

2014-054729117-- 149(1)(c)—Chief's council

Date: February 12, 2015

Reference: [149\(1\)\(c\)](#);

Référence : [149\(1\)c](#)

SUMMARY: 149(1)(c)—Chief's council—ITA-149(1)(c)—Whether a chief's council, relating to several First Nations, is considered a public body performing a function of government for purposes of para. 149(1)(c) such that it would be able to issue donation receipts as a qualified donee.

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Whether the chief's council would be considered a public body performing a function of government for the purpose of paragraph 149(1)(c) and therefore able to issue donation receipts as a qualified donee.

POSITION: Yes.

REASONS: The Council is made up of all elected chiefs of member bands; performs many services that bands do not provide for their members, and is very much involved in treaty negotiations.

February 12, 2015

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2014-054729

Attention Ann Rénoüs

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Advice to Charities on 149(1)(c)—Chief's Council

This is in response to your e-mail request of September 23, 2014, for advice concerning the interpretation of paragraph 149(1)(c) of the *Income Tax Act* (the "Act"). In this letter, unless otherwise expressly stated, all statutory references are to the provisions of the Act.

Issue

In particular, you have asked us to consider whether XXXXXXXXXXXX (the “Council”) could be considered a public body performing a function of government for the purpose of paragraph 149(1)(c) and therefore able to issue donation receipts as a qualified donee as defined in subparagraph (a)(iii) of the definition of “qualified donee” in subsection 149.1(1).

Discussion

There is no definition of a “municipal or public body performing a function of government in Canada” in the Act. Therefore, whether any organization is a municipal or public body performing a function of government must often be determined on a case-by-case basis.

The term “public body” is also not defined in the Act, however, generally, a public body has a governance purpose and is accountable to those governed, regulated or represented by it. It is our view that a public body is:

1. An Indian band as defined in the *Indian Act* with procedures to elect a Chief and council.
2. Other Aboriginal governments with election procedures.
3. A body (whether incorporated or not, the members of which may be elected or appointed) established under or as a result of implementing a statute with specific authorization and duties assigned by the statute to the body to develop, administer or regulate governance functions.

Further, in our view, if a public body is incorporated, the federal government or a provincial or territorial government, or the “public” that the corporation is serving or representing should have some specific control over the actions and operation of the corporation and the corporation should be accountable to either that government or that public.

The Council was incorporated under the *Society Act* of XXXXXXXXXXXX and consists of the elected chiefs of XXXXXXXXXXXX member First Nations. It is responsible for the overall coordination of the members' constitutional and self-government development, XXXXXXXXXXXX. It also represents its members in various external relations and public activities of entities within the Federal and Provincial Governments of Canada and with other First Nations.

Prior to XXXXXXXXXXXX, the Council was directly engaged in all treaty negotiating on behalf of its member bands. XXXXXXXXXXXX.

The Council is also responsible for a number of services that it provides to its members including, but not limited to providing:

- All health programs and services to its member bands in accordance with its Health Funding Contribution Agreement XXXXXXXXXXXX.
- Education services to XXXXXXXXXXXX its member bands, including early childhood education, secondary education programs and post-secondary funding and education services.
- Recreational, cultural, social, economic and human resource development services to all member bands. For example:

- Social development services are provided to XXXXXXXXXXXX member bands, including:
 - Basic Income Assistance;
 - Person with Persistent Multiple Barriers;
 - Persons with Disabilities;
 - Monthly Nutritional Supplement;
 - Adult In-Home Care; and
 - Child Out of Parental Home;
- Human resource development programs that include the Labour Market Initiative, the Targeted Wage Subsidy and the Workplace Based Training programs, skill development and training programs, the Student Career Placement and the Youth Initiative Programs;
- Employment services that provides an Aboriginal Career Training Team program;
- Economic development programs such as marketing and promotional organization for the Council, business investment programs and joint venture opportunities; and
- Language and cultural programs.

CONCLUSION

It is our view that because of its governance function and the services that it provides to its member bands and its people, the Council would qualify as a municipal or public body performing a function of government in Canada for the purpose of paragraph 149(1)(c). Therefore, the Council may issue donation receipts as a qualified donee as defined in subparagraph (a)(iii) of the definition of “qualified donee” in subsection 149.1(1).

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