Internal Revenue Code, Indian tribes and their subdivisions are treated similarly to states and their subdivisions for purposes of section 170(c)(1). See Part II, 'Qualified Organizations', for additional information on contributions to Indian tribal governments." Part II of Publication 78 provides "Indian tribal governments are treated as states for purposes of deductibility of contributions under section 170(c)(1) of the Code, pursuant to section 7871(a)(1)(A) of the Code. Rev. Proc. 2008-55, 2008-39 I.R.B. 768 contains a list of Indian tribal governments that are recognized by the Internal Revenue Service as tribal governments for purposes of section 7871 of the Code. A subdivision of an Indian tribal government may be treated as a political subdivision of a state for purposes of deductibility of contributions under section 170(c)(1) of the Code if the Service has determined that the entity qualifies as a political subdivision of an Indian tribal government under the requirements of section 7871(d) of the Code."

I believe this general information will be of assistance to your tribe. You may wish to provide a copy to an organization that inquires regarding your federal tax status.

This letter, however, is not a ruling and may not be relied on as such. If you have any questions, please feel free to contact Carol Parrish at (505) 837-5636.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lonnette L. Graham".

Lonnette L. Graham
Manager, Indian Tribal
Governments
ID Badge # 1000324408